



ANTI-DISCRIMINATION TOOL KIT: A Guide for the Workplace

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ANTI-DISCRIMINATION TOOL KIT:

A Guide for the Workplace



Foreword

"This booklet is meant to be a resource to give people the relevant insight and ability to seek outcomes if they are targeted for hatred and discrimination. We know that workplace discrimination continues and that national and international events may trigger incidents and comments in the workplace that have emotional, psychological and long term impacts on people. A work environment that is not welcoming or hostile to the identities of people, is a work environment that needs to be challenged, if required, through legal redress.

We know that outcomes are key to ensuring that people can move on with their lives and this is why ensuring access to redress is key. Given the diversity of our communities, businesses can get the best out of pluralism and see it as a strength. This also means treating people with dignity and integrity."

Iman Atta OBE
Director of Tell MAMA

Statements

“One of GMB’s founding principles is the promotion of equal opportunities within the union, the workplace and society and bringing about an end to all discrimination. I’m personally committed to making sure my union is a champion of equality and inclusion. I know that this means working to foster a climate of respect and tolerance in our communities.

If you respect someone, it’s difficult to discriminate against them. GMB will work with all those agencies across society which share our values and aims. Bringing people together and putting an end to hate crime, whether on the streets or in the workplace, must be a priority for us all.”

Neil Derrick
Regional Secretary

“This booklet has been designed in conjunction with Tell MAMA and GMB Yorkshire and North Derbyshire’s regional equality forum. As a group, we have highlighted the rise in hate crime as an issue we need to both raise awareness of and provide support around for our members and reps.

This booklet has been designed to take you from the initial incident through to its outcome in the legal system and give you guidance on how to deal with it. By challenging these issues together, we can start to make a difference.”

GMB, Challenging hate together as One

Louise Foster-Wilson
GMB Equality and Inclusion Officer
Yorkshire and North Derbyshire region

“Since Brexit we have seen a rise in reported hate crime cases. Against this backdrop the role of unions in challenging racism in the workplace and in the community is more important than ever. BAME and LGBT workers are well represented in the trade union movement and unions have a long history of fighting against racism, homophobia and the far right.

The GMB union actively seeks to organise and support particular national and ethnic minority groups and migrant workers as well as offering training and guidance on challenging racism in the workplace.

The GMB union has a very practical role to play in tackling racist abuse, harassment and discrimination not only in the world of work but in a Brexit-divided future society.”

**Steve Jennings MICPD
Senior Organiser/Political Officer**

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Introduction: About this guide

This guide is produced by Tell MAMA, a national campaign that tackles anti-Muslim hatred and Islamophobia, and GMB, the third largest union in the UK that provides advice and support in the workplace. Both organisations are often the first point of contact for those who are experiencing discrimination in the workplace. Tell MAMA and GMB offer free, confidential support to people affected by discrimination and prejudice. This guide focuses on all types of employment discrimination.

The guide is designed to be as useful as possible both for those who are the victims of discrimination and those who witness it. It is designed to offer advice as to how to navigate both the informal and formal stages of responding to discrimination in the workplace. If you believe you have been the victim of employment discrimination or have witnessed it, Tell MAMA or GMB will be able to provide support and guidance.

Your rights

The **Equality Act 2010** is the most important piece of legislation in providing protection from discrimination in the workplace. It combined 116 different pieces of legislation into one Act including the following:

- the Equal Pay Act 1970
- the Sex Discrimination Act 1975
- the Race Relations Act 1976
- the Disability Discrimination Act 1995
- the Employment Equality (Religion or Belief) Regulations 2003
- the Employment Equality (Sexual Orientation) Regulations 2003
- the Employment Equality (Age) Regulations 2006
- the Equality Act 2006, Part 2
- the Equality Act (Sexual Orientation) Regulations 2007

The Act provides protection from discrimination based on what are known as **protected characteristics**:

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- race (including colour, nationality and ethnic or national origins)
- religion or belief
- sex
- sexual orientation

The Act covers the whole employment process. This includes the recruitment process such as the interview stage and whether you are offered a job. Once employed, the Act protects against discrimination in the workplace covering all aspects including the terms of your employment, training and continuing professional development opportunities, pension provision and termination of employment

New rights

The Equality Act 2010 extends the remit of employment discrimination and provides greater clarity from many forms of discrimination in the workplace and in wider society. Indirect discrimination has been extended to include disability and gender reassignment whilst direct discrimination in schools now includes gender reassignment, pregnancy, and maternity

Types of discrimination

Discrimination can be direct or indirect. **Direct discrimination** occurs when individuals or groups feel unequally or unfairly treated because of a protected characteristic. An example would be refusing to promote an employee because of their religion or offering jobs only to male applicants.

Indirect discrimination is when employment policy or practice unequally or unfairly treats an individual or group. An example would be the wearing of uniforms in the workplace. Although the uniform provision may extend to all employees, it may discriminate against an individual or group in preventing the wearing of religious symbols. However, employers can justify some forms of indirect discrimination, for example, preventing the wearing of religious clothing and symbols in line with safety procedures. The onus lies with the employer to justify the policy or practice.

The Act also provides protection from **harassment** and **victimisation**. The former is described by the EHRC (Equalities and Human Rights Commission) as 'hostile, degrading, humiliating or offensive environment' whilst the latter is 'treating someone unfavourably because they have taken (or might be taking) action under the Equality Act or supporting somebody who is doing so' (equalityhumanrights.com).¹

1 <https://www.equalityhumanrights.com/en/equality-act/equality-act-faqs>

How to determine if you are being discriminated against

Employment discrimination can vary. The following examples demonstrate the different types of discrimination that may be experienced:

- If you are treated differently because of your identity, or perceived identity, this is direct discrimination.
- When placed at a disadvantage in comparison to others because of a workplace practice or policy - this is indirect discrimination.
- If you are treated poorly due to a physical disability, learning disability, or hidden disability, such as depression or chronic pain, that is discrimination. Disability discrimination also takes place if employers fail to make reasonable adjustments.
- If you are treated in an offensive, frightening, degrading, humiliating or distressing manner – this is harassment.
- If you complain about discrimination and they treat you badly as a response – this is victimisation.

What you can do

After reading the above, if you think you have been discriminated against according to the Equality Act 2010, you can take the following steps:

Grievances in the workplace

This guidance is aimed at those who feel they are a victim of discrimination at work or feel that they are being treated differently from other employees.

In the first instance, have you made the person or persons aware that you find their behaviour unacceptable? It may be helpful to keep a record. If you do not feel that you can raise the issue with the person or persons responsible, you should first seek advice from your GMB representative who can offer advice and support if necessary.

It may prove helpful, at this stage, to access your company's policy on Disciplinary and Grievance as it may offer you guidance on how to proceed

i) Informal grievance

Speak to the HR department or a manager and try to resolve the matter informally. It could be best to resolve the problem by talking to someone who might be able to help. Keep a record of all conversations and steps taken during the informal grievance process for future reference if needed.

ii) Formal grievance

If the matter is not resolved informally, you should proceed with the formal complaints process. After raising a written grievance, the employer will be obliged to convene a meeting as soon as possible to discuss your complaint

We advise that you write down details/dates of the discrimination, how it has affected you, and what you would like your employer to do. If necessary, speak to a trade union representative, or seek legal advice before your formal meeting. You have the right to bring a work colleague or representative with you to the meeting. If a member, contact GMB for representation.

iii) Right of Appeal

If the Grievance outcome is unsatisfactory you may wish to use your right to appeal. If you are a GMB member contact us to take the matter further.

Alternatively, should you choose to make a claim to the Employment Tribunal, below is the general information on how to proceed.

Employment tribunal

iii) Acas

If the formal grievance process is unsuccessful and you have decided to take the matter further, you need to notify the Advisory, Conciliation and Arbitration Service (Acas) of your intention to file a claim to the Employment Tribunal before doing so.

Acas is an organisation that provides free conciliation services for employers and employees. Acas helps in resolving workplace disputes and reaching a settlement, if possible, between you and your employer through early conciliation service.

After you have notified Acas of your intention to make a claim, they will contact you to find out if you are interested in their free early conciliation service. Early conciliation is voluntary, and you are entitled to refuse this service.

If you agree to early conciliation but do not reach an agreement or decide not to choose early conciliation, Acas will send you a certificate which you will need to file a claim at the Employment Tribunal

iv) Claim to the Employment Tribunal

Once you receive your Acas certificate, you will be able to file a claim to the Employment Tribunal, which can be a stressful and lengthy process. It is advisable that you seek **legal advice** beforehand to assess the strength of your claim. This will help you decide whether to proceed with a legal claim, or perhaps try reach a settlement outside of court.

You may qualify for **legal aid** if you meet the eligibility criteria. You can check if you are eligible on the Gov.uk website, or you can contact the Equality Advisory Support Service (details of support are available at the back of this booklet).

Make sure you proceed with a claim to the Employment Tribunal before the time limit expires. Under the Equality Act, this is three months (minus one day) from the last act of discrimination.

In most cases the Tribunal will not extend the three-month time limit, however, in discrimination cases, the deadline might be extended if the Tribunal thinks it is just and equitable to do so. When deciding whether to extend the deadline, the Tribunal will consider different factors such as the conduct of the parties, length, and the reasons for the delay, whether a fair trial is still possible, and the effect of the delay on the evidence.

If you have decided to make a claim, the process will be as follows:

- Complete a claim form titled ET1². In the form you will explain the details of your claim and the discrimination you have faced at work. There is no fee for making a claim to the Employment Tribunal.
- Once you submit the form, the employer will be notified and will have 28 days to respond.
- If the employer does not respond, your claim will automatically succeed. However, if your employer submits a defence, the tribunal will set a date for a hearing or pre-hearing depending on

2 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/737795/et1-eng.pdf

the complexity of the claim.

- At the pre-hearing, the Tribunal will ask both parties to clarify their positions and will make orders as to how the claim will progress (e.g. orders to provide witness statements, further information, copies of relevant documents).
- Before the final hearing, the Tribunal may suggest to you and your employer to participate in judicial mediation, a form of dispute resolution where a judge helps you resolve your dispute with your employer without going to trial.
- If mediation is not appropriate or is unsuccessful, the claim will proceed to a final hearing.
- At the final hearing, parties will submit their evidence in the form of documents or witness statements, and each party will have the chance to ask questions about the other party's evidence (cross-examination).
- For your claim to succeed you need to provide evidence that you have been discriminated against.
- After the hearing the Tribunal will decide whether the claim has succeeded. This decision can either be given on the day of the final hearing or a few weeks later. You can ask the Tribunal to explain the reasoning behind the decision.
- If your claim succeeds, the Tribunal may award you financial compensation and/or make recommendations to your employer. In discrimination cases, there is no maximum limit on financial compensation. The Tribunal might award compensation for financial losses suffered and/or compensation for emotional distress.
- The compensation amount may be reduced by the Tribunal if the employee did not follow the formal grievance process.
- In terms of costs, unlike other court cases, you do not have to automatically pay the other party's costs if you lose. In a very few circumstances the Tribunal will order you to pay your employer's costs, for example, if you brought a claim that had no chance of winning, or you unreasonably refused a good offer for settlement.

INFORMAL GRIEVANCE

Speak to the HR department or a manager and try to resolve the matter informally. It could be best to resolve the problem by talking to someone who might be able to help.

Keep a record of all conversations and steps taken during the informal grievance process for future reference if needed.

FORMAL GRIEVANCE

If the matter is not resolved informally, you should proceed with a formal complaints process. After raising a written grievance, your employer will be obliged to convene a meeting as soon as possible to discuss your complaint.

We advise that you write down details of the discrimination, how it has affected you, and what you would like your employer to do.

If necessary, speak to your GMB representative, or seek legal advice before your formal meeting. You have the right to bring a friend or representative with you to the meeting.

ACAS

If the formal grievance process is unsuccessful and you have decided to take the matter further, you need to notify the Advisory, Conciliation and Arbitration Service (Acas) of your intention to file a claim to the Employment Tribunal before doing so.

Acas is an organisation that provides conciliation services for employers and employees. Acas helps in resolving workplace disputes and reaching a settlement, if possible, between you and your employer through an early conciliation service.

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If you agree to early conciliation but do not reach an agreement or decide not to choose early conciliation, Acas will send you a certificate which you will need to file a claim at the Employment Tribunal.

EMPLOYMENT TRIBUNAL

It is advisable that you seek legal advice beforehand to assess the strength of your claim. This will help you decide whether to proceed with a legal claim, or try to reach a settlement outside of court.

You may be able to get legal aid if you meet the eligibility criteria. You can check if you are eligible on the Gov. uk website, or you can contact the Equality Advisory Support Service (details of support are available at the back of this booklet).

Complete a claim form titled ET1 2. In the form, you will explain the details of your claim and the discrimination you have faced at work. There is no fee for making a claim to the Employment Tribunal.

Once you submit the form, the employer will be notified and will have 28 days to respond.

At the final hearing, parties will submit their evidence in the form of documents or witness statements, and each party will have the chance to ask questions about the other party's evidence (cross-examination).

If your claim succeeds, the Tribunal may award you financial compensation and/or make a recommendation to your employer. In terms of costs, unlike other court cases, you do not have to automatically pay the other party's costs if you lose.

Preparing for the hearing

Employment Tribunal hearings tend to be less formal than other court hearings. They are held in individual tribunal rooms where the tribunal panel sits on a raised desk. The tribunal panel normally consists of three people, an employment judge and two people representing the employee and employer's organisations. It might be a good idea to go and watch a public Tribunal hearing to see what it is like before your hearing date.

Discrimination from colleagues or third-parties

Your employer is also liable for any discrimination you suffer from other employees if the discrimination occurred at work or during external employment events (work trips, or other work-related events). It does not matter if the discrimination was known to the employer or whether the employer approves of the discriminatory incidents. The only defence available for the employer under the Equality Act is if they can show that they took all reasonable steps to prevent employees from discriminating against other employees before the discrimination occurred.

In these situations, it is advisable to make your claim against both the employer and the employee; if the employer's defence is accepted, you can continue your claim against the employee alone.

Your employer may also be liable for discriminatory acts by third parties where they have been informed of the discrimination and they still failed to protect the employee involved.

Public authority employers

Under the Equality Act, public authorities and public-sector organisations have additional duties as employers to promote equality under the public sector equality duty (PSED).³ To comply with their duty, public authorities must always think about how to protect people with protected characteristics when making their decisions or carrying out their functions. This additional duty can be used to strengthen your discrimination claim.

3 <https://www.citizensadvice.org.uk/work/problems-at-work/employment-tribunals/employment-tribunal-hearings/>

Case studies and examples

Tell MAMA case studies

Case 1:

In 2016, Tell MAMA received a complaint from a Muslim woman who had worked for a charity based in the West Midlands for many years. Whilst at work, she would regularly witness other colleagues making Islamophobic remarks to Muslim staff, including derogatory comments about their Islamic clothing. Later into her career, the woman herself began receiving abusive comments. On one occasion she greeted her co-workers when coming to work, but instead was asked if she planned to blow up a building. Due to the stress caused by the incident the victim had to take long-term sick leave. The woman complained to her employer and agreed to Tell MAMA writing to the employer and contacting the police on her behalf. The police investigated the matter, questioning the workers involved. Because of the complaint made, they reviewed their policies around racism at work and were also advised by Tell MAMA on how to deal appropriately with complaints that are raised about discriminatory behaviour at work. The abusive workers were given a warning by the employer.

Case 2:

Tell MAMA was approached by a Muslim man who received a derogatory comment at work. Whilst attending to a computer with technical faults, the man was bent underneath a table to check the computer wiring. Two colleagues near him began making snide remarks about his position and started to make fun of the worshipping practices adopted by Muslims. The victim informed the colleagues that their comments were offensive. However, their behaviour towards him became hostile and his time at work became uncomfortable and intimidating. The victim raised a formal grievance but felt he needed someone to emotionally support him

during the process as he did not feel comfortable disclosing this to anyone else. Tell MAMA acted as the victim's confidential support and guided him through the grievance process so that he did not feel alone during this distressing time. Furthermore, we offered him advice on handling both the stresses of work and raising a grievance and reassured him that he was right and should feel confident about challenging the behaviour of his colleagues.

Other examples of employment discrimination cases

The EHRC successfully supported the case of a man who argued he suffered disability discrimination. After suffering a heart attack, Smith asked for adjustments to be made at his place of work, but they were not made. Pimlico Plumbers argued that Smith was a business in his own right rather than an employee. The Supreme Court, using the Equality Act 2010, found in favour of Smith, and defined his work as 'employment'. Pimlico Plumbers therefore had a duty to protect him under the Equality Act.

Ladele

Ladele was employed as a registrar of births, deaths and marriages and refused to participate in civil partnership ceremonies as they conflicted with her own religious beliefs. When her employer began disciplinary action against her, she used an employment tribunal to argue she had suffered discrimination. The EHRC ruled against her and stated that her employer merely sought to fulfil their employment role in providing civil partnership ceremonies rather than discriminating against her religious beliefs.

Qureshi v Teknequip

Qureshi argued that as a Muslim employee, he was discriminated against when his employers refused to grant him an extended lunch to attend his local Mosque for prayer. The employer was found not to have discriminated against him as they had attempted to cater for his needs, including extending his lunch break by thirty minutes and allowing him to pray during break times.

Hate crime in the workplace

A hate incident or hate crime is perceived, by the victim or any other person, to be motivated by a hostility or prejudice based on a person's protected characteristic, or perceived protected characteristic. Something is a hate incident if it is motivated by hostility/prejudice based on:

- Disability
- Race
- Religion
- Sexual orientation
- Transgender identity

If you have experienced a hate incident or hate crime you can report it to the police. This means that if you believe something is a hate incident it should be recorded as such.

Underlying prejudice as manifested in employment discrimination may not in itself be hate crime. However, prejudice needs to be taken seriously as it may culminate into a hate crime. Hate crime is defined as *“any criminal offence which is perceived by the victim or any other person, to be motivated by hostility or prejudice based on a person's race or perceived race; religion or perceived religion; sexual orientation or perceived sexual orientation; disability or perceived disability and any crime motivated by hostility or prejudice against a person who is transgender or perceived to be transgender” (The National Police Chiefs' Council and the Crown Prosecution Service).*

Hate crime comes in many forms, it is illegal and always wrong. Reporting hate crime makes a difference. You can help prevent a hate crime happening to someone else in your community and other communities, and you can help the police better understand where hate crimes are occurring and improve their responses to it.

If you do not feel comfortable contacting the police directly, third-party reporting services such as Tell MAMA and the CST can do so on your behalf. They can keep your identity anonymous or pass on your details – whichever you prefer.

How to report to the police

In an emergency always dial 999

Dial 101 to report hate crime, get advice, or speak with a local officer

Online: True Vision (www.report-it.org.uk) or by downloading Self Evident (police reporting app)

On train networks or the London Underground: 0800 40 50 40
or text 61016

Anonymously: CRIMESTOPPERS 0800 555 111

Looking after yourself

Tell MAMA and GMB recognise how stressful discrimination in the workplace can be. As well as advocating and providing practical support on your behalf, we also recommend you find the means to support yourself both emotionally and psychologically during this process. If you are not coping well with stress seek external support from organisations like the Samaritans. Our daily jobs occupy a large portion of our lives. Work can be more than just an income source; it also shapes our social life and interactions with others. It is not easy to lose trust in others through discriminatory behaviour and it can affect our lives in many ways. Therefore, embracing our feelings and thoughts and sharing with people or professionals with whom we trust can potentially transform our experience and help us move on. Visit Tell MAMA's website for further information on gaining support and taking care of your emotional being, including the role mindfulness can take in providing you with care and support away from the workplace.

Sources of information

Tell MAMA

www.tellmamauk.org

Tell MAMA (Measuring Anti-Muslim Attacks) is the leading independent and confidential support service for those who experience anti-Muslim prejudice, racism, discrimination, and Islamophobia in the UK. As a third-party support service, Tell MAMA also supports victims of Islamophobic hate crime and can liaise with relevant police forces on behalf of victims (when requested), provides advocacy work and signposting for legal assistance. Its groundbreaking research is shaping government policy, including the Hate Crime Action Plan.

How to report to Tell MAMA

Helpline: 0800 456 1226

Online: www.tellmamauk.org/submit-a-report-to-us/

Email: info@tellmamauk.org

WhatsApp: 07341 846086

Twitter: @TellMamaUK

Facebook: TellMAMAUK

GMB

Gmb.org.uk

GMB's website provides comprehensive advice on workplace discrimination throughout the whole employment process. Their Workplace Organisers are trained in negotiating equality. They also provide 'model equality workplace agreements' that can be adapted for use across different workplaces,⁴ including maternity and paternity agreements and time off due to emergencies.

How to contact the GMB

Helpline: 0300 333 0303

Online: www.unionline.co.uk

Email: info@gmb.org.uk

Other support services

Acas

Acas.org.uk

Provides information on disputes and workplace discrimination.

CST (Community Security Trust)

Cst.org.uk

The CST works to protect the Jewish community from antisemitism and has a dedicated team that offers advice and support throughout the whole hate crime process.

Citizens Advice

Citizensadvice.org.uk

Provides information and advice on different types of discrimination and how to use the Equality Act 2010.

Dimensions

www.dimensions-uk.org

A charity that supports people with learning disabilities, autism, challenging behaviour, and complex needs.

Equality Advisory Support Service

www.equalityadvisoryservice.com

A helpline and legal advice for issues relating to human rights. Telephone 0808 800 0082.

Galop

www.galop.org.uk

A charity that records hate incidents and violence directed against the LGBT+ community.

Stonewall

Stonewall.org.uk

Provides help and support for the lesbian, gay, bi and trans communities.

The Traveller Movement

www.travellermovement.org.uk

A charity that works with the Gypsy, Roma, and Traveller communities in the UK to tackle discrimination.

For more information on what is contained in the Equality Act 2010, visit the UK government's website at, www.legislation.gov.uk/ukpga/2010/contents.

Glossary of terminology

Direct discrimination occurs when individuals or groups feel unequally or unfairly treated because of a protected characteristic.

Harassment is described by the EHRC as 'hostile, degrading, humiliating or offensive environment' (equalityhumanrights.com).

Indirect discrimination is when employment policy or practice unequally or unfairly treats an individual or group.

Protected characteristics that are protected by the Equality Act 2010 include age, disability, gender reassignment, marriage, or civil partnership (in employment only), pregnancy and maternity, race, religion or belief, sex, sexual orientation

Victimisation is 'treating someone unfavourably because they have taken (or might be taking) action under the Equality Act or supporting somebody who is doing so' (equalityhumanrights.com)⁴.

4 <https://www.equalityhumanrights.com/en/equality-act/equality-act-faqs>

