



# Race



# A. EXTENT OF DISCRIMINATION

---

Black and minority ethnic (BAME) workers are disadvantaged at work and in wider society. The most recent census figures show that BAME people make up over 8% of the UK population, about 4.5 million people. It is estimated that BAME people accounted for half the growth in the working age population in the ten years to 2009.

- The rate of ethnic minority employment in 2009 was 12% lower than that for white people
- Black workers are twice as likely to be unemployed and one and half times as likely to be economically inactive as the overall working age population. Bangladeshi, Pakistani, black Caribbean and African workers are three times as likely to be unemployed as white British workers
- There is a greater concentration of ethnic minority groups into a smaller range of jobs. Black Caribbeans, black Africans, Pakistanis and Bangladeshis are the least likely to be in professional or managerial jobs
- Black Caribbean men earn over £100 less per week than their white counterparts
- Four fifths of Pakistani and Bangladeshi households have incomes at or below the national average compared with a quarter of white households
- Physiotherapists from BAME backgrounds account for approximately 7% of the CSP's membership

# B. ARGUING FOR EQUALITY

---

It is the CSP's aim to provide services which meet the needs of all patients and in particular the traditionally most disadvantaged.

- People from the South Asian community are six times more likely to be affected by type 2 diabetes than those from the white population and at a much younger age

- Infant mortality in England and Wales for children born to mothers from Pakistan is double the average
- The prevalence of stroke among African Caribbean and South Asian men is 40 to 70% higher than for the general population
- Evidence from the Office for National Statistics has shown that Black and South Asian ethnic groups – including NHS staff - have a higher risk of testing positive with novel coronavirus (SARS-CoV-2) which causes Covid-19, as well as a higher risk of suffering a more severe disease from the virus.

The CSP encourages recruitment from black and minority ethnic communities. However there are a number of reasons why the profession still struggles to attract, retain, and promote BAME people:

“My father has never understood why I wanted to be a physiotherapist and not a doctor, which pays so much better”.

The NHS has also been seen to have problems with racism, which has led to a problem in not only recruiting staff but also retaining them:

“My mother was a nurse in the NHS for 25 years – she warned me not to go into the health professions. Her experience was very bad but she had no choice but to put up with it”.

Some of the views which people take for granted as being true prevent highly educated and competent members of various communities wanting to join the profession or continuing to work in the NHS.

## Foreigners just won't fit in with the way we do things here

If we go back far enough, we can say that everyone who lives in Britain today has origins somewhere else. Many of us can probably trace the immigrants in our own family histories. People have come to this country for a variety of different reasons: some to make a better life for themselves, others forcibly, and some were invited to undertake the jobs that were difficult to fill due to a severe labour shortage. For whatever reason immigration has been a fact of life since the beginning of civilisation. Immigrants almost always make a tremendous effort to adapt to their adoptive countries, but also greatly enrich the indigenous culture with their differences.

## There is no scope for further immigration to the UK

There are 66 million people in the UK. The birth rate in Britain is low and we are living longer. Working populations across the Western world are shrinking but pensioners and public services will need to be supported by fewer people working and paying taxes. In 1995 there were over four working people for every pensioner in the UK. By 2050 this will have fallen to less than three. Without immigration into the UK, the UN estimates the retirement age will have to go up to 72.

## Immigrants are making a bad employment situation worse

Britain has always been a country where migrant workers have made a massive contribution to the economy. This has been the case in the past in hospitals, transport, textiles, engineering, building, hotels and restaurants and will continue to be the case in the future. Without the workers that have come to the UK over the last 20 years, the UK economy would not have grown and many of our service industries and public services would not have been able to function. Migrant workers often work in low paying dangerous jobs and like everybody else work to improve their quality of life and provide for their families and communities. Employers and the labour market decide what jobs are available in the UK and how much they will pay. Migrant workers, like all workers, apply for the jobs that are available. Allowing ourselves to be divided into us and them only helps the employers and does not help workers.

## Positive action means special treatment for minorities

Positive action is about redressing inequalities. For example, the CSP is actively encouraging people from diverse backgrounds to enter the physiotherapy profession so as to more accurately reflect the patients they treat and offer more appropriate services. This does not mean that the entry standards are lower, or that anyone is given preferential treatment.

# C. TACKLING DISCRIMINATION IN THE NHS

---

There are still problems of discrimination within the NHS. In 2009, the Healthcare Commission (now Care Quality Commission) reported that compliance with the legal requirements of race equality legislation continued to be a problem for trusts, despite the fact that trusts should have been producing information since 2002.<sup>7</sup>

Only 44% of trusts, for example, had published outcomes of race equality impact assessments.

The Healthcare Commission also reported the following sobering facts:

- Although 30% of nurses and doctors are from minority ethnic groups, fewer than 10% of senior managers and only 1% of chief executives are from a similar background.
- In the Healthcare Commission's 2007 national staff survey, around 3% of all staff said they had been discriminated against on the grounds of their ethnic background. This rose to 12% from minority groups.<sup>8</sup>
- A survey of all NHS Trusts/Boards and PCTs in 2008 found that staff from minority ethnic groups made up around 16% of the workforce, but were involved in more than twice as many bullying and harassment cases and capability reviews than the wider workforce. In addition, nearly a third of grievances are taken out by staff from minority ethnic groups.<sup>9</sup>
- In a second survey of the South East Coast region of the NHS, staff from minority ethnic groups were found less likely to be appointed from a shortlist and more likely to be disciplined, be involved in a grievance, be involved in a bullying or harassment dispute, and pursue a case through an employment tribunal, than staff from the wider population.

CSP stewards and full-time officers frequently deal with complaints from BAME members about lack of promotion and career advancement, or unfair treatment in relation to capability reviews. The danger with such performance assessments is that they can very easily turn into assessments of the person, as opposed to their skills as a worker.

Under the Public Sector Equality Duty of the Equality Act 2010, public sector employers with over 150 staff have to monitor performance appraisals by reference to race. The results of this monitoring should reveal whether or not appraisals are operating in a discriminatory way. If the statistics show that ethnic minority staff are consistently scoring lower marks than white staff, the employer may be vulnerable to a claim of race discrimination. CSP stewards and full-time officers should remember to ask for this data when dealing with capability cases on behalf of BAME members.

The specific duties that are owed by public sector employers are different in England, Scotland, Wales and Northern Ireland. There is more information on the website of the Equality and Human Rights Commission: [www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty](http://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty).

## D. EQUALITY ACT 2010

---

This section provides a brief guide to:

- 1 Who is covered by the Act and amendments
- 2 What the legal duties are for employers
- 3 What the legal duties are for trade unions

### Introduction

The Equality Act 2010 makes it unlawful for an employer to discriminate on racial grounds. This includes:

- Colour
- Race
- Nationality (including citizenship)
- National origin
- Ethnic origin

Discrimination due to someone's caste is also covered.

The Act applies equally to England, Wales and Scotland.

Northern Ireland has very similar provisions, found in the Race Relations (Northern Ireland) Order 1997, available at: [www.equalityni.org/](http://www.equalityni.org/)

**Legislation.**

## Who is covered?

The Equality Act protects both applicants for jobs and employees. It also protects contract workers, temporary agency workers and many freelancers and 'self-employed' workers (that is, people who do work for an organization and its customers).

Anyone who is in business on their own account, freely selling their own goods and services at arms-length to their own clients and customers, is not protected.

Genuine volunteers are not protected.

All employees and workers are covered irrespective of their length of service or the number of hours they work each week. It applies to all stages of the employment relationship and can apply to discrimination after employment has ended, e.g. it prohibits employers from refusing to give a reference on the grounds of race. Equally, a job applicant can make a claim to an Employment Tribunal (ET) – it is not necessary for them to have been employed by the organisation to make a claim of discrimination under the Equality Act.

## Employers' duties under the Equality Act 2010

Discrimination can arise in relation to:

- the arrangements made for the purposes of determining who should be offered employment (such as advertisements and interviews)
- the terms upon which employment is offered
- refusing or deliberately omitting to offer employment
- the way in which access to opportunities for promotion, transfers, training or other benefits, facilities or services are offered

- dismissal or any other detriment

Racial discrimination can arise in any of four ways:

### **Direct discrimination**

A person discriminates against someone by treating them less favourably than they treat (or would treat) another person. Where such discrimination is on racial grounds it is unlawful. This apparently straightforward issue creates difficulty for tribunals. Employers will almost always deny that the alleged discrimination had anything to do with race. In this situation the tribunal has to find the real reason for the employer's action.

**EXAMPLE:** A black employee is disciplined for being late for work several times. The tribunal has to look at the employer's treatment of that worker and compare that to how the employer treated (or would treat) a white person who had been similarly late for work.

### **Indirect discrimination**

Indirect discrimination applies where the employer operates a provision, criterion, or practice which applies to everyone and which on the face of it is neutral in relation to race yet in practice works to the disadvantage of a racial group and cannot be demonstrated by the employer to be a proportionate means of achieving a legitimate aim.

**EXAMPLE:** An organisation advertises a vacancy that is only open to staff at a certain grade. If white people dominate that grade, a black employee could bring a claim of indirect discrimination because he or she was prevented by that requirement from applying. The evidence of disadvantage would be likely to be statistics showing the racial breakdown of the grade in question. As a defence, the employer would have to show that the requirement for that particular grade was objectively justified.”

### **Harassment**

Unlawful harassment occurs when someone is subjected to unwanted conduct that has the purpose or effect of violating their dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment, and the treatment is on the grounds of race, national or ethnic origin.



Conduct will only be regarded as harassment when all the circumstances are taken into account (including the perception of the person at the receiving end), and if it is reasonable to conclude that it could have had this effect. A single act may be enough to constitute unlawful harassment.

## **Victimisation**

It is discriminatory to treat a worker less favourably because they have brought or supported a complaint of race discrimination, e.g. it may be unlawful victimisation if an employer does not promote someone because they previously complained of race discrimination, or if they supported someone else's complaint.

## Trade union duties under the Equality Act 2010

Trade Unions have duties under the Equality Act (and the Northern Ireland equivalent laws), both to the staff it employs and to its members. CSP stewards have an important role to play on behalf of members in preventing unlawful racial discrimination or harassment in the workplace, and in promoting equality of opportunity and good relations between people from different racial groups. By participating in staff sides, stewards can help to negotiate changes in policies, procedures and practices, when needed, and to support measures that will prevent unlawful racial discrimination or harassment in the workplace, and promote equality of opportunity. Stewards should take seriously their role to make members more aware of the importance of racial equality, and of the CSP's responsibilities under the Equality Act.

It is unlawful for a trade union to discriminate against members on racial grounds in the terms on which they offer membership or in the way they make benefits or facilities available. These may include training, welfare and insurance schemes, entertainment and social events, being involved in negotiations, or advice, representation and assistance in grievance, disciplinary or dismissal procedures. Trade unions must not harass members or potential members on racial grounds.

**EXAMPLE:** A black trade union member claimed at a tribunal that the branch secretary had discriminated against her by refusing to represent her in a formal grievance she had brought against two of her colleagues for bullying and racial harassment, having said that he was too busy.

When she later found that he was representing the alleged harassers, also union members, she made a formal complaint to the union, which failed to investigate it properly and dismissed it. The tribunal unanimously decided that the union had discriminated against her in its provision of services, as well as by dismissing her complaint against one of its officials.

## Time limits

Occasionally, it may be necessary to take a claim to an Employment Tribunal (ET). Claims must be lodged with the ET no later than 3 months minus one day after the act of discrimination that is the source of complaint.

The first step in the tribunal process is to submit an Acas Early Conciliation (EC) form to Acas. This step is compulsory and must be taken before the claim deadline expires. Otherwise the claim is likely to be dismissed. There is more information about Acas EC on the Acas website at: **[www.acas.org.uk/early-conciliation](http://www.acas.org.uk/early-conciliation)**.

Please speak to your Senior Negotiating Officer as soon as possible if you think you have an ET claim.

## E. PUBLIC SECTOR EQUALITY DUTY

---

Following the Stephen Lawrence Inquiry, the Race Relations Act was amended to introduce a general statutory duty on public authorities, including NHS Trusts/Boards, to promote race equality. This has now been incorporated into the public sector equality duty of the Equality Act 2010.

In April 2011 the public sector equality duty came into force, replacing the previous race, disability, and gender equality duties. It requires all public authorities to meet both a “general” duty and a number of “specific” duties.

The general duty requires public bodies (including NHS Trusts/Boards) or those carrying out work of a public nature to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

This involves taking action to:

- Remove or minimise disadvantages suffered by people due to their protected characteristics.
- Take steps to meet the needs of people from protected groups where these are different from the needs of other people.
- Encourage people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

In addition to the three general equality duties, public bodies have to carry out other specific duties to help them perform this general duty. In England, this involves:

- Assessing their functions and policies relevant to race equality
- Monitoring their policies in relation to their impact on race
- Assessing and consulting on the policies they propose to introduce
- Publishing the results
- Training their staff on their new duties

The range of specific duties varies depending on whether the public authority is based in England, Wales, Scotland or Northern Ireland.

As part of these duties, public bodies should publish a race equality scheme setting out how they will carry out both their specific and general duties.

In relation to staff, all public authorities must monitor, by ethnic group, their existing staff as well as applicants for jobs, and staff who apply for promotion or training. Employers must publish the results every year.

In addition, public authorities with at least 150 full time staff have to:

- Monitor and analyse by racial group, statistics for those staff who receive training, are involved in grievances or are the subject of disciplinary procedures, who benefit or suffer detriment from performance appraisals, and staff who leave
- Assess the data by reference to grades, management or profession
- Ensure that they take action as a consequence

The Equality and Human Rights Commission (EHRC) provides further guidance on their website: **[www.equalityhumanrights.com](http://www.equalityhumanrights.com)**

Within the NHS, NHS commissioners and healthcare providers, including independent organisations, must implement the Workforce Race Equality Standard (WRES), through the NHS standard contract. There is more information about WRES here: **[www.england.nhs.uk/about/equality/equality-hub/equality-standard/](http://www.england.nhs.uk/about/equality/equality-hub/equality-standard/)**.

## Checklist for stewards

- Be clear on how you stand on racism and discrimination. Be prepared to challenge racist remarks, jokes or behaviour as part of your steward's role
- Provide a service for everyone and make this as accessible as possible
- Educate yourself about the issues so you are in a position to give at least some initial advice
- Make use of the expertise and knowledge of external BAME organizations
- Educate members – organise speakers or a short training session for one of your meetings. Informal discussions can be a vital part of education and a short conversation with a member will be more effective than a long lecture.
- Distribute information and posters which advertise union and equality messages and events, including information about the CSP BAME network
- Challenge management – make sure there are equality policies and they have a firm commitment to putting them into practice

- Check all Trust policies to ensure that they do not discriminate against BAME staff and if they need revising raise at the Joint Negotiating Committee
- Ensure there are anti-harassment, bullying and discrimination policies in place and they are widely publicized
- Ensure that your employer is fulfilling its legal requirements under the Public Sector equality duty and the NHS Workforce Race Equality Standard, and that you make use of available monitoring statistics to advance your race equality arguments on behalf of your members
- Put pressure on management to organise training and diversity courses
- Take up cases on behalf of members. These may be difficult, but the CSP Employment Relations and Union Services (ERUS) Department Officers will support you. This may involve using specific procedures or a more general grievance procedure. Occasionally the case may go as far as an Employment Tribunal, in which case the CSP's solicitors may be involved
- If you think you may have an ET case, be aware of time limits and discuss with your SNO at the outset

## Checklist for managers

- Be clear on how you stand on racism and discrimination. Be prepared to challenge racist remarks, jokes or behaviour. It is a manager's responsibility to ensure that all staff are treated equally and are not subjected to discrimination or harassment
- Be prepared to act decisively when you encounter inappropriate behaviour. The NHS is committed to tackling racism and it is part of your job to carry this out at local level
- If you are not sure of your exact responsibilities or need more information and training, contact the appropriate department
- Ensure you are aware of your Trust's policies on procedures on harassment, bullying and discrimination
- Organise training, information sessions and discussions on the issues

- Encourage staff to participate in outside courses or events which may broaden their knowledge
- Examine the service you provide. Are you meeting all the needs of your client groups? A lot of information has been produced about providing services to BAME communities. It is important that this is available and used
- Encourage BAME staff to join the CSP Network Group (see p8) and if possible allow study leave to attend the biannual meetings

## F. EXERCISES FOR WORKPLACE MEETINGS:

---

The following case study is designed to help you initiate discussion at a staff meeting. The purpose is to raise awareness of the issues facing BAME members, of their rights and how members can support them.

**CASE STUDY:** Indira is a Band 6 physiotherapist who qualified as a physiotherapist in India and came to the UK to work in the NHS 15 years ago. She has worked at her trust as a Band 6 for the last 7 years. She has been applying for Band 7 vacancies in the same department for the last 2 years but has not been successful. She feels that she has not been encouraged to apply for these posts. She also always seems to be at the bottom of the queue for study leave. She feels that she is being discriminated against because of her ethnic origin and the fact that she qualified overseas.

What do you think Indira should do next?

