

RACE RELATIONS ACT 1976

ASKING QUESTIONS UNDER THE PROVISIONS OF SECTION 65 OF THE RACE RELATIONS ACT 1976, AS AMENDED BY THE RACE RELATIONS (AMENDMENT) ACT 2000

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A complainant should obtain TWO copies of this booklet, one to send to the respondent and the other to keep.
Before completing the questionnaire or the reply form (as appropriate), the complainant and the respondent should read Part I of the guidance and (again as appropriate) Part II or III.

GUIDANCE ON THE PROCEDURE UNDER SECTION 65 OF THE RACE RELATIONS ACT 1976

PART 1 – INTRODUCTION

1 The purpose of this guidance is to explain the questions procedure under section 65 of the Race Relations Act 1976 (“the Act”)¹. This guidance has been updated to take into account the provisions of the Race Relations (Amendment) Act 2000 (“the Amendment Act”) which came into force on 2 April 2000. The procedure is intended to help a person (referred to in this guidance as the **complainant**) who thinks he has been discriminated against by another (the **respondent**) to obtain information from that person about the treatment in question in order to

- (a) decide whether or not to bring legal proceedings, and

section) admissible in proceedings under the Act and a court or tribunal may draw any such inference as is just and equitable from a failure without reasonable excuse to reply within a reasonable period, or from an evasive or equivocal reply, including an inference that the person questioned has discriminated unlawfully. The respondent's attention is drawn to these possible consequences in the note at the end of the questionnaire.

5 New section 65(4A) of the Act, inserted by section 5(2) of the Amendment Act, provides that, in proceedings under new section 19B of the Act, a court will not be able to draw the inferences in paragraph 4 above if:

- (a) at the time of doing the relevant act the respondent was carrying out public investigation or public prosecutor functions; and
- (b) he or she reasonably believes that a reply or a different reply would be likely to prejudice any criminal investigation, any decision to institute criminal proceedings, or any criminal proceedings, or would reveal the reason behind a decision not to prosecute, or not to continue, criminal proceedings.

The Act does not prevent a complainant from seeking a reply at a later date when the circumstances set out above may no longer apply.

Period within which questionnaire must be served on the respondent

6 There are different time limits within which a questionnaire must be served in order to be admissible in any ensuing legal proceedings. Which time limit applies depends on whether the complaint would be under the employment, training and related provisions of the Act (in which case the proceedings would be before an employment tribunal), or whether it would be under the functions of a public nature, education, goods, facilities and services or premises provisions (in which case proceedings would be before a designated county court or, in Scotland, a sheriff court).

Employment tribunal cases

7 In order to be admissible under the questions procedure in any ensuing employment tribunal proceedings, the complainant's questionnaire must be served on the respondent either:

- (a) before a complaint about the treatment concerned is made to an employment tribunal, but not more than 3 months after the treatment in question; or
- (b) if a complaint has already been made to a tribunal, within 21 days beginning when the complaint was received by the tribunal.

However, where the complainant has made a complaint to a tribunal and the period of 21 days has expired, a questionnaire may still be served provided the permission of the tribunal is obtained. This may be done by sending to the Secretary of the Tribunals a written application, which must state the names of the complainant and the respondent and set out the grounds of the application. However every effort should be made to serve the questionnaire within the period of 21 days as the permission of the tribunal to serve the questionnaire after the expiry of that period will not necessarily be obtained.

Court cases

8 In order to be admissible under the questions procedure in any ensuing county or sheriff court proceedings, the complainant's questionnaire must be served on the respondent before proceedings in respect of the treatment concerned are brought, but not more than 6 months after the treatment². However, where proceedings have been brought, a questionnaire may still be served provided the permission of the court has been obtained. In the case of county court proceedings, this may be done by obtaining form N244 from the county court office, and completing it and sending it to the court, with the appropriate fee, and the respondent. In the case of sheriff court proceedings, this may be done by making an application to a sheriff.

PART II – GUIDANCE FOR THE COMPLAINANT

NOTES ON PREPARING THE QUESTIONNAIRE

paper. If you have insufficient room on the questionnaire for what you want to say, you should continue on an additional piece of paper, which should be sent with the questionnaire to the respondent.

Paragraph 2

10 You should give, in the space provided in paragraph 2, as much relevant factual information as you can about the treatment you think may have been unlawful discrimination, and about the circumstances leading up to that treatment. You should also give the date, and if possible and if relevant, the place and approximate time of the treatment. You should bear in mind that in paragraph 4 of the questionnaire you will be asking the respondent whether he agrees with what you say in paragraph 2.

Paragraph 3

11 In paragraph 3 you are telling the respondent that you think the treatment you have described in paragraph 2 may have been unlawful discrimination by him against you. It will help to identify whether there are any legal issues between you and the respondent if you explain in the space provided **why** you think the treatment may have been unlawful discrimination. However, you **do not have** to complete paragraph 3; if you do not wish or are unable to do so, you should delete the word “because”. If you wish to complete the paragraph, but feel you need more information about the Race Relations Act before doing so, you should look to the appendix to this guidance.

12 If you decide to complete paragraph 3, you may find it useful to indicate –

(a) what **kind** of discrimination you think the treatment may have been ie whether it was direct discrimination, indirect discrimination, or victimisation (for further information about the different kinds of discrimination see paragraph 1 of the appendix)

(b) which provision of the Act you think may make unlawful the kind of discrimination you think you may have suffered. (For an indication of the provisions of the Act which make the various kinds of discrimination unlawful, see paragraph 2 of the appendix.)

Paragraph 6

13 You should insert here any other question which you think may help you to obtain relevant information. (For example, if you think you have been discriminated against by having been refused a job, you may want to know what were the qualifications of the person who did get the job and why that person got the job.)

14 Paragraph 5 contains questions which are especially important if you think you may have suffered direct discrimination because they ask the respondent whether racial considerations had anything to do with your treatment. Paragraph 5 does not, however, ask specific questions relating to indirect discrimination or victimisation. If you think you may have suffered indirect discrimination you may find it helpful to include the following question in the space provided in paragraph 6:

Paragraph 6:

“Was the reason for my treatment the fact that I could not comply with a condition or requirement which is applied equally to people regardless of their racial group?”

If so –

- (a) what was the condition or requirement?
- (b) why was it applied?”

15 If you think you may have been victimised you may find it helpful to include the following question in the space provided in paragraph 6:

“Was the reason for my treatment the fact that I had done or intended to do, or that you suspected I had done or intended to do, any of the following:

- (a) brought proceedings under the Act; or
 - (b) gave evidence or information in connection with proceedings under the Act; or
 - (c) did something else under or by reference to the Act;
- or
- (d) made an allegation that someone acted unlawfully under the Act?”

Signature

16 The questionnaire must be signed and dated. If it is to be signed on behalf of (rather than by) the complainant, the person signing should –

- (a) describe himself (eg “solicitor acting for (*name of complainant*)”), and
- (b) give his business (or home, if appropriate) address.

WHAT PAPERS TO SERVE ON THE PERSON TO BE QUESTIONED

17 You should send the person to be questioned the whole of this document (ie the guidance, the questionnaire and the reply forms), with the questionnaire completed by you. **You are strongly advised to retain, and keep in a safe place, a copy of the completed questionnaire** (and you might also find it useful to retain a copy of the guidance and the uncompleted reply form).

HOW TO SERVE THE PAPERS

18 You can either deliver the papers in person or send them by post. If you decide to send them by post you are advised to use the recorded delivery service so that, if necessary, you can produce evidence that they were delivered.

WHERE TO SEND THE PAPERS

19 You can send the papers to the person to be questioned at his usual or last known residence, business address, or the office or establishment where he works or is normally attached. If you know he is acting through a solicitor you should send them to him at his solicitor’s address. If you wish to question a limited company or other corporate body or a trade union or employers’ association, you should send the papers to the secretary or clerk at the registered or principal office of the company, etc. You should be able to find out where its registered or principal office is by enquiring at a public library. If you are unable to do so, however, you will have to send the papers to the place where you think it is most likely they will reach the secretary or clerk (eg at, or c/o, the company’s local office). It is your responsibility, however, to see that the secretary or clerk receives the papers.

USE OF THE QUESTIONS AND REPLIES IN EMPLOYMENT TRIBUNAL PROCEEDINGS

20 If you decide to make (or already have made) a complaint to an employment tribunal about the treatment concerned and if you intend to use your questions and the reply (if any) as evidence in the proceedings, you are advised to send copies of your questions and any reply to the Secretary of the Tribunals before the date of the hearing. This should be done as soon as the documents are available; if they are available at the time you submit your complaint to a tribunal, you should send the copies with your complaint to the Secretary of the Tribunals.

PART III – GUIDANCE FOR THE RESPONDENT

NOTES ON COMPLETING THE REPLY FORM

21 Before completing the reply form, you are advised to prepare what you want to say on a separate piece of paper. If you have insufficient room on the reply form for what you want to say, you should continue on an additional piece of paper, which should be attached to the reply form sent to the complainant.

22 Here you are answering the question in paragraph 4 of the questionnaire. If you **agree** that the complainant's statement in paragraph 2 of the questionnaire is an accurate **description** of what happened, you should delete the second sentence.

23 If you **disagree** in any way that the statement is an accurate description of what happened, you should explain in the space provided in what respects you disagree, or your version of what happened, or both.

Paragraph 3

24 Here you are answering the question in paragraph 5 of the questionnaire. If, in answer to paragraph 4 of the questionnaire, you have agreed with the complainant's description of his treatment, you will be answering paragraph 5 on the basis of the facts in his description. If, however, you have disagreed with that description, you should answer paragraph 5 on the basis of your version of the facts. To answer paragraph 5, you are advised to look at the appendix to this guidance.

You need to know:-

- (a) how the Act defines discrimination – see paragraph 1 of the appendix,
- (b) in what situations the Act makes discrimination unlawful – see paragraph 2 of the appendix; and
- (c) what exceptions the Act provides – see paragraph 3 of the appendix.

25 If you think that an exception (eg the exception for employment where being of a particular racial group is a genuine occupational qualification) applies to the treatment described in paragraph 2 of the complainant's

THE RACE RELATIONS ACT 1976 SECTION 65(1)(a)

QUESTIONNAIRE OF PERSON AGGRIEVED (THE COMPLAINANT)

Name of person to be questioned (the respondent) To

Address of

Name of complainant 1 I

Address of

consider that you may have discriminated against me contrary to the Race Relations Act 1976.

Give date, approximate time, place and factual description of the treatment received and of the circumstances leading up to the treatment (see paragraph 10 of the guidance)

2 On

Complete if you wish to give reasons, otherwise delete the word "because" (see paragraphs 11 and 12 of the guidance)

3 I consider that this treatment may have been unlawful because

This is the first of your questions to the respondent. You are advised not to alter it

4 Do you agree that the statement in paragraph 2 is an accurate description of what happened? If not in what respect do you disagree or what is your version of what happened?

This is the second of your questions to the respondent. You are advised not to alter it.

5 Do you accept that your treatment of me was unlawful discrimination by

If not

- a why not?
- b for what reason did I receive the treatment accorded to me?
and
- c how far did considerations of colour, race, nationality (including citizenship) or ethnic or national origins affect your treatment of me?

Enter here any other questions you wish to ask (see paragraphs 13-15 of the guidance)

6

*Delete as appropriate above is if you delete the first alternative, insert the address to which you want the reply to be sent

7 My address for any reply you may wish to give to the questions raised

*that set out in paragraph 1 above/the following address

See paragraph 16
of the guidance

Signature of complainant

Date.....

NB By virtue of section 65 of the Act, this questionnaire and any reply are (subject to the provisions of the section) admissible in proceedings under the Act and a court or tribunal may draw any such inference as is just and equitable from a failure without reasonable excuse to reply within a reasonable period, or from an evasive or equivocal reply, including an inference that the person questioned has discriminated unlawfully

THE RACE RELATIONS ACT 1976 SECTION 65(1)(b)

REPLY BY RESPONDENT

Name of complainant

To.....

Address

of.....

Name of respondent

I I.....

Address

of.....

Complete as appropriate
.....

hereby acknowledge receipt of the questionnaire signed by you and dated

which was served on me on (date)

*Delete as appropriate
accurate

2 I ***agree/disagree** that the statement in paragraph 2 of the questionnaire is an
description of what happened.

If you agree that the Statement
in paragraph 2 of the
questionnaire
is accurate, delete this
sentence. If you
disagree complete this
sentence (see para-
graphs 22 and 23 of the
guidance

I disagree with the statement in paragraph 2 of the questionnaire in that

*Delete as appropriate
against you.

3 I ***accept/dispute** that my treatment of you was unlawful discrimination by me

If you accept the
complainant's assertion
of unlawful discrimina-
tion in paragraph 3 of
The questionnaire
delete the sentences at
a,b and c. Unless
completed a sentence
should be deleted (see
paragraphs 24 and 25 of
the guidance)

a My reasons for so disputing are

RR 65(b)

b The reason why you received the treatment accorded to you is

c Considerations of colour, race, nationality (including citizenship) or ethnic r
national origins affected my treatment of you to the following extent:-

Replies to questions in
paragraph 6 of the
questionnaire should be
entered here

4

Delete the whole of

this sentence if you
have answered all the
questions in the
questionnaire. If you
have not answered all
the questions, delete
“unable” or “unwilling”
as appropriate and
give your reasons for
not answering

If, at the time of doing the
relevant act, you were carrying
out public investigation
or public prosecutor functions;
and you reasonably believe
that to respond, or to give a
different response, would be
likely to prejudice any
criminal investigation, any
decision to institute criminal
proceedings, or any criminal
proceedings, or would reveal
the reason behind a decision
not to prosecute, or not to

5 I have deleted (in whole or in part) the paragraph(s)
numbered.....

above, since I am **unable/unwilling** to reply to the relevant questions of the questionnaire
for the following reasons:-

continue, criminal proceedings, you should refer to section 5(2) of the Race Relations (Amendment) Act 2000. This provides that, in such circumstances, you may be able to decline to respond to a section 65 questionnaire without the risk of adverse inferences being drawn.

See paragraph 26 of the guidance

Signature of respondent.....

Date

APPENDIX

NOTES ON THE SCOPE OF THE RACE RELATIONS ACT 1976, AS AMENDED BY THE RACE RELATIONS (AMENDMENT) ACT 2000

Definitions of discrimination

1 The different kinds of discrimination covered by the Act are summarised below.

Direct discrimination arises where a person is treated less favourably than another is (or would be) treated because of his (or someone else's) colour, race, nationality (including citizenship) or ethnic or national origins.

Indirect discrimination arises where a person is treated unfavourably because he cannot comply with a condition or requirement which

- (a) is (or would be) applied regardless of colour, race, nationality (including citizenship) or ethnic or national origins, and
- (b) is such that the proportion of persons of a particular racial group (ie one defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins) who can comply with it is considerably smaller than the proportion of persons not of that group who can comply with it, and
- (c) is to the detriment of the person in question because he cannot comply with it, and
- (d) is such that the person applying it cannot show that it is justifiable regardless of the colour, race, nationality including citizenship) or ethnic or national origins of the person to whom it is applied

Victimisation arises where a person is treated less favourably than other persons are (or would be) treated because that person has done (or intends to do or is suspected of having done or intending to do) any of the following:-

- (a) brought proceedings under the Act; or
 - (b) given evidence or information in connection with proceedings brought under the Act; or
 - (c) done anything else by reference to the Act (eg given information to the Commission for Racial Equality);
- or
- (d) made an allegation that someone acted unlawfully under the Act.

Victimisation does not, however, occur where the reason for the less favourable treatment is an allegation which was false and not made in good faith.

Unlawful discrimination

2 The provisions of the Act which make discrimination unlawful are indicated in the table on the next page. Complaints about discrimination which is unlawful under the provisions in Group A (the employment provisions) must be made to an employment tribunal. Complaints about discrimination which is unlawful under the provisions in Group B must be made to a county court or in Scotland, a sheriff court.

Exceptions

3 The Act provides for a number of exceptions in relation to employment, housing, the provision of goods and services, and public functions.

PROVISIONS OF THE RACE RELATIONS ACT 1976 (AS AMENDED) WHICH MAKE DISCRIMINATION UNLAWFUL

	Section of Act
<p>GROUP A</p> <p>Discrimination by employers in recruitment and treatment of employees</p> <p>Discrimination against contract workers</p> <p>Discrimination against partners</p> <p>Discrimination by trade unions, employers' associations etc</p> <p>Discrimination by bodies which confer qualifications or authorisations needed for particular kinds of jobs</p> <p>Discrimination in the provision of training</p> <p>Discrimination by employment agencies</p> <p>GROUP B</p> <p>Discrimination by bodies in charge of educational establishments</p> <p>Discrimination (other than that covered by section 17) by local education authorities</p> <p>Discrimination by planning authorities</p> <p>Discrimination (other than that covered by other provisions of the Act) by public authorities</p> <p>Discrimination in the provision of goods, facilities or services to the public or a section of the public</p> <p>Discrimination in the disposal of premises</p> <p>Discrimination by landlords against prospective assignees or sublessees</p> <p>Discrimination by clubs or associations with 25 or more members (other than clubs or associations covered by section 11 or 20)</p> <p>Discrimination by, or in relation to, barristers</p> <p>Discrimination by, or in relation to, advocates</p>	

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	12
	13 and 15
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	19A
	19B
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	21
	24
	25
	26A
	26B