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Target Audience:  
All HSE Visiting Staff

### **HANDLING RACE ISSUES ENCOUNTERED DURING WORK WITH EXTERNAL CONTACTS**

This OC sets out the action HSE visiting staff are required to take to raise, record and report details of racist incidents encountered during their work in order to meet the positive duty imposed by the Race Relations (Amendment) Act 2000.

The OC does not cover those circumstances where HSE visiting staff are the victim of a racist incident – this is covered in the **unacceptable behaviour** section of the Staff Handbook and **assaults and threats** procedure.

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## THE LEGAL REQUIREMENT

1 The Race Relations (Amendment) Act 2000 places a positive legal duty on HSE as a public authority to work towards the elimination of unlawful discrimination and to promote equality of opportunity and good relations between persons of different racial groups<sup>1</sup>. This instruction sets out the general approach to be taken when race issues are encountered during work with external contacts.

2 The instruction is based on Codes of Practice issued by the **Commission for Racial Equality** and the **Home Office Code of Practice (CoP)** on reporting and recording racist incidents<sup>2</sup>.

3 HSE has a general duty to be aware of race issues and to respond to circumstances where discrimination including racist incidents may have occurred. The duty includes recording brief details of the circumstances and in specific circumstances, to ensure relevant information is passed to the appropriate authority for possible action. However it is not HSE's role to investigate racist incidents. The primary role of HSE visiting staff is to act as an agent for recording and exchanging relevant information. On occasion they may be called as witnesses in race-related civil or criminal cases.

4 HSE is required to provide intelligence on discrimination cases (including possible racially aggravated or motivated crime) that visiting staff encounter to the Commission for Racial Equality (CRE).

### DEFINITIONS

5 A number of terms which are used in the instruction are defined below; see **Guidance notes** for further information.

#### 6 **Racism**

'words, conducts and practices which disadvantage people because of their colour, culture, race and nationality or ethnic origin'. (Chapter 6 paragraph 4 – Steven Lawrence Enquiry Macpherson Report).

#### 7 **Racist incident:**

"any incident which is perceived to be racist by the victim or any other person."<sup>3</sup>

The definition is deliberately broad so that it does not prejudge the question of whether the perpetrator's motive was racist or not. The key issue is that the incident is perceived to have taken place because of colour, race, nationality or ethnic or national origins, or racial group. Racist incidents may or may not constitute **racial discrimination** and/or a **racist crime** depending on their nature.

#### 8 **Racial discrimination**

When someone is treated less favorably on the grounds of his or her colour, race, nationality, or, national or ethnic origin<sup>4</sup>. Racial discrimination in the workplace which does not amount to a crime is a civil matter dealt with by Employment Tribunals and investigated by the Commission for Racial Equality.

#### 9 **Racist crimes**

There are two legal provisions which set out racist crimes. This definition is given to help HSE staff decide which incidents should be reported to the police as potential racist crimes.

- a) Section 28 of the Crime and Disorder Act 1998 describes racially aggravated crimes as those cases of assault, criminal damage, public order offences and harassment where the offender demonstrates hostility towards the victim based on the membership or perceived membership of a racial group eg deliberately endangering other workers with a racist motive; racially motivated assault of person at work.
- b) Under Section 18 of the Public Order Act 1986 the use of words or behaviours which are abusive, insulting or threatening and are made with the intent to stir up racial hatred or are likely to stir up racial hatred, is an offence eg distribution and display of racist material in the workplace likely to incite racial hatred

#### GENERAL PRINCIPLES FOR HANDLING RACE ISSUES DURING WORK WITH EXTERNAL CONTACTS

#### 10 HSE visiting staff should not

- condone racist behaviour
- attempt to resolve the issues between victim(s) and perpetrator
- give legal advice on race matters

#### 11 HSE visiting staff should

- follow the procedures detailed in the Staff Handbook and Health and Safety Policy to ensure their personal safety while visiting sites and premises on HSE business [hyperlink].
- take reasonable steps, deploying tact and diplomacy within the context of your role as an HSE employee, to raise objections to racist behaviour at the time and place it is encountered
- Where there are signs of potential discrimination and/or racist crime take action as set out in this instruction
- make clear that HSE's role is as an agent for recording and exchanging information and is not to investigate the circumstances of racist incidents
- record and report details of racist incidents encountered during their work with external contacts.
- if in any doubt about the appropriate course of action make a brief record of the relevant details as soon as practicable and then discuss with the divisional Race Equality Contact involving your line manager as appropriate.

#### CONSIDERING RACE ISSUES DURING CONTACTS WITH DUTYHOLDERS

12 Keep your eyes and ears open for any signs that race is an issue eg visible signs such as graffiti or behaviour, racist comments. Where there are no obvious signs that race is an issue you should not probe into race issues with the dutyholder.

13 Inspectors should be mindful of race issues during visits to dutyholders. Where workers have limited or no command of English inspectors should enquire how the dutyholder is fulfilling their legal duties to provide comprehensible information for ensuring health and safety at work.

14 Inspectors should when conducting investigations consider whether any of the employment practices are potentially discriminatory and whether racist attitudes or behaviour have played any part in the incident or circumstances being investigated. Where there are signs of potential discrimination and/or racist crime take action as set out in this instruction.

#### TREATMENT OF VICTIMS


15 Where the victim(s) of a racist incident comes forward or are readily identifiable, consider very carefully when and how to raise the issue with them, so as not to exacerbate the situation either for you or them.

16 HSE visiting staff should:

- treat victims of racist incidents with sensitivity and understanding
- ask victims whether they feel the incident is so serious that they fear for their well-being and need the assistance of the police
- ask victims whether they need to talk through the incident with Victim Support – if they do refer to them to the Victim Supportline 0845 303900
- explain the importance and purpose of recording, reporting and sharing details of the incident with the relevant authorities

#### RACIAL DISCRIMINATION

17 In circumstances where you encounter potential evidence of discrimination you should advise those affected that you are of that opinion and then:

- advise them that they may wish to discuss their case with the **Commission for Racial Equality (CRE)** who can advise on possible legal redress through an Employment Tribunal) and
- refer them to the free CRE leaflet '**Advice and Assistance**' 

You should not purport to give the employee any legal advice or guidance on the matter. If an employee makes an allegation to you of racial discrimination in the workplace, you should give them the same advice.

18 To ensure HSE can demonstrate having taken appropriate action, provide evidence for any subsequent police investigation and to provide intelligence to the CRE, make a brief record of the nature of the allegation and the action you have taken on COIN. Forward brief details to your Race Equality Contact and file paper copies of any correspondence. Periodically the Race Equality Contact will be asked to provide a return which will be collated and sent to the CRE.

#### RACIST COMMENTS

19 If you hear racist comments during your work (eg when interviewing witnesses), consider the nature and severity of the comments and impact upon those affected, to decide how to proceed.

20 You may encounter a one-off comment of a general racist nature that does not relate to a particular incident or individual and which is not perceived by any party to amount to a racist incident. As part of HSE's duty to promote good race relations and help eliminate unlawful discrimination, HSE staff should object to the use of racist language. Tactfully request that the

individual refrains from making such comments and make a brief record of the matter in your notebook.

21 Where verbal comments are perceived to constitute a racist incident by any person (including HSE staff), details of the incident should be recorded so that the information can be passed to the relevant authority. Follow the procedures outlined in paragraph 23 below on recording and reporting relevant information.

22 Racist comments directed at a specific individual or racial group may constitute a crime if there is a breach of the Public Order Act. If you believe that comments may amount to a criminal act you should collect details with a view to reporting to the police. If the racist comments may indicate discriminatory practices rather than a criminal act, take action as set out in paragraph 18. If in doubt about how to proceed, record the relevant details and discuss with your local Race Equality Contact, involving as appropriate your line manager and/or the police.

#### RECORDING DETAILS OF A POSSIBLE RACIALLY AGGRAVATED OR MOTIVATED CRIME

23 If in the course of your work you come across possible evidence of a **racist crime**, record relevant details when safe to do so, with the view to reporting them to the police. **Do not attempt to investigate the matter with the victim, the dutyholder or the alleged perpetrator.** It is the police, not HSE, who enforce the relevant legislation and have the duty to investigate the matter.

24 Record as many details of the incident as practicable using the prompts in Appendix 1. Do not assume any information. Allow the victim to choose how they describe sensitive personal data<sup>5</sup> such as their ethnicity and religion.

25 You must specifically ask the victim(s) of a racist incident for their consent to record their personal data. If consent is given by the victim(s) to record their personal data, ask them to confirm their consent by signing your notebook or other record. If they do not give consent, do not record any personal details, but try to obtain general details of the incident.

26 If the victim agrees to provide details of the incident ask them if they consent for you to report this information to the police. Explain to the victim that it is HSE's policy to refuse requests for disclosure of information relating to racist incidents or race discrimination other than to the police. Therefore if someone else requested this information it would not be disclosed.

27 Where the personal data of the victim has been provided by a third party you will need to obtain written authorisation from the victim, to release their personal data to the police and, if it also contains personal data of the third party reporter, you will also need their consent to disclosure. Do not attempt to force the person either to provide information or to allow us to report it to the police.

28 To ensure HSE can demonstrate having taken appropriate action and to provide intelligence to the CRE make a brief record of the action you take on COIN. Forward brief details to your Race Equality Contact (REC) and file paper copies of any correspondence. Periodically the REC will be asked to provide a return which will be collated and sent to the CRE.

**Action where the victim agrees to provide information and report the incident to the police.**

29 Contact the local police unit which deals with racially motivated crime, (eg Community Safety Unit or Race Crime Unit). Discuss the nature of the incident with the relevant police officer and, if agreed, send the completed form and any relevant papers to them. Record brief anonymous details of the incident and the action taken on the appropriate HSE IT database record and file all relevant paperwork for three years in case it is needed for any subsequent police investigation.

**Action where the victim does not wish to report a serious incident to the police**

30 In exceptional circumstances, despite the victim's wishes it may be irresponsible not to disclose information about the incident with the police. If you consider that the victim may be at risk of harm and/or the incident is likely to amount to a serious criminal offence you should consider disclosing the relevant information to the police. In reaching a decision consider the danger of recurrence, the danger to the victim or informant, the public interest and the seriousness of the incident. If you decide that you must disclose the information despite the victim's/informant's wishes, you should pass anonymous details to the police and tell the victim/informant of your action. Confirm receipt of the information with the police.

31 The disclosure of information is permitted for the purpose of any criminal investigation or criminal proceedings whether in the United Kingdom or elsewhere, pursuant to section 115 of the Crime and Disorder Act 1998 and section 17(2) of the Anti-terrorism, Crime and Security Act 2001 (which amends section 28(7) of the Health and Safety at Work etc Act 1974). Do not disclose unless you are satisfied that it is proportionate to what is sought to be achieved by it. If in doubt discuss with your line manager, CRE and police.

**Action where the victim does not wish to report a less serious incident to the police**

32 In all other circumstances where the victim has provided their personal details but has refused permission to disclose the information to the police, write to them to confirm that they have declined to give their permission (see letter in appendix 2). Provide them with contact details for the local police and the Commission for Racial Equality so that they may if they choose follow the matter up in the future. Record brief details of your actions on COIN and file a copy of the paperwork for a minimum of 3 years in case it is needed for any subsequent police investigation.

33 Where the victim refuses to provide personal details and refuses permission to disclose the information to the police, record brief details of your actions on COIN and file a copy of the paperwork for a minimum of 3 years in case it is needed for any subsequent police investigation.

**Action to take if there is no identifiable victim**

34 You could encounter racist graffiti, posters or other materials which are racist incidents as defined. They may also constitute a criminal offence. Tactfully raise your objection to the material with someone in authority, and make a record of the details. Consider whether a racist crime may have been committed and if so pass details to the police. Make a brief record of the action taken on the dutyholders COIN record and file a copy of the paperwork.

**SUPPORT AND GUIDANCE**

35 Racist incidents can involve difficult and sensitive issues, but HSC, HSE

and individuals all have a legal duty to take appropriate action. See the [Race Equality and Communicating with Ethnic Minorities Site](#) for further information and advice on race equality issues. If you require further support or guidance, please contact your Race Equality Contact involving your line manager as necessary.

#### FEEDBACK

36 We want to develop an effective, efficient and nationally-consistent approach to this new area of HSE's responsibilities. The policy and arrangements will be further developed in light of experience. This instruction will be reviewed within 12 months of being published and revised as appropriate. To assist the review please copy brief details of racist incidents that you handle to your Race Equality Contact. If you have suggestions for improvements please contact your Race Equality Contact in the first instance.

26 November 2004

- 1 Section 71 of the Race Relations Act 1976 as inserted by Section 2(1) of the Race Relations (Amendment) Act 2000.
- 2 Code of Practice on reporting and recording racist incidents in response to recommendation 15 of the Stephen Lawrence Inquiry Report, published 25 May 2000 by the Home Office.
- 3 This is the definition given in recommendation 12 of the report of the Stephen Lawrence Inquiry and agreed for use by the police, local government and other relevant agencies.
- 4 See section 1(1) of the Race Relations Act 1976, as amended by the Race Relations (Amendment) Act 2000 and regulation 3 of the Race Relations Act 1976 (Amendment) Regulations 2003 (S.I. 2003 No. 1626). The effect of regulation 3 of the 2003 Regulations is to broaden the definition of indirect discrimination in the areas of employment (and related matters), social protection, social advantage, education and access to the supply of goods and services". Regulation 3 adds a section (1A) to the 1976 Act and states that a person also discriminates"... if he applies ... a provision, criterion or practice which he applies or would apply equally to persons not of the same race or ethnic or national origins in a way which puts or would put persons of the same race or ethnic or national origins at a particular disadvantage when compared with other persons and which cannot be shown to be a proportionate means of achieving a legitimate aim.
- 5 Sensitive personal data includes information on racial or ethnic origin, religious beliefs or other beliefs of a similar nature, membership of a trade union, physical or mental health or condition, the commission or alleged commission of any offence, or any proceedings for any offence committed or alleged to have been committed should not be processed without the explicit consent of the victim. This should be made clear on the racist incident form. Further information on the application of the Data Protection Act 1998 can be found in Annexes A and B of the Home Office Code of Practice and in GAP 37.
- 6 Apply equally to persons not of the same race or ethnic or national origins

in a way which puts or would put persons of the same race or ethnic or national origins at a particular disadvantage when compared with other persons and which cannot be shown to be a proportionate means of achieving a legitimate aim.

7 See section 2(1) of the Race Relations Act 1976.

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## APPENDIX 1

(para 24)

### RECORDING A RACIST INCIDENT

Use the prompts below to collect details of the racist incident.

#### PART 1 – VICTIM AND REPORTER DETAILS

Victim's Details:

Full name

Date of birth

Address and phone numbers

Gender

Religion\*

Ethnicity\*

Languages spoken

Are they a repeat victim – Yes / No

Person reporting (if not victim):

Full name

Date of birth

Relationship with victim

Address and phone numbers

Gender

Religion\*

Ethnicity\*

Languages spoken

Are they a repeat victim – Yes / No

\* Note these details are sensitive personal data and should only be recorded with the explicit consent of the victim and defined by the victim.

#### PART 2 - INCIDENT DETAILS

Type of location eg factory

Address where incident occurred

Description of the incident (including whether incident is part of a series)

Is an extreme organisation believed to be involved – if so provide details if available

Who identified the incident as racist eg victim, HSE member of staff

Give details of any suspect(s)

#### PART 3 – INITIAL ACTION TAKEN IN RELATION TO VICTIM

Give details of HSE action taken eg contact details given for Victim Support, CRE, REC

Details of action taken in relation to the dutyholder's health and safety arrangements

Confirmation as to whether or not the victim consents for referral to another agency including signature of the victim/person reporting

Confirmation as to whether the incident details have been referred to another

agency and which agency  
Give details of any interpretation requirements

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APPENDIX 2  
(para 31)  
OUTLINE LETTER

The outline letter below can be used to send to a victim confirming that he/she has refused permission to provide and/or share the information with the police. A translation slip offering to translate the letter should also be included.

**RACIST INCIDENT OCCURRING AT ON**

Thank you for taking the time to meet me on [date]. I write now to confirm the outcome of our discussion. [insert details of the circumstances leading to HSE's involvement with the racist incident]

We discussed your/my perception that this incident was motivated by skin colour / race/ nationality / ethnic or national origins (*use as appropriate*). I am therefore obliged to treat the incident as a racist incident. The Commission for Racial Equality (CRE) have issued guidelines on the reporting of racist incidents. At our meeting I asked for permission to collect minimum data on the incident. You agreed to provide the data and I made a record of the details which I explained would be used to help identify trends and which may help to prevent further incidents, or provide useful information in the event of future incidents.

The circumstances suggest that there is evidence of a racially motivated crime. As a health and safety inspector/visiting officer this is not something that I am empowered to deal with, but would be a matter for the police. Due to the seriousness of the incident I asked your permission to share the information I had gathered with the [insert name but usually Police]. I accept that this is a difficult decision to make and that at this time you are not willing for the Police to be involved. Should you change your mind at any time in the future, you may contact [insert Police Force name and address].

You may wish to consider seeking legal redress under the Race Relations (Amendment) Act 2000 through Employment Tribunal. I strongly advise you to seek specialist advice on this matter. In the first instance I would suggest you contact the Race Equality Council (REC) who have an office at [insert details]. You may also wish to seek advice from the Commission for Racial Equality (CRE) by phoning them on [insert telephone number] and asking to speak to a Complainant Aid Officer. It is also possible to seek redress through civil law and would advise you to seek legal advice through a solicitor and/or seek advice from REC or CRE.

I understand that it has been a very difficult and traumatic time for you over the past few weeks. I hope that this information will be of help to you and wish you every success for the future. Please do not hesitate to contact me on [insert details] if I can be of any further assistance or if you require this letter translating.

Yours sincerely

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APPENDIX 3  
FURTHER GUIDANCE

## **Racist Incidents**

Examples of racist incidents which HSE staff may encounter include:

- the use of inappropriate language, racial stereotyping, and racist jokes;
- racist graffiti or other displayed racial material;
- racist abuse, insults, nuisance phone calls, threats and harassment;
- discriminatory practices, including victimisation; and
- racially motivated criminal damage, stalking, horseplay, and physical assaults.

## **Racial Discrimination**

Racial discrimination occurs when someone is treated less favorably on the grounds of his or her colour, race, nationality or national or ethnic origin. For example:

- segregating workers from black and/or minority ethnic groups into dirty, dangerous, low paid or unpopular work;
- failing to promote workers from black and minority ethnic groups when patently fitted for promotion;
- violating people's dignity via bullying, intimidation, hostility, or humiliation;
- imposing a requirement or condition which makes it less likely for people from specific racial groups to comply with, and that requirement cannot be justified on non-racial grounds<sup>6</sup> (e.g. a requirement that employees must not wear headgear, which could exclude Sikh males who wear a turban or Jewish males who wear a yarmulke).
- victimising those who have complained about racial discrimination or supported someone else who has, is a form of discrimination<sup>7</sup>.

Racial discrimination in the workplace is a civil matter, which can only be pursued by the person claiming to have suffered discrimination. Anyone who thinks they have been discriminated against at work has the right to make a complaint to an employment tribunal. The CRE is the body who deals with racial discrimination and has the powers to:

- advise or assist people with complaints about racial discrimination, harassment or abuse;
- conduct formal investigations of companies and organisations where there is evidence of possible discrimination;
- if the investigation does find discrimination, the CRE can oblige the organisation to change the way it operates; and assist individuals to take judicial review action to challenge the decisions of public bodies, including their compliance to the general duty.

The CRE also helps to fund over a hundred local Racial Equality Councils which work in local areas among local communities, to promote racial equality and tackle racial discrimination.

If a worker makes an allegation to you of discrimination in the workplace, you should advise them that they may wish to discuss their case with the Commission for Racial Equality (CRE). The CRE may refer them on to the local Racial Equality Council (REC). You should also refer them to the free CRE leaflet 'Advice and Assistance'. You should not purport to give them any legal advice or guidance on the matter. The CRE will be able to advise on possible legal redress through an Employment Tribunal.

### **Further guidance material**

Language considerations for the management of health and safety of non-english speaking workers

Accessing Language services in HSE

Government guidance and toolkit

COI information on communicating with black and ethnic minority groups

Race Equality and Ethnic Minorities site

Faces of Britain: A cultural guide, Avon and Somerset Constabulary, 2000.

Available from your Race Equality Contact.