

Race Discrimination Protocol

Foreword

The experience of our Black members in their workplaces are too often scarred by the injustice of racism. It affects their ability to access jobs, to earn decent pay, to be treated with dignity and to receive the support and opportunities that are due to all workers.

As success levels in race discrimination cases in the Employment Tribunals continue to be amongst the lowest, despite long established legislation. To strengthen its support to members, UNISON developed a Race Discrimination Protocol. This is a tool to give more consistency and transparency to how the union takes forward race discrimination cases. This was launched in 2010 by our previous general secretary Dave Prentis. I am now relaunching the Protocol and proud to recommit our union to fighting for justice for Black workers. UNISON leads the trade union movement on equality, but we are not complacent.

I am totally committed to this work. Even in the toughest times, the Black Lives Matter movement has shone a light on racism. With competing demands and an increased call on resources with COVID-19, our work in challenging racism in the workplace will remain a UNISON priority and together, we will work for zero tolerance of workplace racism.



Christina McAnea
general secretary

Race Discrimination Claims Protocol

Race as defined under the Equality Act 2016 includes colour, nationality and ethnic or national origins.

Where a member or their representative believes that the member has been the subject of race discrimination in their workplace, the Branch must ask the member to complete a CASE form as soon as possible to ensure that any Employment Tribunal deadline is not missed.

All CASE forms setting out allegations of race discrimination must be forwarded by Branches to the Region promptly and without delay.

Stage 1

- (1) The Region must refer all race cases to Thompsons, using the CASE protocol, for a preliminary legal assessment to be made. A record of the request must be retained on CASE. When referring the case to Thompsons, the Region, in conjunction with the Branch, will obtain information and evidence from the member and forward it to Thompsons with the referral. Prior to providing their written advice as to the merits of the case, Thompsons will contact the Region to arrange a meeting in person or by telephone with the member, to assist Thompsons in making their assessment. This meeting must be attended by the Region and the member may choose to be accompanied by someone from the Branch.
- (2) In the event that an Employment Tribunal limitation date arises before Thompsons' merits assessment has been received and before Thompsons has agreed to represent the member it is the responsibility of the Regional Officer to ensure that the member's position is protected. This means that the Regional Officer must trigger Early Conciliation and assist the member with

this process and/or a protective claim is lodged if necessary within the time limit for bringing a claim. In all cases every effort should be made to expedite the matter to avoid cost being incurred. The Region should follow the UNISON legal services protocol for lodging claims in the Employment Tribunal.

Stage 2

- (3) If at any stage prior to or after lodging the claim, Thompsons advise that the claim has no merit, the Regional Officer will inform the member that in accordance with the Union's rules, UNISON will no longer provide legal representation to the member in relation to this claim. The member or Branch may then ask the Regional Secretary to review the case. The Regional Secretary will consult the Head of Legal Services or a UNISON Legal Officer to consider the following –
 - i. Test 1 - merits of the case
 - ii. Test 2 - strategic importance
- (4) If the Regional Secretary decides not to pursue the case because the case has neither reasonable prospects of success nor strategic importance, a case conference will be convened, involving the relevant representative(s) of Black members (selected following discussion between the Chair of the Regional Black Members Committee and the Regional Secretary); Regional Organiser, Regional Secretary or member of the Regional Management Team if appropriate; a representative from Thompsons; a representative from legal services; the member and a representative from branch. If following examination of the case a consensus on how to proceed cannot be reached, the original decision will be invoked. The case conference, contents of discussions and communications at, and relating to, the case conference are confidential.
- (5) If the decision is not to pursue the Tribunal case, the Branch, in partnership with the Regional Organiser, should

continue to provide support to the member in the workplace in line with the union's representation guide.

- (6) Following the case conference, if the decision is taken to pursue an Employment Tribunal claim, the Regional Secretary will seek authority via the Head of Legal Services from the Chair of Services to Members to proceed. It is a requirement of rule K of UNISON's rules that the decision to run an Employment tribunal case is at the absolute discretion of the NEC.
- (7) If UNISON decides not to pursue a claim but the member wishes to go ahead and engage their own legal representative and succeeds at an Employment Tribunal, the union will exercise discretion, in consultation with the Chair of Services to Members, in deciding whether to reimburse the costs incurred by the member. This discretion will only be applied in circumstances where it is proven this protocol has not been adhered to (in part or in full).

Organising matters

- (8) At all stages of the process, Regional staff and the Branch should seek to identify potential organising and/or collective bargaining opportunities which would further our campaign against racism in the workplace.
- (9) In order to ensure that members complaining of race discrimination in the workplace are provided with the best representation and support, and in order to advance our campaign against racism in the workplace, Regions are reminded of the following -
 - (a) Regions must feedback summary information on cases to Regional Black Members' Committees.
 - (b) Regions must ensure that Thompsions are invited, on an annual basis, to discuss work being done on race discrimination cases with Regional Black Members Committees. These meetings will include a full statistical breakdown

comprising of the number of race cases accepted/rejected during the year, etc.

- (c) All Regional and Area Organisers should have attended a mandatory race awareness training course. If any Regional or Area Organisers have not attended a course, they must do so at the earliest opportunity.
- (d) Regions must monitor particular problematic employers and report back to Branches so that work can be delivered on exerting industrial pressure upon employers to deal with racism in the workplace.

Training

- (10) Any individual participating in a case conference established under this paragraph requiring a briefing/training on the operation of the Protocol, or UNISON's legal process, should submit a request in writing to the Regional Secretary.

August 2016

Race Discrimination Claim

Case form setting out allegation of race discrimination via branch sent to region

Satge One

- Branch in conjunction with RO to obtain information and evidence from the member
- Regional Organiser refers case to Thompsons under the Protocol

Meeting with Thompsons, member and region is organised either in person or over the phone. Member may be accompanied by a branch rep

Negative merits assessment

Positive merits assessment

Member unsatisfied

Member satisfied

Member/branch request Regional Secretary to review the case with Head of Legal services to consider test 1. merits of the case and test 2. strategic importance.

Standard case process pursued. (Rule K applies leaving decision to run ET at discretion of the NEC)

No reasonable prospect of success or strategic importance

Reasonable prospect of success or strategic importance

Satge Two

Case Conference to involve:

- Regional Black members representative
- Regional Organiser
- Regional Secretary/Management Team Rep
- Thompsons rep
- Legal Services Rep

Permission is sought from Services to members by Regional Secretary/Head of Legal to proceed

No Consensus

Consensus— Not to pursue Employment Tribunal case

Consensus— pursue Employment Tribunal case

Revert to Thompson's original advice

RO and branch in partnership continue to provide support in line with representation guide