

## Negotiating for race equality: disciplinary procedures

### Why is it vital to challenge racism in disciplinary procedures?

Because

- fair disciplinary procedures should comply with the [Acas Code of Practice](#). The [Acas guidance](#) is clear: “good disciplinary procedures should be non-discriminatory”
- disciplinary procedures can have a distressing impact on [Black](#) workers (even if they are cleared of an allegation). When unnecessary or unfair, disciplinary action undermines the confidence of Black workers in the workplace, can affect their work performance and their chances of career progression
- it will help address deep-rooted discrimination and reduce unfair treatment. No workplace where racism is allowed to flourish can ever be effectively organised. That’s why anti-racist work must be part of all branch activity
- it will help recruit new members and activists, of benefit to all the membership and contributing to the growth and future strength of your branch
- it will place public authorities under a proactive duty to identify activities to help address any inequality in the workplace.

### Examples of this widespread problem in workplaces

A [review commissioned by Dudley Council in 2020](#) found that “Black, Asian and minority-ethnic staff were twice as likely - 2.46% - to be the subject of a formal disciplinary investigation - compared to 0.83% of white employees. A third of disciplinaries raised against non-white employees resulted in no case to answer.”

Lambeth Council’s [Annual Workforce and Equalities Report 2021-2022](#) found that “overall, 78% of all disciplinary cases involved Black, Asian and Multi-ethnic employees, with black employees making the largest majority at 65%.”

A [Review of Manchester City Council’s Approach to Workforce Race Equality](#) found that Black staff were more likely to enter the formal disciplinary process than white staff in the years 2016/17 to 2019/20.

A [report by the Royal College of Midwives](#) found that Black workers make up 44.1% of the midwives employed in London but 66.4% of those facing disciplinary proceedings in the five years from 2011. The same report also found harsher penalties for Black workers during the same time period.

The NHS England 2022 [Workforce Race and Equality Standard \(WRES\) report](#) notes that Black staff are 1.14 times more likely to enter the formal disciplinary process compared to white staff in the same organisation. This number has reduced from 1.56 in 2016 which shows some progress has been made, but the figure hides the rate in many trusts where Black staff can be 3 or 4 times more likely to enter formal disciplinary action.

### How can branches help make sure disciplinary procedures are used more fairly?

- Educate yourselves. Make sure union reps have the knowledge and skills to notice, deal with and report racial discrimination in the workplace. Make sure Black members are properly represented amongst reps and branch officers.

Contact your regional education teams and / or LAOS to find out what training and resources are available to assist you with negotiating with your employer or promoting the issues in this leaflet

with your members <https://learning.unison.org.uk>

When representing members with race discrimination cases individually, refer these cases under UNISON's [race discrimination claims protocol](#).

- Push for all staff including managers to receive mandatory equality and diversity training that specifically includes anti-racism. This should be part of the induction process, with refresher courses available. Stress that all managers must be trained in dealing with disciplinary procedures.
- Ensure that your employer undertakes equality impact assessments for all its strategies, policies and procedures to ensure they promote inclusion and anti-racist principles.

More information in UNISON's [Model equality impact assessment flowchart](#)

- Urge the employer to undertake monitoring and collection of ethnicity data in the workforce so that they can identify areas where changes are required. Ensure monitoring data covers all staff so includes bank staff, agency workers, temporary staff and those on zero hours contracts.
- What does the monitoring of disciplinary action reveal? Are Black workers being disproportionately subjected to disciplinary action? Ask for information for a set number of past years (such as 5) so that you can see if there are any trends.
- Check for patterns for particular groups or in particular teams/settings in branch casework. And talk to members about their experiences. Why do they think this is happening and what action has been taken so far?
- How much emphasis is placed on unconscious bias when cases of race discrimination are dealt with and how does unconscious bias influence outcomes i.e. the level of action taken to address the issues?
- Are standards of conduct and performance clear and precise and known by all staff? Is disciplinary action being used as a way of resolving issues of competence?
- Do Black workers feel that they have little communication with management and are given little or no supervision and guidance?
- Is your employer precise about what is required of managers in managing poor performances and what responsibilities they have to provide ongoing supervision?
- Do informal discussions take place to try to resolve issues or do managers go straight down the disciplinary route? Anecdotal evidence suggests that some line managers may take refuge in formal processes when dealing with Black staff as a defence mechanism whereas they are comfortable to deal with things informally when it comes to white staff.
- Review the disciplinary policy and ensure there is clarity about the disciplinary process, including the importance of considering informal approaches, the role of the investigating officers, who the panel are that make the decision, and when the different stages of disciplinary actions are appropriate.

More information in UNISON's [Model disciplinary procedure](#)

- Are all decisions made to take staff through a formal disciplinary reviewed to look at any weaknesses, biases or drivers or adverse treatment of any staff group?
- Work with senior management to champion diversity in the organisation, to properly scrutinise any concerns raised and to promote progress in working for real change.