



Welcome to the Equality Officers' Toolkit



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welcome...



Linda Roy
 Assistant Secretary
 Equal Opportunities
lroy@cwu.org

from the CWU Equality Officer

The role of the Equality Officers is finally being recognised with the importance it deserves. The knowledge, skill and expertise required for the role should never be under-estimated. The DEBUT toolkit is a pioneering initiative which will be updated as developments in equality matters occur and following users' feedback.

Renewed focus on equality will see our union underline its position as a leader in the field of equal opportunities. We hope that the industries that our representatives are working in will also recognise the value of this role and allow some scope/paid time for them to fulfil this important role.

The legacy of the Toolkit will unfold over the years to come, but we expect that whenever any of our representatives speak of equality in the workplace that the Toolkit will be synonymous with resolving equality issues.

We are grateful to BIS (Business Innovation & Skills) for match-funding this project which has been pivotal in allowing the CWU to develop our equality agenda at a much faster pace.

Linda Roy

www.equalitylinda.blogspot.com

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welcome...



Billy Hayes
General Secretary
bhayes@cwu.org

from the General Secretary

The creation of the CWU's online toolkit has seen a historic milestone reached for our union. We have been leading the arguments along with the TUC to get more support for our Equality Representatives, specifically in relation to getting paid time off to carry out their very important duties. This toolkit will provide the platform to support our Equality Representatives, who in turn support those members who have equality issues in their workplaces. The value of this to the employer should also not be under-estimated and where opportunities present itself we will work with the employer to continue to build positive industrial relations, particularly where employers also recognise the value of the role our Equality Representatives can and will play in working to promote a positive equality agenda in the workplace.

Finally, my thanks goes to Linda Roy and all of the Equality Department for their excellent work in creating this wonderful equality resource.

A handwritten signature in black ink that reads "Billy Hayes". The signature is written in a cursive, slightly slanted style.

www.billyhayes.co.uk

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The CWU

The Communications Workers Union (CWU) is the largest union for the communications industry in the UK, representing approximately 250,000 members nationally. It was formed in 1995 when the Union of Communication Workers joined forces with the National Communications Union. The CWU represents experts in the postal and telecommunication industries and also those with engineering, computing, clerical, mechanical, driving, retail, financial and manual skills.

The CWU's Statement of Value aims:

- To provide first class collective and individual representation for all CWU members
- To achieve security of employment for all members
- To offer individual membership services of the highest quality
- To expand the trade union membership throughout the communications industry
- To promote, by industrial and political means, the success of the industries in which our members work
- To campaign against all forms of discrimination
- To further these objectives by promoting the influence of the union throughout the national and international community

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The Union Rule Book

All members are encouraged to familiarise themselves with the entire CWU Rule Book, which can be found by clicking the following link:

<http://www.cwu.org/11990/rulebook.html>

However, one of the main equality rules of the union, for your information, reads as follows:

Rule 2: Objectives

4. *To actively oppose all forms of discrimination based on race, creed, religion, age, political affiliation, disability, marital status, sex or sexual or gender orientation in industry, the union and society in general. To this end the CWU shall actively oppose any organisation, political or otherwise, whose aims are racist or fascist.*



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CWU Equality

The CWU Equal Opportunities Department is essentially the catalyst for ensuring that equality takes place and is high on the union's agenda. As a trade union, we seek to address individuals and groups of employees' (collectives) equality issues at work and in turn promote greater fairness within society.

The Advisory Committees serviced by the Equal Opportunities Department are there to address areas of potential discrimination within their brief; for example issues affecting disability, women, race, lesbian, gay, bisexual and transsexual, retired and youth members. The Equal Opportunities Department also campaigns on issues of common concern, including assisting with harassment, bullying and discrimination. This is dealt with by a 24 hour, 7 days a week advice line **0800 107 1909**. In addition the Department provides advice and support to branches nationally on equality issues and produce a range of equality publications.



The information contained within this toolkit is intended to brief Equality Officers on equality legislation and is provided as guidance only. This should not be regarded as an authoritative statement of the law, particularly as legislation is continually changing.

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The information contained in this publication is believed to be correct at the time of production. Whilst care has been taken to ensure that the information is accurate, the publisher can accept no responsibility for any errors or omissions or for changes to the details given.

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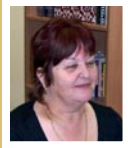
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contact us...



Linda Roy

Assistant Secretary & National Equality Officer

020 8 971 7238

email: lroy@cwu.org

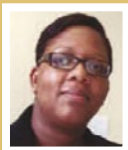


Fevzi Hussein

Policy Assistant

020 8 971 7388

email: fhussein@cwu.org



Dionne Gittens-Noel

Personal Assistant

020 8 971 7356

email: dgittens@cwu.org



Julie Rodrigues

Senior Secretary

020 8 971 7309

email: jrodrigues@cwu.org

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The Role of Equality Officer

Equality Officers have a significant role to play in ensuring that equality issues are dealt with and addressed effectively at branch level. We acknowledge that your work is voluntary and value your commitment. We hope each representative will see the value in promoting fair treatment in the workplace and your role will see you gain skills, experiences and contribute to the improvement of people's working conditions. Where ever possible paid time off release should be negotiated with your branch.

Some of the things an Equality Officer may be expected to get involved with are to:

- Work alongside other branch representatives ensuring all equality data (including minutes and records of meetings) are kept safely and where necessary acted upon, whilst ensuring that these are accessible to those who are authorised
- Recruit new members, organise and provide some representation for members
- Monitor harassment, discrimination and equality issues at your place of work
- Undertake mapping exercises sensitively, to monitor the make up of your workforce in relation to equality matters

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- Campaign, share information and raise awareness on equality issues at work
- Provide opportunities for members to raise equality issues including organising and attending regular equality meetings
- Be involved in negotiating with management along with other union officials on the equality agenda
- Monitor and review relevant company equality policies, ensuring they reflect up-to-date legislation and best practice
- Provide support and identify opportunities for encouraging under-represented groups to take part in the union and ensure their equality needs are also addressed
- Be involved in promoting family friendly equality policies. For example, flexible working practices and also encouraging the eradication of discrimination and bullying at work
- Identify best practice in relation to equality for part time, migrant and agency workers
- Identify training opportunities and keep members and management informed and up-to-date on equality matters
- Assist and support members pursuing discrimination cases at the request of the branch

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- Be a contact point for equality matters;
- Ensure regular equality meetings take place.

Equality Workplace Mapping and Research

You should begin to identify the areas in your workplace which need monitoring. Basic data like age, ethnicity, disability, gender and religion held within your branch would all be extremely useful, as it would build a launch pad for your equality work. From this data and the information received, you will then be able to begin drafting your action plan which could form the basis of discussion for your equality meetings.

There may be situations in which the Equality Officer will have to use a logical approach to resolve the problem. We suggest you use the PIP method, which is:

Problem = find out what the problem is
Information = gather all relevant information
Plan = plan an appropriate action plan

Interviewing Members

Occasionally there may be a requirement to interview members in relation to their problems. It is important to consider the individual's circumstances and be sensitive to any issues that arise. The issue of confidentiality cannot be stressed enough. Any notes taken should be held in a secure place. More detailed information is contained further in the toolkit.

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All branches work to a branch model constitution, which is included as an attachment to this Toolkit. As Equality Officer you should ensure that you have an up-to-date copy of your specific branch constitution as some may differ slightly. All branches are governed by the CWU Rule Book and guided by the Model Branch Constitution. It is worth noting that some branches have their own byelaws within their Branch Rule Book.

Branches may also produce their own magazines and as the Equality Officer, you may be able to contribute items for publication on equality issues.

If you need Branch contact details, click the link below:

www.cwu.org/cwu-branches.html

Initial Equality Training and Briefing

A branch rep will provide you with the relevant information to begin successfully in your role. They should also brief you on the equality issues of particular importance within your workplace or branch. They should help to ensure you receive the appropriate union training. At the very least they should make you aware of what you should do in the early stages of your role, pertinent to that particular place of work or branch.

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The Equality Officers' Action Plan

All Equality Officers will require time to plan and organise their equality agenda. This may be in relation to any number of things which have been identified at your workplace.

When formulating an action plan, see below some key points that you may like to consider:

- **Communications** – you may wish to keep your members informed using an equality newsletter or bulletin
- **Organising networks** – you may wish to develop a series of networks within your Branch, which are strand specific Where opportunities arise, you may want to consider a multi-strand initiative e.g organising a branch equality forum
- **Collective Equality Issues** – You should always consider having an input into all negotiations where there are equality issues involved. Consideration should also be given to whether an Equality Impact Assessment would be beneficial
- **Mapping** – check with your Branch organiser to see how advanced the membership breakdown has been developed in terms of identifying where the under-represented groups work and how many there are

This in turn will allow you to monitor your workplace for equality.

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We discussed the sensitive nature and potential difficulties of monitoring LGBT workforce information. Grievance and disciplinary issues can be monitored for fairness and any patterns explored (for example large numbers or continuous staff leaving). Some staff may not feel empowered to complain and so there may very well be underlying equality issues taking place.

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Discrimination law

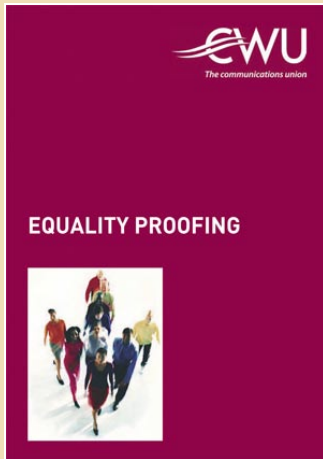
In this section, individual factsheets covering aspects of discrimination law can be downloaded and printed.

Just click any of the links to the right to access the factsheets.

The Equality Bill
Discrimination in Recruitment
Age Discrimination
Positive Discrimination
Positive Action
Objective Justification
Disability Discrimination
Race Discrimination
Religion and Belief
Sex Discrimination
Sexual Orientation
Gender Re-assignment Regulations
Part-time Workers
Agency and Migrant Workers
Human Rights

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CWU Equality Proofing Booklet

Discrimination is treating people or groups of people less favourably, ignoring, isolating, excluding or belittling on the basis of their gender, colour, race, nationality, ethnic or national origins, age, disability, sexual orientation, religion or belief or lack of belief than they would otherwise have been treated. It is also taking decisions based on prejudice, acting upon prejudice and subjecting people to harassment at work.

Equality Impact Assessments (EIAs) are one way to assess the effectiveness of your company's equality systems and policies. Whilst we know that not everyone is subject to EIAs placed on them by a public duty, they are strongly encouraged as best practice.

Please feel free to refer to and familiarise yourself with the CWU Equality Department's Equality Proofing Booklet. This contains information regarding; training, the harassment & bullying helpline, equality proofing agreements, equal opportunities in the CWU, anti-discriminatory and equality legislation, equality and bargaining including terms and conditions.

Click here for a copy of the CWU Equality Proofing Booklet:

<http://www.cwu.org/30550/equal-opportunities.html>

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Discipline and Grievance Procedures

Your disciplinary and grievance procedures may have been recently updated (2009) to reflect the new Statutory Grievance and Disciplinary Procedures. You must ensure you have an up-to-date copy of your employer's policies and procedures.

Statutory Minimum – Grievances

A grievance is where an employee has a problem about their work, working conditions or relationship with colleagues. Grievances occur for a range of reasons including discrimination on the grounds of sex, age, race, disability, religion or belief.

Careful consideration should be given to the lines of reporting a grievance. As, if there are not a range of people to go to, in various situations the procedure is fundamentally flawed and will not be effective in protecting employees and members from abuse.

Employees and members have a right to be represented by a union representative or another colleague.

The most important issue is that grievances are held in a fair and open way and procedures should clearly reflect this. All managers and supervisors should be trained to deal with grievances.

All employers will have their own agreed procedures. As a CWU representative, your responsibility is to ensure that your members are supported.

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A statutory ACAS Code of Practice and Guidance booklet (which does not form part of the Code and is for advice only) has been produced for your benefit and you can access it by clicking on the link below:

www.acas.org.uk/index.aspx?articleid=2179

The new ACAS Statutory Code of Practice on Discipline and Grievance

The practical guidance is attached to the toolkit in full and sets out the principles for handling disciplinary and grievance practices in the workplace. The guidance does not include dismissals due to redundancy or non-renewal of fixed term contracts on expiry. The Code will be taken into account when tribunals consider cases in relation to unreasonable failure to comply with the Code.

The full text of the Code of Practice can be downloaded from the following link:

www.acas.org.uk/CHttpHandler.ashx?id=1047&p=0

The following flow chart provides an illustration of how a typical grievance or disciplinary procedure can be implemented. Ultimately, we would strongly recommend that Equality Officers appraise themselves of the employer's relevant discipline/grievance procedures.

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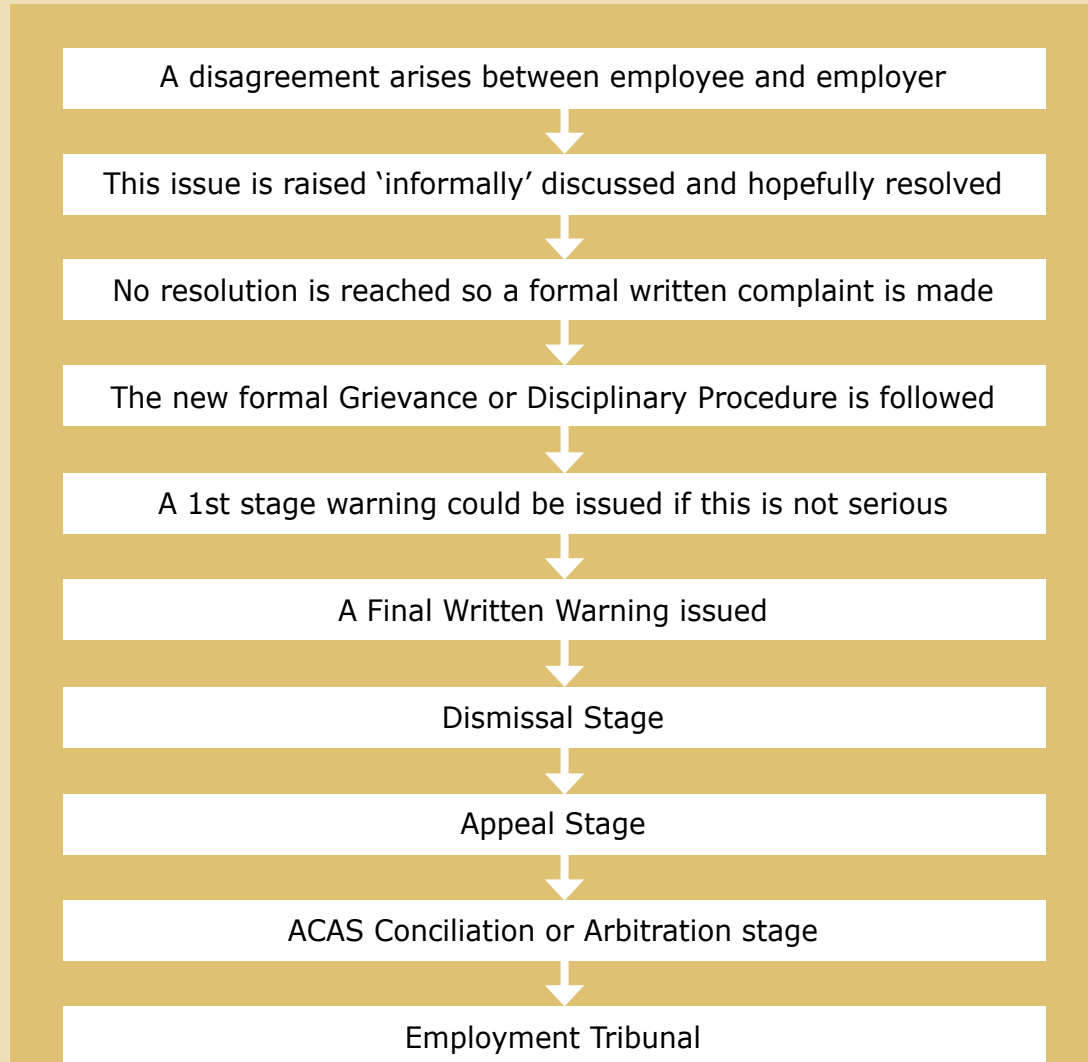
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Typical grievance or disciplinary process



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Mediation can be used at any stage of the process, which can include restorative counselling. Mediation may be used to help resolve disputes. This is where a 3rd party helps two or more people to resolve a dispute. The agreement comes from those in dispute not the mediator. The mediator should not judge or say one person is right or wrong or tell those involved what to do. They should manage the process of resolution.

As Equality Officer it is important to ensure that you understand the Grievance and Disciplinary Codes in order that you are able to advise your members.

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Key points from the new ACAS Guide to Disciplinary and Grievance at Work

Use ACAS's Equality Direct Helpline: **08456 00 34 44**

ACAS Advisors are available for problem solving services or tailored programmes in employment. They normally work with employers on developing positive in work arrangements including training. As Equality Officer it is useful for you to be aware of the role of ACAS in employment relations today.

Employers are legally liable to take the Code of Practice into account when considering relevant cases. Compensation awards may be adjusted by 25% either in favour of the employee or employer, where cases reach the Employment Tribunal stage.

The Guide on the other hand (attached) does not form part of the Code of Practice and therefore Employment Tribunals are not required to have regard for the parts of the guide which do not form parts of the Code. The emphasis of the Code is to try to resolve disciplinary and grievance issues within the workplace.

Currently, there is no statutory right for an employee to be accompanied at an investigatory meeting, unless stated in the company's policy or procedures. In this case, as Equality Officer,

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you could assist members to prepare for such a meeting. Remind them that disciplinary action should not be taken at an investigatory meeting.

Encourage them to have representation at the formal disciplinary hearing at which they have a right to be accompanied, including for example where a formal warning is to be issued and placed on an employee's record, suspension action is being taken, demotion, dismissal or an appeal. The representative should be working with the member throughout this process and providing support.

If you are representing at the actual hearing there are instructions in the Code to observe, including not prejudicing the hearing. Representatives must not have a conflict of interest and must be authorised to represent members at the meeting as per the requirements set out in the Code of Practice.

Language translators may be used if necessary and reasonable adjustment rules apply to employees. This includes making provisions for any support workers or advocates for those with a disability.

** The CWU successfully negotiated paid time off for Equality Representatives employed by Alliance & Leicester. This was widely heralded as a first of its kind.*

The Equality Officer may need to negotiate time off, as Equality Officers have no statutory rights to release time. *Employers must not disadvantage employees who exercise their right to representation as this is unlawful and could lead to a claim at an Employment Tribunal.

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Some of the mitigating circumstances that you may wish to consider when dealing with a disciplinary case could include the following:

- Health – the medical condition of the employee
- Domestic Problems – issues at home or away from work
- Provocation – where employees have been goaded
- Justifiable ignorance of rules or standards
 - genuine misunderstandings
- Inconsistent treatment in the past – irregular to previous similar cases

It is always advisable to check whether any similar previous cases have taken place to establish whether a consistent approach has been carried out by the employer. If you uncover evidence of inconsistent treatment, you may have established a comparator which could be used in a case of discrimination at an Employment Tribunal.

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Harassment and Bullying

Definition: Harassment is any conduct or behaviour which is unwanted, unwelcome, offensive and unreciprocated related to: sex, race, disability, sexual orientation, religion/belief, age or any personal characteristics

Examples:

- Unwelcome sexual advances, propositions, demands for sexual favours
- Unwelcome comments about dress/appearance
- Displaying offensive material, pornographic pictures
- Pin ups and calendars, including electronic forms
- Asking intimate questions about people
- Name calling, jokes, offensive language, mocking
- Exclusion from workplace social activities
- Making stereotypical assumptions
- Isolating people.

The list above is not exhaustive.

The Equal Opportunities Department has produced a comprehensive Bullying and Harassment factsheet which you can access by clicking the following link:

[Click here to download individual factsheets from CWU Equality](#)

[Click here to see a flow chart of how a bullying and harassment procedure can work.](#)

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The Harassment Database

As Equality Officer you will have a role to play in ensuring that complaints are logged onto the harassment database. You must check with the branch that you are following correct CWU branch procedures. The CWU believes that every worker should be treated with dignity and respect. We do not tolerate harassment, bullying or discrimination, wherever it comes from. We aim to do all we can to ensure our workplaces are free from the misery caused by harassment and that all workers can expect to be treated with dignity and respect.

In law, it is the employer's responsibility to ensure that their workplace is free from harassment. They are responsible for acts of harassment committed by any of their employees. They have to prove that they acted firmly enough against the perpetrators. This means that no matter how good their policies and procedures are on paper, if they are ignored or the workforce is not made aware of them, then it is the employer who is to blame for acts of harassment committed by its employees.

So where an employee or member needs to make a complaint about the way they are being treated (e.g. bullied or harassed), they must first turn to their company Grievance Procedures, you could assist them here. They may also have to refer to the Bullying and Harassment policy if their company has one.

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This is the mechanism to use if you have a complaint about harassment. Your employer must respond to the complaint and resolve the matter fairly. Union members have the right to seek assistance. As Equality Officer you must inform the member of their legal rights to take the complaint to an employment tribunal, if necessary.

As Equality Officer you could go with the member to ask the aggressor to stop, often this is enough to prevent a reoccurrence. Alternatively you could assist the member to write to them.

The information you should help the member to collect is:

- i) Dates, times and nature of all incidents.
- ii) Talk to others at the member's place of work discretely to gather more facts.
- iii) Encourage the member to make people aware of their situation so that they do not feel isolated.



Some members may not wish to talk further to their branch. You can advise them of the **CWU Harassment Helpline 0800 107 1909** who are independent of their branch, which they can call direct for advice at anytime. The helpline is available 24 hours a day, 7 days a week and is confidential.

The Helpline will log the complaint and will only pass the information onto the CWU National Equality Department, who will coordinate any necessary action relating to the members wishes.

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Alternatively, the member could choose to receive counselling from a team of qualified professional counsellors who can provide them with further guidance and support.

If the member still wants your help at this stage and if a complaint is to be taken forward, you can assist the member to do so. In particular help them to complete the appropriate HCD1 Form which you get from the Equal Opportunities CWU website.

You can interview the member to retrieve the relevant information or just help them to prepare to log their complaint.

General tips for filling in this form:

- Ensure that if you are interviewing the complainant you have somewhere quiet and private to do so
- Try to show some empathy
- You may need more than one appointment with the complainant to complete the form
- Explain the reasons for completing the form
- Try to keep their case details confidential
- Remind them that the monitoring questions are voluntary and they are allowed to complete it themselves if they wish

Please also refer to the attached CWU Bullying & Harassment Factsheet.

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Branches are encouraged to try first to tackle the issue at branch level but if you are having difficulties please contact the CWU Equal Opportunities Department.

The **PIP** approach – Problem, Information, Plan. This means that members should clearly identify the problem by way of

- What are the facts of the case?
- Is it a grievance or is only advice needed?
- What are the equal opportunity implications?
- Is it an individual case or does it affect others?
- Can I settle it locally?
- Have those involved (including witnesses), been interviewed?

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Contracts of Employment

A contract of employment is a legally binding agreement between two parties, where one person has agreed to work for the other for pay. It may be written or verbal. Where issues arise it can be ruled upon in a court of law or employment tribunal.

Contracts may include express (written explicitly), implied (too obvious to include with the contract e.g. mutual trust) or custom and practice where certain work practices are unwritten but remain the norm. In cases where any contractual issue is disputed, a court or tribunal could take a decision. Employers can award their staff better terms than the statutory (minimum requirements imposed by law) but not less.

There are three main types of written contract Permanent open ended and indefinite. This type of contract should run until retirement unless either party terminates it. Temporary for a set period of time but can be extended. In employment temporary staff build up their employment rights as they go along, like permanent staff. Fixed Term where an end date is specified and in some cases the end of a task may be specified. There are special rules for people on a fixed term contract.

For more information, click on the following link:



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Types of Contract

Fixed term contracts

The fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 aims to ensure that employees on fixed-term contracts are treated no less favourably than comparable permanent employees. Under the regulations these employees have the right to the same terms and conditions of employment as comparable permanent employees. Examples of fixed-term work include:

- agricultural workers doing 'seasonal' work
- shop assistants working for the Christmas period
- employees covering maternity leave
- employees doing a specific task, like painting a house

For more information, see **Fixed-term work – Guidance** at the Department for Business & Innovation & Skills website (formerly BERR).

Casual contracts

These are terms for staff who are called in to cover or fill gaps in service, are not obligated to accept shifts nor is the employer obligated to give them. Casual workers do have some employment rights.

Part-time and Job Share

Part-timers work less hours each week than the standard norm (e.g. 35 hours per week). Job sharers split the responsibility for the

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full hours per week normally between two people. They have the same rights as full time staff.

Contracts

All contracts may not all be the same and employees are encouraged to read thoroughly and then sign a copy as should the employer. This is where you are agreeing to the terms contained within it. All employees should receive a contract within 2 months of employment.

Sick Leave

No sick note is required for a period of seven days or less. Managers should discuss leave with employees to make clear that everything is OK, ensure they have access to the correct policies and procedures.

Leave or Time off Rights

Employees have the right to time off for adoption, annual leave, antenatal care, dependants, disciplinary or grievance meetings and accompanying someone to a disciplinary or grievance meeting also employee representatives.

The right to time off also extends to European Works Councils, flexible-working hearings, jury service, ordinary and additional maternity leave, parental and paternity leave, occupational pension scheme trustees meetings and directors of trustee companies, public duties, job hunting or to arrange training when facing redundancy, safety representatives, for study or training.

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Time off for Trade Union Duties and Activities

Time off for trade union duties and activities includes time off for union learning representatives. There may also be further qualifying conditions attached to an employee's right to time off for trade union duties. Officials are entitled to time off whilst carrying out their role as a union official, please contact your branch secretary for more details

Where a trade union is not recognised by an employer, employees have no statutory right to time off to undertake any duties, except that of accompanying a worker at a disciplinary or grievance hearing.

An employee who is an official of an independent trade union, which is recognised by the employer, must be allowed reasonable time off with pay during working hours to:

- Carry out union duties
- Consult with the employer or receive information from the employer about mass redundancies or business transfers
- Undergo training for union duties (as approved by the union or Trade Union Congress).

An employee who is a member of a trade union recognised by their employer is also entitled to reasonable time off for certain trade union duties, including attending a union conference. The employer however, is not obliged to pay the employee for time off for these activities.

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Employees have the right to join or not join a trade union of their choice. The employer must not hold this against them and this should not prejudice them in any way and they must not suffer any detriment for their involvement or proposed involvement in a trade union. Dismissals which infringe these rights may be taken to an employment tribunal regardless of length of service.

Unpaid time off for trade union activities

Employees who are members of a recognised trade union are entitled to take reasonable unpaid time off. This can be during the working day to take part in union activity or to talk to a union learning representative. Employees can take time off for:

- Going to work place meetings to talk about and vote on negotiations with their employer
- Going to meetings with full-time union officials to discuss issues relevant to the workplace
- Voting in union elections

If you are a union official, you can take unpaid time off to go to union conferences, meetings, and union policy-making committees.

Although there is no statutory right to be paid for this time off, some employers make payments in some circumstances. Your contract of employment may explain these rights.

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As time off for union activities are not normally paid, meetings are often held during breaks such as lunchtime.

Although industrial action is a trade union activity there is no right to time off for it. However, union officials do have the right to paid time off to take part in negotiations to avoid industrial action.

Union Learning Representatives are entitled to paid time off for training and carrying out their duties. Union members are entitled to unpaid time off to consult their learning representative, as long as they belong to a bargaining unit for which the union is recognised for collective bargaining purposes.

The duties for which a union learning representative may take paid time off are:

- To analyse learning or training needs
- To provide information and to arrange or promote learning or training
- To discuss learning or training with the employer
- For training as a learning representative

Safety Representatives are also entitled to certain time off to carry out their functions and undergo training. Employers are required to consult staff on health and safety under the Health and Safety (Consultation with Employees) Regulations (HSCER) 1996.

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Time off under Working Time Regulations – This states the right to paid annual leave and a limit on the average hours a worker can be required to work (48 hours). These regulations also give other rights to time off including:

- 11 consecutive hours' rest in any 24 hours
- An in work rest benefit if the working day is longer than 6 hours
- One day off each week
- A limit on the normal working hours of night workers to an average eight hours in any 24 hour period and an entitlement for night workers to receive regular health assessments

This applies equally to agency workers and freelancers.

The rights of young workers – those over the minimum school leaving age (16) but under 18's are entitled to:

- A limit of eight hours working time a day and 40 hours a week
- Not to work between 10pm and 6am or between 11pm and 7am (except in certain circumstances – contact ACAS for more details)
- 12 hours rest between each working day
- 2 days weekly rest and 30 minute in-work rest break when working longer than four and a half hours.

What is reasonable?

It is important for union officials and representatives and employers to be reasonable in handling requests for time off for union duties and activities. There is no legal definition of reasonable time off.

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You need to take into account the employer, the need to keep production going, the importance of health and safety at work and the amount of time off a person has already had.

Those seeking time off for trade union duties and/or activities should provide their employer with as much notice as possible and give details of the purpose of the time off and how much time is required.

The ACAS Code of Practice recommends that unions and individual employers have formal agreement about time off for union activities.

The Right to go to an Employment Tribunal

Employees who feel that their contracts have been breached in one way or another can begin proceedings against their employer, which could result in an Employment Tribunal hearing. There may be oral and/or written terms, these are referred to as express (written) and implied (non-written) terms, in addition there are 'legal' terms, which is in particular where Discrimination Law comes in.

If a change is significant enough this could be a fundamental breach, which has broken mutual trust and confidence. This shows that one party no longer wishes to be bound by the terms of the contract. This is more commonly known as constructive dismissal.

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ACAS support (Pre-claim conciliation)

Employment Tribunals – hear discrimination cases logged within 3 months. The burden of proof lies with the employer; this is once some evidence has been provided by the complainant to show the discrimination has occurred (a prima facie case). ETs should be a last resort to resolve things but should not be ruled out.

For a full jurisdiction list and the relevant originating legislation, please go to the following link:

www.employmenttribunals.gov.uk/FormsGuidance/

Equality Training

This online toolkit has been incorporated as a resource for the Equal Rights I and II Courses.

For an up to date list of what CWU courses are available, please click on the following link:

www.cwueducation.org/courses.asp?step=17

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Information about family friendly policies

Parental Rights include Adoption leave, Antenatal care, Time off for dependants, Flexible Working, Maternity Allowances, Maternity leave, Statutory Maternity Pay, Health in maternity grant, other maternity rights including Parental leave and Paternity leave.

A wide range of CWU Equality factsheets covering these issues and policies can be downloaded by clicking the following link:

[Download individual factsheets from CWU Equality](#)

Please note that the Channel Islands have differing rights to mainland UK. Listed below are some useful websites which relate to government legislation and minimum standards. The contract of employment will state if the employer gives above the minimum. See the links below for assistance with statutory rights:

Jersey:

- www.gov.je/socialsecurity/benefits
- www.jacs.org.je

Isle of Man:

- www.gov.im/dti/employmentRights/maternityandrelatedrights.xml

Guernsey:

- www.gov.gg/industrialrelations

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www.cwu.org

BIS (formerly Department for Business, Innovation & Skills)

www.berr.gov.uk

ACAS

www.acas.org.uk

UK National statistics

www.statistics.gov.uk

UK Government website

www.direct.gov.uk

Government Equalities Office

www.equalities.gov.uk

TUC

www.tuc.org.uk

Institute of Employment Rights

www.ier.org.uk

The British Council

www.britishcouncil.org

Equality & Human Rights Commission

www.equalityhumanrights.com

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Equality Commission for Northern Ireland

www.equalityni.org

Employers Forum on Age

www.efa.org.uk

Department for Work and Pensions

www.dwp.gov.uk

Labour Research Department

www.lrd.org.uk

Health and Safety Executive

www.hse.gov.uk

Inland Revenue 0845 47 47 47

www.hmrc.gov.uk

or call **0845 607 0143**

Labour Relations Agency

028 9032 1442 (N.Ireland)

Abortion Rights

www.abortionrights.org.uk

Info. on the Disability Equality Duty

www.dotheduty.org

Fire risk assessments for disabled people

020 7 944 4400

www.communities.gov.uk/publications/fire/firesafetyassessments Fire Safety

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Joint Council for the Welfare of Immigrants

www.jcwi.org.uk

Access to Work:

Job Centre Plus Scheme offers disability work grants

0800 0055 6688

Employer Forum on disability

Employers focus on disability at work

020 7 403 3020

RADAR

National network of disability organisations includes useful risk assessment advice

020 7 250 3222

Institute of Occupational Health (IOSH)

have an occupational health toolkit

www.ohtoolkit.co.uk

0116 257 3100

ACAS – The Arbitration and Conciliation Advice Service

0845 747 4747

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The Equality Bill

The Equality Bill (April 2009) General Employment Implications

This Bill is a plan for a new law, when parliament agrees to a Bill it then becomes law. The Equality Bill is expected to become law in summer 2010.

The Equality Bill aims to bring together all equality legislation in one place and make some specific improvements.

People will be protected on the grounds of Race, Religion or Belief, Sex, Sexual Orientation, Age, Disability, Gender Reassignment, Marriage and Civil Partnerships, Pregnancy and Maternity.

The key areas of the Bill can be summarised as follows:

- Banning age discrimination in the provision of goods, facilities or services and public functions. Things that benefit older people, such as free bus passes, will still be allowed
- Increasing transparency in the workplace. If inequality remains hidden, we can't measure it and make progress
- Making Britain fairer through a single equality duty, which will require public bodies to consider the diverse needs and requirements of their workforce and the communities they serve, when developing employment policies and when planning services
- Extending positive action measures to allow employers to make their organisation or business more representative
- Allowing political parties to use all-women shortlists beyond 2015
- Reducing nine major pieces of legislation and around 100 statutory instruments into a single Act, making the law more accessible and easier to understand, so that everyone can be clear on their rights and responsibilities

In addition to the above, the areas of the bill that will be of particular interest to Unions include areas such as:

- For the first time, a Government target to close the gender pay gap is included in the Equality public service agreement
- Improved data collection on equality, providing a better evidence base to support future progress
- Ensuring the public sector has due regard to equality when buying goods and services. Every year £175 billion is spent by the public sector on goods and services supplied by the private sector. This purchasing power can be put to good use to improve equality
- Providing additional funding to support the work being done by trade union equality representatives who help to create a more equal workforce
- Advice and guidance from ACAS and information on the Business Link website to help employers understand what equality means for their workforce and to improve working life for everyone
- Work by the Equality and Human Rights Commission which provides advice and guidance on equality issues
- Equality and Human Rights Commission inquiries into the financial and construction sectors. The inquiries will look at the underlying causes of inequalities and consider measures to address discrimination and increase diversity in these sectors. The Commission will make recommendations based on examples of best practice
- Helping to increase the number of ethnic minority women councillors. There are only 149 ethnic minority women councillors in the UK. Better representation will ensure that the voice of ethnic minority women is heard, and local councils better reflect the communities they serve. We have set up a cross-party Taskforce chaired by Baroness Uddin to take this work forward
- Considering how Parliament could be more representative of society as a whole. A Speaker's Conference has been set up to consider and make recommendations on how to improve the representation of women, disabled people and people from ethnic minority communities in the House of Commons

- Taking steps to understand other forms of inequality and the role they play in determining people's chances in life. Factors like family background, educational attainment, where you live and the sort of job you have can influence your chances in life as well as things like gender, ethnic background and whether or not you have a disability. We set up the National Equality Panel in 2008, chaired by Professor John Hills of the London School of Economics, to analyse these factors as well as the links between them. By better understanding these links we will be more able to tackle the problems where they exist. The Panel will report in 2009

Discrimination in Recruitment

Discrimination can occur if potential employees feel that they have been discriminated against in recruitment, on the grounds of age, race, sex, disability, sexual orientation and religion or belief or union membership.

Employees should be selected on the basis of their ability to do the job and nothing else. A clear person specification and job description will easily allow both the employer and potential employee to relate their skills, experiences, qualifications and professional qualities to the job. A suitably designed application form should allow the employee to demonstrate their appropriateness for the post.

Any professional competencies required to do the job should be made apparent when the application packs are sent out, otherwise this could be seen as introducing 'extra' requirements after the employee has passed the interview and selection stages. Employees can use suitable tests at interview to ensure the employee has the right skills.

References should leave some room for the person giving the reference to make their own personal comments (as opposed to tick boxes or yes no answers, which sometimes have the affect of guiding the person writing the reference into a particular direction), which can sometimes be misleading and/or limiting. References can help new employers to understand new starters and help them to settle in better.

Reasonable Adjustments relating to disabilities at recruitment and interview stage

Reasonable adjustments regarding potential employee's disabilities should be established early on. Employers should make provision for this during the recruitment process. This is covered in more detail under the Disability Discrimination Act section of the toolkit.

Family friendly policies or company benefits should also be made clear to potential employees and these should remain available where employees have been successful at interview.

Unsuccessful candidates may request written feedback and interviewers should be prepared to provide this. This should provide details of the reasons the applicant was unsuccessful and may be useful for identifying whether any discrimination took place. It will also allow the candidate a chance to prepare better for their next interview.

Age Discrimination

The Employment Equality Age Regulations 2006 made it unlawful to discriminate on the grounds of age. This legislation covers all forms of discrimination whether direct, indirect, victimisation or harassment.

Currently the law states the minimum national default retirement age is 65.

It is unlawful to discriminate on the grounds of age against employees, trainees, workers and job seekers. All employers are covered by the regulations. Cover includes employment issues; recruitment, terms and conditions, promotion, transfers, dismissals and training.

Employer's workforces should aim to be a reflective representation of the communities which they serve. Therefore you could check with national statistics or even your local council to reveal the details for your area, these can be found in the census. It can be useful to study trends and patterns particularly relating to the age range of your workforce. All employees should understand the implications for age discrimination.

We need to remember that age is relative (for example a 35 year old may seem old to a 16 year old but young to a 65 year old).

Where a member is concerned about age discrimination you need to establish firstly whether this is justified. For example, can the employer give a reasonable objective for favouring one employee of a certain age over another?

This must not be simply discriminatory for example, some people believe that with age comes experience or that because you have worked somewhere longer you have the right to be treated more fairly than newer employees, people should be treated the same. All of this should not therefore discriminate against all younger employees. Another negative example is that you develop memory problems or are less able to learn with older age.

Employees are entitled not to be dismissed, refused training, denied a promotion, be given adverse terms and conditions, retired before their minimum legal retirement age of 65 (without objective justification) or your own retirement age whichever is higher. Even with the latter the laid out retirement procedure must be followed, otherwise the retirement will be out with legal procedure.

Employees must not be subjected to indirect discrimination by way of selection of recruitment, training and promotion, policies, benefits, employment rules, or any other practices, which could disadvantage employees of a particular age.

Case Study

A job advert seen in a local paper makes a clear stipulation that applicants must have a least 5 years experience to carry out the advertised post. It is also a condition of the post that the successful candidate shall have suitable gravitas for this position.

Protection Against Age Discrimination**Redundancy Procedures**

Your employer must make sure that any redundancy policies don't directly or indirectly discriminate against older workers. An example of indirect discrimination could be your employer selecting only part-time workers for redundancy, when a large number of these may be older workers. The only exceptions are where an age requirement can be objectively justified.

There is no upper or lower age limit on the entitlement of statutory redundancy pay. Your employer will have to pay you the statutory minimum redundancy payment even if you are under 18 or over 65 (or after your normal retirement age if this is lower).

Retirement Rights

The national default retirement age is 65, although this is not a compulsory retirement age. Your employer can only retire you below the age of 65 if they can show that having a lower retirement age is appropriate and necessary. Your employer will have to give you at least six months notice of your retirement date. You have the right to request to work beyond 65 or any other retirement age set by your employer. You will not automatically be allowed to work beyond your expected retirement date and your employer does not have to agree to your request or give you a reason for turning it down, but they will have to hold a meeting with you to consider your request.

Is Indirect Discrimination Lawful?

There may be situations where it is lawful to discriminate on the grounds of age. For example if it is an objective justification, that is evidenced-based.

If a person is within 6 months of the statutory minimum retirement age which is 65, employers may legally refuse them employment. There are also exceptional issues relating to the minimum wage and training.

An example of age discrimination is where most employees are older, say over 40 and there are constant references made to 'younger people being inexperienced' even if it is done in a humorous way. It would seem strange for example if all employees under a certain age were in junior positions, even where they are quite clearly more qualified and/or skilled than older employees. Individuals who harass other employees are putting their employment at risk.

As Equality Officer you should be able to look to your employer's equality policy, which should also address issues relating to Age Discrimination. This makes everyone clear of the expectations placed upon them as individuals and as part of the company as a whole.

Everything must be justifiable. Adverts should be placed in a suitable variety of places unless exercising legal positive action or a Genuine Occupational Requirement (GOR) (e.g. 'driving is required', therefore the applicant must have a driving licence).

Click the link below for more information on age discrimination:

www.worksmart.org.uk/rights/viewsubsection.php?sun=21

Positive Discrimination

Positive discrimination in the UK can occur legally where there are Genuine Occupational Requirements (GOR) and are permissible in discrimination legislation in terms of recruitment, transfers, training or dismissal or in the case of sex or race a Genuine Occupational Qualification (GOQ).

This is a limited defence however and should only be used where the nature of a role makes it unsuitable for individuals with particular characteristics. For example a certain person may be necessary for a particular job (e.g. where there may be gender issues where physical contact with another individual(s) and issues of decency or privacy may arise). Under the Race Relations Act 1976 an employer may be able to justify employing individuals of a particular racial background, this may be for the purposes of 'authenticity', in a particular setting. This relates to both the private and public sectors.

There are however, strict conditions that must be met. The discrimination must be a determining requirement of the job and must be proportionate to apply that requirement in a particular case.

Positive Action

This is where an employer can take positive steps to develop people from under-represented or disadvantaged groups effectively and fairly. They must still show however, that they want to attract applicants from all sections of the community and will not discriminate in the selection of candidates for employment, promotion or the terms and conditions on which they are employed.

The employer must be able to show that before committing to positive action, they have evidence to show that the targeted group is under-represented or at a disadvantage.

With this provision employers could, for example, take the following steps for certain disadvantaged groups:

- Offer work experience opportunities
- Mentor students from the local community
- Open days
- Work with specific community groups
- Encourage local community support
- Offer training and development opportunities

For example, training may be provided in developing certain skills, how to complete application forms, develop interview techniques, develop confidence or assertiveness, retraining for women, developing management skills to encourage women/ethnic minorities to apply for promotion, provide career counselling and guidance for working women or those wishing to return to work.

For example, it does not allow employers to recruit people on the basis of their race or gender unless under (GOR or GOQ). It is important however that no favouritism is shown. All help must stop as soon as the post is advertised, when all applications must be judged equally on their merit.

It is not necessary for the interview team to know the ages of the candidates before they choose. They should try to avoid asking age-related questions particularly at interview. Panel members should be made aware of equality and discrimination issues well in advance. It is useful to ask someone non-biased to check the interview process was undertaken fairly and all notes should be kept for 12 months.

Objective Justification

Effective justification to discriminate can only be fair when it is clear, compelling and evidence based. It must be a proportionate means of achieving a legitimate aim. This means it must be crucial to your employers business. This may include issues to do with economic viability of the business (not just because it costs less), efficiency, welfare, safety or training for example. It may also be a cross over of any of these. Each situation should be judged on its own merits.

Exceptions

There may be exceptions to age discrimination, in certain circumstances including pay and other benefits related for example to the national minimum wage. Young people are paid less to encourage them to stay in education. Also acts under statutory authority, enhanced redundancy, life assurance, genuine occupational requirements – as mentioned before, retirement and occupational pension schemes.

There may also be exceptions made for payment made in relation to length of service but there are regulations relating to the 5 year threshold and the reasons employers award these benefits (e.g. loyalty or motivation). If unsure check the individual's employment contract and work from there, seeking further advice from the union where necessary.

Minimum Wage

There are three main age bands 16 and 17 years, 18 to 21 years and 22 and over.

Employers can of course pay their employees a higher rate if they so wish. Employers must also ensure that employees within the same age band in relation to the minimum wage for younger people are paid the same.

Some apprentices may receive less if they are not entitled to the minimum wage.

Statutory Enhanced Redundancy Payments

Age Band	Entitlement
16-21 years	receive half a week's pay for each year served
22-40 years	receive 1 week's pay for each year served
41+ years	1.5 weeks pay for each year served

The maximum number of year's service is 20.

Employers may decide to pay more; this would be detailed in contracts and/or terms and conditions relating to individuals. All age bands (where they apply) should receive the same benefits. Employers' redundancy decisions must also be objectively justifiable.

If you require any further information which has not already been covered in this section, please click on either of the following links:

www.worksmart.org.uk/rights/age_discrimination

www.acas.org.uk/index.aspx?articleid=1841

Disability Discrimination

The Disability Discrimination Act 1995 (DDA)

The Disability Discrimination Act 1995 came into force on the 2nd December 1996. It was the most comprehensive and wide ranging piece of legislation to be introduced within the last decade and has been responsible for giving all employees enforceable rights and protections within the workplace.

The Act gives all employees, irrespective of age or length of service, protection against discrimination, unfair treatment or dismissal if it is on the grounds of their disability or serious illness.

For further information on the DDA procedure, please click the following link:

<http://www.cwu.org/30550/equal-opportunities.html>

The new Equality Bill will also impact on this when it becomes law.

Duty of the Employer to Make Adjustments

The employer must try to make reasonable adjustments to accommodate a disabled person's working needs, to enable them to do their job. This would be to make up for any disadvantages particularly of a physical nature.

Reasonable adjustments can include:

- a) Allocating some of the disabled person's duties to another person
- b) Transferring a disabled employee to fill an existing vacancy
- c) Altering working hours
- d) Assigning them to a different place of work
- e) Allowing them to be absent during working hours for rehabilitation, assessment or treatment
- f) Giving him/her or arranging for him/her to be given training
- g) Acquiring or modifying equipment
- h) Modifying instructions or reference manuals
- i) Modifying procedures for testing or assessment
- j) Providing a reader or interpreter
- k) Providing supervision

These measures would normally be considered against:

- a) The extent to which taking the step would prevent the effect in question
- b) The extent to which it is practicable for the employer to take the step
- c) The financial and other costs which would be incurred by the employer in taking the step and the extent to which taking it would disrupt any of his activities
- d) The extent of the employer's financial and other resources
- e) The availability to the employer of financial or other assistance with respect to taking the step.

Certain agreements may impact on the above and must be considered very carefully. It is advised that in these instances, legal advice is sought. In any case no agreement should deliberately prejudice a disabled person.

The union is part of the Disability Champion Programme and where possible the Equality Officer should seek advice from a Disability Champion or maybe enrol to become one.

Advice might also be sought from Job Centre Plus or various local and national disability organisations. Currently the employers duty extends only to the disabled people they would potentially employ or actually employ not generally though in terms of the wider public.

Access Audits may be necessary and ideally these should be carried out by someone on the National Register of Access Consultants. New building designs for example should comply with British Standard 8300.

An Equality Officer could also monitor the disability trends within their workplace, with a view to presenting reports and raising issues within the workplace and union. Within your role as Equality Officer you might also advise members initially on their basic disability rights and seek further help and advice for them if required.

You could help disabled staff to fully understand the procedures, which of course should be in a suitable accessible format for disabled people. You might also review or arrange to have reviewed any adjustments, ensuring that records are kept. Employers must try to ensure that none of the work policies disadvantage disabled workers, you could assist with this. These policies may include:

- flexible working arrangements
- appraisal and performance-related pay systems
- sickness absence
- redundancy selection criteria
- emergency evacuation procedures
- procurement of equipment, IT systems, software and websites
- information provision
- employee training and development
- employee assistance schemes offering financial or emotional support

How the Law Works In Practice

Case Study 1

A blind woman is not short-listed for a job involving computers because the employer wrongly assumes that blind people cannot use them. The employer makes no attempt to look at the individual circumstances. The employer has treated the woman less favourably than other people by not short-listing her for the job. The treatment was on the grounds of the woman's disability (because assumptions would not have been made about a non-disabled person).

Case Study 2

An employer seeking a shop assistant turns down a disabled applicant with a severe facial disfigurement solely on the grounds that other employees would be uncomfortable working alongside him. This would amount to direct discrimination and would be unlawful.

Case Study 3

A person who becomes disabled takes six months' sick leave because of his disability and is dismissed by his employer. A non-disabled fellow employee also takes six months sick leave (because he has broken his leg) but is not dismissed. The difference in treatment is attributable to the employer's unwillingness to employ disabled staff and the treatment is therefore on the grounds of disability. The non-disabled employee is an appropriate comparator in the context of direct discrimination because his relevant circumstances are the same as those of the disabled person. It is the fact of having taken six months' sick leave which is relevant in these circumstances. As the disabled person has been treated less favourably than the comparator, this is direct discrimination.

Race Discrimination

The Race Relations Act 1976 (as amended) makes it unlawful to treat a person less favourably on the basis of their race, colour and ethnic or national origin.

Consideration should be taken far beyond the traditional black and white racial dimensions as racial discrimination exists amongst every racial group.

What is the Definition of Race?

The definition of race, as defined within the Race Relations Act, defines racial grounds as including race, colour, nationality or ethnic or national origins. **source** *EHRC*

Where a member feels they have been discriminated against under racial grounds they should take the following steps:

- Make a detailed record of the complaint
- Make a note of the individuals and witnesses involved
- Ask witnesses for written and signed statements
- You could approach the alleged aggressor and try to resolve it informally, although keep records of this and take the victim or have another witness present.
- If you do not want to approach the aggressor yourself or the victim is against this approach or this generally feels inappropriate, then a formal approach should be used following the appropriate procedures

Exceptions may be permitted in special cases, for example where a particular language is required for a particular post. This could be relevant in a role working with say all polish men. This could be justified as a Genuine Occupational Requirement (GOR)). This act does not apply to outside Great Britain except where the employer has business in the UK and the employee is an ordinary UK resident.

What are the Forms of Race Discrimination?

There are four main types of racial discrimination: direct, indirect, victimisation and harassment.

Direct Race Discrimination

This occurs when you are able to show that you have been treated less favourably on racial grounds than others in similar circumstances.

To prove this, it will help if you can give an example of someone from a different racial group who, in similar circumstances, has been or would have been, treated more favourably than you. Racist abuse and harassment are forms of direct discrimination.

Example: Racial groups

BBC v Souster 2001, IRLR 150

Mr Souster, a presenter for BBC Scotland's Rugby Special, complained that he had lost his job because he was English and the BBC wanted a Scottish person. Mr Souster claimed that being English was a matter of national origins, while the BBC argued that, since both the Scots and the English share a British passport, there could be no unlawful discrimination between different parts of the one nation. The Scottish Court of Session, which had to decide whether the RRA applies to discrimination between the Scots and the English, ruled that national origins should be interpreted more broadly and flexibly than just by reference to a passport. As England and Scotland were once separate nations, the English and the Scots have separate national origins and therefore the RRA does cover discrimination between them.

On the question of whether the English and Scots are part of a 'racial group', the Court of Session followed the House of Lords' ruling in an earlier case (*Mandla v Dowell-Lee, 1983 IRLR 209*), to the effect that '...it is possible for a person to fall into a particular racial group either by birth or by adherence'. The court also observed that, if the way the discriminator treats someone is based on her or his perception of that person's national or ethnic origins, then their actual origins, let alone their passport nationality, are irrelevant.

This definition of racial grounds clearly takes into account the complex reality of national identity, where a person may change their nationality by marriage or geographical migration or indeed simply by association, as well as the complexity of racial prejudice, where a person who discriminates may do so in complete ignorance of the victim's actual nationality or national background.

Indirect race discrimination

Indirect racial discrimination may fall into one of two categories depending on the racial grounds of discrimination. The first is on grounds of colour or nationality, under the original definition in the *Race Relations Act*. The second is on grounds of race, ethnic or national origin. This was introduced by the *Race Relations Act (Amendment) Regulations 2003* to comply with the EC Race Directive.

Example: Indirect discrimination***Aina v Employment Service 2002, DCLD 103D***

A Black African employee applied for the post of equal opportunities manager in his organisation. He was assessed as having the skills and ability for the job. However, his application was rejected because unknown to him, the post was open only to permanent staff at higher grades than his. Monitoring data showed that the organisation had no permanent Black African employees at the grades in question. The employment tribunal held that there was no justification for the requirement and that it amounted to indirect discrimination on racial grounds.

On grounds of colour or nationality

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

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

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

On grounds of race, ethnic or national origin

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

- puts or would put people of the same race or ethnic or national origins at a particular disadvantage when compared with others
- puts a person of that race or ethnic or national origin at that disadvantage
- cannot be shown to be a proportionate means of achieving a legitimate aim.

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

Victimisation

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

- brought proceedings under the *Race Relations Act* against the discriminator or anyone else
- given evidence or information in connection with proceedings brought by another person under the *Race Relations Act*
- done anything under the *Race Relations Act* or with reference to it
- alleged that a person has acted in a way which would breach the *Race Relations Act*.

The complaint does not need to expressly claim discrimination when making the complaint.

Harassment

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

A person harasses another on grounds of race or ethnic or national origins when he or she engages in unwanted conduct that has the purpose or effect of:

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

Example: Harassment

Anisetti v Tokyo-Mitsubishi International Plc Case

No.6002429/98

The Indian-born head of credit derivatives at an international Japanese bank in London resigned, claiming he had been made to feel like a 'second-class citizen' by his Japanese employers. He said he had been humiliated, excluded by workers speaking Japanese and underpaid, simply because he was not Japanese. The bank argued that it was 'natural' for Japanese staff to use their own language among themselves.

An employment tribunal upheld the complainant's claim that he had been discriminated against unlawfully, not because of his Indian national origins but because he was not Japanese. The tribunal noted that the bank had maintained a practice which had effectively excluded the complainant from various activities and treated him less favourably than others.

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

- partnerships
- trade unions
- qualifying authorities
- vocational training
- employment agencies

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

Complicated Race Disputes

As communities become more and more multi-cultured, conflicts can exist anywhere, even among people of the same colour and this cannot be ignored. For example conflict may manifest within the Black or Asian British communities also amongst those who were born here and those who were not, as their nationalities may in fact be different but they are the same colour. No discrimination should be allowed.

There are of course inter-cultural (from within the same culture), discriminative issues also to be taken into account, which may manifest themselves within the workplace. In India for example, there is a caste system where there is a hierarchy in terms of how highly people are placed their society. The discriminatory effects of this could spill over into the UK workplace. For example, if a lower caste Indian worker was placed in a position of management of a higher caste Indian worker. This could create conflict, although it is important to note that this is not UK law.

A person's race has to be what **they** consider themselves to be.

Religion and Belief

Employment Equality (Religion or Belief) Regulations protects people on grounds relating to their religion or beliefs. This legislation covers employment practices and the need to treat everyone fairly.

Legal Definition:

Religion or belief (or lack of belief) is defined as being any religion, religious belief or similar philosophical belief. Not including political belief unless it is similar to religious belief.

Examples of various religions or beliefs include; Sikhism, Judaism, Buddhism, Hinduism, Islam, Taoism, Shinto and Christianity. This list is not exhaustive.

Religion or Belief must have a collective worship. Also employees must demonstrate a clear belief system and a profound belief, affecting a person's way of life or view of the world.

These are the determining factors in defining a religion or belief. The regulations cover religious perceptions as well as known religions and faiths, alternative faiths such as paganism and humanism and people without a belief (Atheist).

For the purposes of the *Equality Act 2006*, belief is defined as including philosophical beliefs such as Humanism, which are considered to be similar to a religion. Other categories of beliefs such as support for a political party are not protected by the Equality Act. **source** EHRC

Direct discrimination

Direct religious discrimination is when you are treated less favourably because:

- somebody does not like your religious or philosophical beliefs
- you don't have the same religious or philosophical beliefs as someone else, or you have none
- someone associates you with somebody whose religious or philosophical beliefs they don't like

Indirect discrimination

If an organisation has policies, criteria or processes that put you at a disadvantage because of your religious or philosophical beliefs or because you have none, this may be indirect discrimination.

Harassment

Harassment because of religion or belief is behaviour that is intimidating, frightening or in any way distressing. Harassment can also be aimed at someone because they have no religion or belief.

Harassment in the workplace is unlawful on grounds of an individual's religion or belief, or none and is covered by the *Employment Equality (Religion or Belief) Regulations 2003*. This form of harassment is defined in law as unwanted conduct that violates a person's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment.

Harassment at work

Harassment on grounds of religion or belief may be obvious bullying or it can be unintentional or hidden. It can be aimed at:

- your beliefs or religious practices
- the religion or philosophical belief itself
- a religion or belief that a person is associated with.

Harassment does not have to be aimed at an individual. A general culture of telling jokes about a certain religion, for example, might amount to harassment.

Organisations may be held responsible for harassment carried out by their staff in the workplace or at an event or venue associated with work.

Victimisation

Victimisation is when a person is treated badly because they have made a complaint about discrimination or have given evidence in a discrimination case.

This could include:

- labelling the person a 'troublemaker'
- denying them opportunities or services they would normally have (such as a promotion at work)
- ignoring them

A person who victimises someone else can be forced to pay their victim compensation. This also applies to organisations that do not stop their employees victimising somebody.

Hate crimes

If someone threatens, abuses or attacks you because of your religion or belief (or lack thereof), this may amount to what is called a 'hate crime'. Hate crimes are criminal offences and you should report them to the police.

Hate crimes can include:

- physical attacks and damage to your property
- offensive letters, emails or phone calls
- groups of people intimidating you
- insults or offensive leaflets or posters
- dumping rubbish outside your home or through your letterbox
- bullying at school or work

If you are too frightened to speak to the police, you can report a hate crime anonymously through:

- Victim Support
- Citizens Advice Bureau.

source EHRC

The regulations relate to employment issues including dismissal, training opportunities, promotion opportunities and an individual's terms and conditions. Genuine Occupational Requirements (GOR) rules apply here also.

For example, a Somali Worship Group may ask for a Male Muslim care-taker who will respect their faith in his duties, particularly where there is a spiritual angle to the work and the fact that mainly Muslim men attend the mosque.

Of course all forms of discrimination applies here also. Discrimination including harassment could occur in various ways. For example name calling, chanting or singing unwanted songs, teasing and behaviour in general which upsets the victim.

Employers need to prove that they have taken reasonable steps to prevent religious discrimination from happening. This isn't simply by issuing a policy. Harassment grounds are also valid in written or verbal references supplied for employees to gain employment.

Recruitment Practices should also be fair, transparent and consistent and should not bias people of a particular religion or belief. They should relate only to the skills required to do the job. Desirable skills should be marked so accordingly and should exclude opportunities for recruiting on the basis of personal preferences.

Criteria therefore should be looked at carefully to ensure no bias exists or could manifest. Job Descriptions should be clear from the outset. This gives applicants the chance to review whether the post's duties would conflict with their religion or beliefs. Adverts should be placed so that it attracts a wide audience and does not discriminate against people from certain religions.

Application Forms do not need to know a person's religion or belief (unless it is a genuine occupational requirement). Your employer needs to take a clear stance on their own position in relation to religion and belief. Making such a statement, in a policy makes this view public and goes some way towards not excluding anyone.

Interview times should take into account when people may not be available (due to religious commitments). Positive steps can be taken by your employer to encourage people whom are under-represented in your workplace.

Sunday Working People working in the retail or betting trades have the right to opt out of working on Sunday if they so wish. They must give their employer 3 months notice (this does not apply to people who only work on a Sunday). People who work in other trades still have the right to request this. The employer would need to give a legitimate business need if they are unable to grant this request. If they are unable to, this could be grounds for discrimination.

Complaints Members should be made aware of procedures which should be followed to deal with a complaint on religion or belief grounds. As Equality Officer you could be asked to give support and guidance during this process. You should deal with their case sensitively and confidentially.

Leave Request Members can request leave to attend various religious/cultural occasions and we would expect these to be dealt with sympathetically and agreed to where this is possible. It is in the interest of the person requesting leave to give their employer as much notice as possible.

Where there are large requests for leave over a given period, the employer should consult all employees on this and you should use your skills as the Equality Officer to help to facilitate the leave. Other union officials may also need to be involved.

Dietary Requirements may exist within some religions or beliefs. These need to be observed, including keeping some foods separate.

Fasting is when some religions require staff to refrain from eating food during certain times of the day. As Equality Officer you could support staff to appreciate this and help to negotiate with managers how to support them.

In relation to **Prayer Rooms**, it is generally regarded as best practice to provide a room where workers could go to perform their prayers. However, the regulations do not insist on the provision of prayer rooms at the time of writing this toolkit.

Agreements are in place that permits groups of people to perform their religious commitments. These should be proactively negotiated at all times.

The time could also be negotiated through the normal breaks allowed. If the prayer time however, does coincide with a legitimate business need, then an employer may refuse the request on genuine needs. Without fair and reasonable justification of this need, members may claim discrimination on the grounds of religion and belief.

As an Equality Officer, it would be a proactive measure to remind the employer that ongoing training and information is needed to understand why people are required to pray at these times. Ensure though that one religion does not overbear the needs of another. Remember all religions and non-religion is covered.

Clothing and uniforms policies should take into account peoples' religions and beliefs. Where there is conflict this could be deemed discriminatory. Requests for changes in a person's appearance could be challenged, unless it can be justified on the grounds of health and safety or another piece of legislation possibly to do with disability or race issues.

Discussing Religion or Belief – no-one should be subject to harassment or experience offensive behaviour towards them through other people discussing their religion or belief. The CWU have well established policies on issues pertaining to faith and homophobia and believe that religion should in no way be a justification for attacking someone as a result of their sexual orientation.

Sex Discrimination

The Sex Discrimination Act 1975 as amended by the *Sex Discrimination (Indirect Discrimination and Burden of Proof) Regulations 2001(6)* gives two types of discrimination plus victimisation, which are unlawful under the Acts.

(i) Direct Discrimination. A person discriminates against a woman "if, on the grounds of her sex, he/she treats her less favourably than he/she treats or would treat a man"... For example, to exclude women from a shortlist for a managerial job because of gender related prejudice would be direct discrimination.

(ii) Indirect Discrimination. A person discriminates against a woman where a group of workers are subjected to the same requirement regardless of gender or marital status but the proportion of women that meet the requirement is smaller than the proportion of men. A person discriminates against a woman if., 'he/she applies to her a provision, criterion or practice which he/she applies equally to a man, but which is such that it would be to the detriment of a considerably larger proportion of women than of men and which he/she cannot show to be justifiable, irrespective of the sex of the person to whom it is applied..." An example of this is a seniority requirement for promotion whereby fewer women are able to comply compared to men.

The definition of "indirect" discrimination encompasses a "provision, criterion or practice" rather than merely a "requirement or condition". The Regulations also provide that the burden shifts to the employer to disprove sex discrimination once an applicant has proven that there is a case to answer. The transferring of the burden of proof applies equally to all of the strands.

(iii) Harassment. This definition relates to acts committed on or after 1st October 2005. "Harassment, including sexual harassment "is defined as follows in Section 4A SDA:

(1) For the purposes of this Act, a person subjects a woman to harassment if:

(a) on the grounds of her sex, he engages in unwanted conduct that is related to her sex or that of another person and has the purpose or effect:

(i) of violating her dignity, or

(ii) of creating an intimidating, hostile, degrading, humiliating or offensive environment for her,

(b) he engages in any form of unwanted verbal, non-verbal or physical conduct of a sexual nature that has the purpose or effect

(i) of violating her dignity, or

(ii) of creating an intimidating, hostile, degrading, humiliating or offensive environment for her, or

(c) on the ground of her rejection of or submission to unwanted conduct of a kind mentioned in paragraph (a) or (b), he treats her less favourably than he would treat her had she not rejected, or submitted to, the conduct.

(2) Conduct shall be regarded as having the effect mentioned in sub-paragraph (i) or (ii) of subsection (1) (a) or (b) only if, having regard to all the circumstances, including in particular the perception of the woman, it should reasonably be considered as having that effect.”

(iv) Victimisation: The SDA also protects you against victimisation for taking action under either the SDA or the Equal Pay Act 1970. This provision makes it unlawful to treat you less favourably than anyone else because you have done any of the following:

- Made a complaint under either of the Acts
- Helped someone else to make a complaint
- Given evidence in a court or tribunal in a case under either of the Acts
- Accused someone of breaking either of the Acts.
- Taken any other action in connection with either of the Acts

So, for example, it would be an act of unlawful victimisation for a former employer to refuse to provide an ex-employee with a reference because that ex-employee has brought proceedings against him or her.

Victimisation also occurs where the discriminator knows that you intend to do any of those things or suspects that you have done, or intend to do, any of them.

You do not need to show that the discriminator was consciously motivated by the fact that you carried out one of the above protected acts. Allegations of discrimination must be made in good faith in order to be protected by the victimisation provisions of the SDA.

Case Study:

The following case studies are examples of direct discrimination.

Example 1

An employer transfers a woman from her post against her will because she is having a relationship with a colleague. If the employer does not transfer men in the same circumstances, this transfer may be direct sex discrimination.

Example 2

A hospital insists that a male nurse has a chaperone when seeing patients. If a female nurse is not required to have a chaperone, this requirement may be direct sex discrimination. The following case study is an example of harassment as defined in the SDA:

'I am a female apprentice electrician and all my colleagues are men. I feel like even though my work is of a high standard, my boss constantly criticises me and shouts at me whereas he does not bully the men in this way. A new male apprentice has started at work and he is receiving much more one to one training and assistance. I asked for the same training which I need in order to complete my apprenticeship but my boss called me a 'stupid little girl' and said that if I couldn't do the job properly I should leave. My colleagues often play tricks on me such as putting my tools on a high shelf where they know I can't reach them. They do not behave this way towards one another. I am now keeping a diary to record all these incidents so that I can make a complaint.'

In this example, the employee's written diary could provide important evidence of a pattern of unlawful behaviour. The evidence could show that she has suffered direct sex discrimination (in access to training and being criticised where males are not). She could also show that she is being harassed on the grounds of her gender if she could show that the treatment created a humiliating and degrading work environment for her.

Sources: ENRC website

Sexual Orientation

The Employment Equality (Sexual Orientation) Regulations 2003 protects employees and trainees from all types of discrimination, including direct, indirect, harassment and/or victimisation. This means that they should not be treated less favourably on these grounds. This includes peoples' perceptions of a person's sexual orientation.

Orientation may be towards the same sex (lesbian or gay men), opposite sex (heterosexual) or both sexes (bisexual).

In particular this relates to employment and training. Recruitment selection and employment and training practices must treat everyone fairly regardless of their sexual orientation at all times including before, during and after.

Employers cannot treat LGBT people less favourably by for example:

- Dismissing them or try to have them dismissed
- On issues of training
- Promotional opportunities
- Terms and conditions
- Denying them access to benefits available to other employees.

There may be a general occupation requirement Genuine Occupational Requirement (GOR) to have a particular person for a job. This must be justified and would normally mean it is absolutely necessary and employers have no other options available, this could not relate directly to a person's sexuality.

Harassment is when a person is subject to unwanted offensive, humiliating or distressing behaviour. In relation to sexual orientation this may be on the basis of a real or perceived situation. It should be noted that this applies to heterosexuals, bisexuals, lesbian women or gay men and transpeople inclusively.

Employers can be held responsible as well as individuals for permitting this to occur. Both can be ordered to pay compensation to the victim. In the case of an employer, they would need to prove that they had taken steps to prevent this treatment.

Employees and members may be victimised because they intend to or have made a complaint. This could also happen if a person gives evidence or intends to give evidence at a hearing.

If employees and members are facing unwanted questions around their personal life, this should be challenged. For example about children, child care arrangements, sexual orientation and or family or social life. Implications of discrimination could be assumed.

As Equality Officer if you feel that certain groups are under-represented in your workplace, you could try to take positive action to address this. Training can be a good way of informing and educating people on certain issues indirectly.

Again impact assessments may have a role to play in establishing for example why this is the case in the first place. For example, the questions asked at interview – are these fair?

Equality policies can be used to make clear to all staff that discrimination of any kind will not be tolerated! Perhaps a summarised version could be made prominent in your place of work along with say, your health and safety or insurance policies.

For people who have not yet made clear their sexual preferences they may be frightened of being 'outed'. In some cases employees may disclose a person's sexuality maliciously, including doing this in third person (e.g. 'someone else said'). In a situation like this one could reasonably assume there would be a prima facie case of harassment.

Partners may also be same sex. Pensions are therefore extended to those who have entered into Civil Partnerships and are recognised as 'spouses'. This does not however cover unmarried or unregistered partners.

Spouse benefits extend to adoption, paternity and flexible working. Monitoring the sexual make up of the workforce is currently only a statutory requirement in the public services. If undertaken appropriately, this could prove to be a useful exercise for all concerned. For example, in making positive gender considerations, particularly if there are under-represented groups.

Unions in particular have the power to make reasonable requests for information to carry out their job effectively. Just bear in mind that sexuality is a sensitive issue. Anonymity can be a useful way of addressing the issue, through surveys for example and be sure to make clear why you are doing this and how the information will be used. Information given should therefore be voluntary and confidential.

Gender and sexuality monitoring can take place and can produce some equality benefits but must be done sensitively because of its sheer nature.

Case Study: Whilst being interviewed a job applicant says that she has a same sex partner. Although she has all the skills and competences required of the job holder, the organisation decides not to offer her the job because she is a lesbian. This is direct discrimination.

N.B: a job applicant can make a claim to an Employment Tribunal; it is not necessary for them to be employed by the organisation to make a claim of discrimination.

Transsexual describes a person who is not content or comfortable with the sex assigned to them through birth. This may include the roles which society believes a certain sex should play. Medically this is described as Gender Dysphoria. They may then change certain aspects of their life to address this. This may include social, medical and personal alterations to their life. So a man may change to a woman or vice versa.

Gender Reassignment Regulations

Since 1st May 1999 it has become unlawful to discriminate against someone, as outlined in the Gender reassignment regulations relating to the Sex Discrimination Act 1975, who intends to, or is undergoing or has undergone gender reassignment.

The Gender Recognition Act also gives certain protections including the right to privacy. There are also certain procedures to follow in relation to the records of someone who has undergone this process. Some of which (if not adhered to), could be considered a criminal offence. Particularly where someone discloses that a person was of another gender in the past. This is a very important point.

As Equality Officer, it is worth noting that if you come into contact with gender reassignment related queries, these need to be handled particularly sensitively.

Relevant procedures must be put into place in good time especially where they do not already exist. A point of contact for these matters should be made clear. An agreement should be made with the individual concerned about how to communicate their situation to other employees. They should also be allowed time off for medical appointments and procedures.

Transsexual people are required to live a role of their required gender for a period of time before their surgery takes place, if they opt for gender re-assignment. Transsexual employees and members should not be advised to use disabled toilets in the interim period. As long as the process of communication takes place in a sensitive and professional manner, there is no reason why they cannot use the toilet of their chosen gender, if this is indeed what they choose. Sensitive negotiations again, with the individual concerned, should take place in preparation for this transition.

For more information on sexual orientation click on the link below:

www.acas.org.uk/index.aspx?articleid=2067

Part-time Workers

The Prevention of Less Favourable Treatment Regulations 2000 aims to ensure part time workers are not treated less favourably than comparable full timers. This is in terms of pay, training, leave and redundancy.

A part-time worker is someone who works fewer hours than a full-time worker. There is no specific number of hours that makes someone full or part-time but a full-time worker will usually work 35 hours or more a week.

These regulations aim to protect those who work on the same or similar contract for less hours receiving less favourable treatment. This may relate to the terms and conditions of employment or any other disadvantage.

The employer must be able to show reasonable justification for any different treatment. This must be for a legitimate reason, necessary and the most appropriate way of achieving the objective. Employees and members are quite within their right, to request a written statement of why they have been treated less favourably.

Agency and Migrant Workers

Essentially these are employees working in the UK from overseas. They are normally here on work permits or visas. The law is changing rapidly in relation to this, in the form of The Borders Immigration and Citizenship Bill. The new points system also requires higher standards from migrant workers in order for them to gain permission to work here.

They face a range of issues when they come to work here starting from language issues. As they need to be able to speak a reasonable amount of English in order to communicate with their colleagues effectively. Some employers may offer ESOL courses to their staff.

At the very least, migrant workers should have a written contract which outlines their terms and conditions. This should contain details of their pay, leave, working time limits along with the other things normally found in an employment contract.

They must be registered with the Home Office to work in the UK. They can contact the Home Office's 'Working in the UK' website for further information. Once registered with the Home Office, they will be invited to an interview at the Job Centre.

Migrant Workers may be issued an emergency tax and N.I. number, whilst their official one is being processed. Employers may copy migrant workers documents (e.g. passports) but must not retain them.

In addition, migrant workers are entitled to health and safety protection. They have the right to join a union. They are also protected from unfair discrimination.

For further information regarding the rights of migrant workers, please click on the following links:

www.ier.org.uk/migrant.htm

www.refugeecouncil.com

Agency Workers Directive

The consultation period ended on 31st July 2009. The progression of this is on the CWU website under Campaigning, so keep an eye on this as it progresses. The consultation period should also consider how agency workers discrimination issues are addressed.

For more information and to follow the Directives progress contact:

Sally Bridge

CWU Assistant Secretary
150 The Broadway
Wimbledon
London SW19 1RX
email: sbridge@cwu.org

or

Anita Thomas

Agency Workers Directive Policy Team
BIS
1 Victoria Street
London
SW1H 0ET
Tel: **020 7 215 5963**

Human Rights

The Human Rights Act 1998 incorporates the rights contained within the European Convention of Human Rights and allows for people to claim discrimination on the grounds of race, religion and belief, sex, sexual orientation and transgender status.

We are of course mainly concerned with the treatment of people within employment although this act does cover other areas such as public bodies including the police, local authorities and other private bodies exercising public functions. At this time, sexual orientation and disability have certain exceptions under *Article 14* and legal advice should be sought in relation to these.

The Equality and Human Rights Commission (EHRC) was established in 2006 bringing together three previous Commissions:

- i) The Disability Rights Commission
- ii) The Commission for Racial Equality
- iii) The Equal Opportunities Commission

The (EHRC) also promote Human Rights in England, Scotland and Wales. Northern Ireland has its own equality body The Equality Commission for Northern Ireland.

For more information on the *Human Rights Act* please click on the links below:

www.cwu.org/30550/equal-opportunities.html

www.direct.gov.uk/en/governmentcitizensandrights/your-rightsandresponsibilities/DG_4002951

