



**A GUIDE TO THE
CODE OF PRACTICE
ON RACIAL EQUALITY
IN HOUSING**

For private housing providers



COMMISSION FOR
RACIAL EQUALITY

This leaflet summarises the main recommendations of the Commission for Racial Equality's (CRE) statutory *Code of Practice on Racial Equality in Housing*¹ as they affect organisations and individuals that provide housing and related services. These include private landlords, owners of hotels, boarding houses or guest houses, accommodation or letting agents, estate agents, banks, house builders and developers, sellers of freehold and leasehold property, mortgage lenders, valuers, solicitors, surveyors, factors (in Scotland), and property managing agents and their maintenance or repairs contractors. Collectively they are referred to as 'companies' in this leaflet.

BENEFITS OF THE CODE

The code should help companies generally:

- to understand their obligations under the Race Relations Act 1976 (RRA);
- to prevent unlawful discrimination or harassment against households who seek to rent or buy, or who occupy, premises;
- to identify opportunities to provide housing, including caravan sites, that meets the needs of all racial groups; and
- to build or enhance a reputation as companies that provide a fair and useful service for everyone in the area in which they operate.

It should, for example, help estate agents to offer an effective service to sellers and lettings agents to landlords by reaching all parts of the market in ways that are attractive and accessible to all.

WHAT IS THE PURPOSE OF THIS LEAFLET?

The leaflet is *not* a substitute for the code. It has been produced to make clear how the RRA and the code apply specifically to companies providing housing and related services. While the non-discrimination provisions of the RRA and the code's recommendations apply to all housing organisations and providers of related services in England, Scotland and Wales², regardless of size, those in the private sector are not bound by the duty under the RRA to promote race equality (referred to as the race equality duty).

WHAT IS THE LEGAL STATUS OF THE CODE?

The code is a statutory code; it has been approved by the secretary of state and laid before parliament. The versions for Scotland and Wales also have the approval of ministers in the Scottish Executive and the Welsh Assembly Government respectively. This means that the courts must take its recommendations into account in cases brought under the RRA, if the code is introduced into evidence and the recommendations appear relevant to any question arising during the proceedings. Anyone with responsibility for a housing organisation should be able to defend themselves better in any case of unlawful racial discrimination brought against the organisation if they have followed the code's recommendations on how to avoid racial discrimination and harassment, and promote equal opportunities for all.

1. The *Code of Practice on Racial Equality in Housing* replaces the rented and non-rented codes of practice in housing, published in 1991 and 1992 respectively.

2. Northern Ireland has its own equality legislation and regulatory framework. This code is available in three versions: one each for England, Scotland and Wales.

WHAT IS RACIAL DISCRIMINATION?

The RRA makes it unlawful for any housing organisation or provider of housing services to discriminate on racial grounds. Racial grounds are defined as reasons of race, ethnic or national origins, colour or nationality (including citizenship).

The RRA defines four main kinds of discrimination: direct discrimination, indirect discrimination, victimisation and harassment.

1. DIRECT DISCRIMINATION

It is unlawful to treat a person less favourably on racial grounds than another person is or would be in the same or similar circumstances. No justification may be brought for an act of direct discrimination.

EXAMPLE

An estate agent does not give details of a suitable property to an Asian buyer, because the seller has made it clear he does not want to sell to an Asian family. The agent also withholds information about properties in 'Asian areas' of the town, on the assumption that they would not be interested in living in those areas. Both practices are unlawful and constitute direct discrimination.

EXAMPLE

Local residents get together to persuade a neighbour not to sell her house to an African Caribbean family. The neighbour agrees and refuses to offer viewings or accept offers from black families. In this example, both the neighbours and the person selling the house are discriminating unlawfully on racial grounds. The RRA specifically makes it unlawful to instruct or bring pressure on another person to discriminate, on racial grounds. The seller, by giving way to that pressure, is discriminating directly against black people.

EXAMPLE

An advertisement on the internet for a 'house for sale to white family' or a 'house for sale to Indian family' would be unlawful. Both the person who placed the advertisement and the actual publisher, in this case the owner of the website, may be liable.

Segregating a person from others on racial grounds is automatically unlawful direct discrimination.

2. INDIRECT DISCRIMINATION

This occurs when an apparently non-discriminatory requirement, condition, criterion or practice which applies equally to everyone is actually harder for people from a particular racial group³ to satisfy, and which cannot be objectively justified.

EXAMPLE

A bank limits its mortgage loans to a maximum of 80 per cent of the value of a property in areas with large ethnic minority populations, compared with 95 per cent of the value of the property in white areas. There is no objective evidence that the properties in ethnic minority areas pose a greater lending risk. This could be indirectly discriminatory.

3. VICTIMISATION

A person is victimised if he or she is treated less favourably for having made a complaint of racial discrimination or given evidence or information in a case of racial discrimination.

EXAMPLE

A lettings agency dismisses a temporary worker who has informed the CRE that a manager instructed staff not to show properties to enquirers of east European origin, because they were 'all time wasters and not serious about purchasing properties'.

4. HARASSMENT

Harassment on grounds of race or national or ethnic origins is specifically prohibited under the RRA, while harassment on grounds of colour or nationality may amount to unlawful direct discrimination. Harassment is defined as 'unwanted conduct that has the purpose or effect of violating a person's dignity; or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person'. What is intimidating, hostile, degrading, humiliating or offensive is, in the main, defined by the person who has complained of harassment.

EXAMPLE

A tenant brings a complaint of racial harassment against his landlady, when she persists in making racially offensive remarks to him, despite his attempts to explain his unhappiness.

3. Racial groups are groups defined by race, colour, nationality (including citizenship) or ethnic or national origins. All racial groups are protected by the RRA.

WHAT RIGHTS DO PEOPLE HAVE AGAINST RACIAL DISCRIMINATION?

Individuals who believe that they have been discriminated against, or harassed, on racial grounds, by a provider of housing or related services have the right under the RRA to bring legal proceedings in the County Court (or Sheriff Court in Scotland). The CRE has the power to advise and help individuals bring a case to court. If a complainant can establish facts from which a court can conclude that an act of racial discrimination has occurred, then the housing provider must prove to the court's satisfaction that the treatment was not in any way due to discrimination.

EXAMPLE

The Paisley Sheriff Court found that an estate agency had discriminated against the applicant on racial grounds when it had refused to arrange a property viewing. The applicant was suspicious of the reason given by the estate agency for refusing an appointment and arranged for four other people (two of Asian origin and two of a white Scottish background) to ask for appointments to see the property. The two Asians were refused appointments and the two white Scots were given appointments. An award of £2,000 for damages and expenses was made against the estate agency. [*Yousaf v The Robb Estate Agency and others*, Paisley Sheriff Court, 1997, unreported]

WHO IS LIABLE FOR RACIAL DISCRIMINATION?

A housing organisation or provider of housing services will be liable for any acts of unlawful racial discrimination done by their employees⁴ in the course of their employment, unless the organisation can demonstrate to the employment tribunal that it has taken all reasonable steps to prevent such acts.

DOES THE CRE HAVE ANY ENFORCEMENT POWERS?

Yes, the CRE has the power to conduct a formal investigation if it believes that racial discrimination may have occurred. If the investigation shows that discrimination has indeed taken place, the CRE can issue a non-discrimination notice, requiring the discrimination to stop and making recommendations for change. A non-discrimination notice can last for five years. The CRE also has powers to enforce the duties of public authorities to promote race equality. Companies that bid for contracts with public authorities to provide housing services should be aware of these duties and be prepared through performance of the contract to enable the authority to meet them.

EXAMPLE

The CRE issued a non-discrimination notice to an accommodation bureau when a formal investigation of the company found that it had accepted and acted on discriminatory instructions from white landlords to withhold details of their properties from black applicants.

4. The statutory *Code of Practice on Racial Equality in Employment* (CRE, 2005) gives detailed guidance on the responsibilities of employers under the RRA.

DOES THE RRA HAVE SPECIFIC PROVISIONS ON HOUSING?

Part III of the RRA contains sections 20, 21 and 24. These are the key provisions that apply to companies providing housing and housing services. The main activities where racial discrimination is specifically prohibited are summarised below.

1. SALES OF PROPERTY AND LONG LEASES

It is unlawful for any individual seller,⁵ house builder and developer or estate agent acting on their behalf to discriminate on racial grounds in the way they provide information about available properties or in the type or quality of properties offered for sale.

It is unlawful for valuers or surveyors to discriminate in the way they provide their services to sellers or buyers of properties. It is unlawful for any of these agencies to harass clients or prospective clients and customers on racial grounds.

EXAMPLE

A house builder refuses to sell properties at the entrance of a new building scheme to black buyers. The builder believes that white buyers will be deterred by the presence of black residents. This is direct discrimination.

EXAMPLE

A house owner puts her house up for sale and asks the estate agent to say in the publicity materials that it is only available to a Welsh speaker. This condition could amount to unlawful indirect discrimination.

EXAMPLE

A valuer discriminates directly by giving a lower valuation of a property, based on the seller's racial group.

2. PRIVATE LANDLORDS, LETTING AND ACCOMMODATION AGENTS, MANAGING AGENTS, FACTORS (IN SCOTLAND), HOTELS AND BOARDING HOUSES OR GUEST HOUSES

It is unlawful for private landlords,⁶ their letting or managing agents and owners or managers of hotels, boarding houses or guest houses to discriminate, directly or indirectly, on racial grounds in the way they make accommodation available, the terms on which they provide it, and its quality. It is also unlawful for them to harass their tenants, guests or clients on racial grounds.

5. The Race Relations Act (Amendment) Regulations 2003 abolished the exemption which permitted private property sellers to discriminate when selling their own home, provided they did not use the services of an estate agent to discriminate on their behalf, or placed a discriminatory advertisement.

6. The Race Relations Act (Amendment) Regulations 2003 abolished the small dwellings exemption, which permitted private landlords to discriminate when letting premises if they lived there themselves, and the premises were small, provided they did not use the services of a lettings agent to discriminate on their behalf, or placed a discriminatory advertisement.

EXAMPLE

A landlord charges a higher rent, and requires a larger deposit, from black tenants than from white tenants.

EXAMPLE

A home owner who instructs a letting agency not to send Somali families to view his property acts unlawfully. If the agency acts on these instructions it also acts unlawfully.

EXAMPLE

An estate agency discriminates directly by showing an Asian and a white buyer different selections of properties, if the difference of treatment is based not on each buyer's preferences, but on whether the area in question is 'white' or 'Asian'.

EXAMPLE

A landlord discriminates directly by responding more speedily to requests for maintenance or repairs from one racial group than another, irrespective of the relative urgency of the request.

EXAMPLE

A hotel refuses to accept a booking for a wedding reception from a Romany Gypsy, because they presume that they will cause trouble.

3. MORTGAGE FINANCE AND HOUSE INSURANCE

It is unlawful for financial institutions or agents acting on their behalf to discriminate, directly or indirectly, on racial grounds when making finance available to buyers of properties, or in their lending criteria.

It is unlawful for insurers or agents acting on their behalf to discriminate in the terms on which they offer or provide house insurance.

It is unlawful to racially harass clients and customers.

EXAMPLE

An insurance company refuses to insure homes in certain parts of the city. Most of the residents in that area are from ethnic minorities. The company has no evidence that the insurance risk is greater in that area. This is indirect discrimination.

EXAMPLE

A building society directly discriminated against a white woman, on racial grounds, when it turned down her application for a mortgage because the street where she wanted to buy was in an 'Asian area'.

EXAMPLE

A bank refuses loans or insurance to residents in certain postal areas, which have large ethnic minority populations. Unless the bank can give objective reasons for this, it could be found liable for indirect discrimination.

EXAMPLE

A bank only lends to applicants who have lived in the UK for a minimum period. This rule may disproportionately affect people from racial groups that have migrated to the UK recently. Unless the bank can justify its policy with objective evidence of the risk it would otherwise run, the policy could be indirectly discriminatory.

ARE THERE OTHER LAWS THAT PROHIBIT RACIAL DISCRIMINATION?

Both the Estate Agents Act 1979 and the Consumer Credit Act 1974 include sanctions against racial discrimination.

- **Estate Agents Act 1979** [section 3(1)(b) and schedule 1, paragraph 2]
The Office of Fair Trading (OFT) has the power to prohibit someone from working as an estate agent, if it is satisfied that that person has discriminated on racial grounds in the course of their work as an estate agent.

The CRE has a duty to give the OFT any information about:
 - a finding of discrimination in an individual case;
 - a non-discrimination notice it has issued; and
 - an order or injunction restraining an estate agent from discriminating which appears to be relevant to the OFT's functions under the 1979 Act.
- **Consumer Credit Act 1974** [section 25 (2)(c)]
Estate agents or house builders and developers involved in arranging mortgages (or in Scotland, standard securities) or other credit facilities for property purchase must obtain a licence from the OFT. The OFT can refuse, revoke, or not renew a licence, if there is any evidence that the applicant for, or holder of, the licence has discriminated on grounds of colour, race, or ethnic or national origins in the course of any business.

WHAT CAN PRIVATE HOUSING ORGANISATIONS AND THEIR CONTRACTORS DO TO PREVENT RACIAL DISCRIMINATION AND ENSURE EQUAL OPPORTUNITIES?

1. ESTATE AGENTS, HOUSE BUILDERS AND DEVELOPERS, AND SELLERS

Equal opportunities policy

Does the agency have a written equal opportunities policy or statement, saying what it will do to ensure fair and equal services for all? Is the statement readily available? Is someone sufficiently senior responsible for seeing that the policy is put into effect? Are contractors expected to meet comparable standards?

Discriminatory instructions

Have all sellers been notified that discriminatory instructions are unlawful and that the company will not accept or act on them? Have the company's employees been instructed as to their responsibilities under the company's policy on discriminatory instructions? Is the policy referred to in the company's code of conduct (if it has one)?

Property details and viewing arrangements

What does the company do to make sure information about properties for sale, their availability and viewing arrangements is provided consistently to all prospective buyers, regardless of their racial group?

Staff training

Have employees had training on the RRA and their responsibilities under it? Do they know what to do if they receive a discriminatory instruction from a seller? Are they aware of any industry standards on equality, such as the National Association of Estate Agents' Code of Practice and regulatory framework?

Policy reviews

Does the company review its policies, practices and services regularly, to make sure discrimination is not taking place? Smaller companies should not need to monitor their services in great detail. However, it is recommended that they make regular basic checks instead, such as:

- random checks on property sales to make sure all prospective buyers have received details of all the properties that match their preferences and price range;
- periodic checks on records, to make sure information about a buyer's or seller's racial group has not been recorded; and
- checks on complaints about the agency's services, to see if there is any reference to racial discrimination or harassment.

2. MORTGAGE LENDERS, PROPERTY VALUERS AND INSURERS

Equal opportunities policy

Does the company have a written equal opportunities policy or statement, saying what it will do to ensure fair and equal services for all? Is the statement readily available? Is someone sufficiently senior responsible for seeing that the policy is put into effect? Are contractors expected to meet comparable standards?

Financial lending and insurance criteria

Has the company reviewed its lending and insurance criteria to make sure they are not discriminatory, either directly or indirectly, and that no racial group is adversely affected as a result? Has it considered developing house purchase products that avoid potential indirect discrimination against members of racial groups who are likely to have religious objections to interest-based financial transactions?

Property valuation and services

Do the company's employees understand how prejudice and stereotyping could lead to unlawful racial discrimination, and social disadvantage?

Staff training

Have employees had training on the RRA and their responsibilities under it? Are they aware of relevant industry standards on equality, such as the Financial Services Authority (FSA), Royal Institute of Chartered Surveyors (RICS) or Council of Mortgage Lenders (CML)?

Advertising and communication

Has the company checked to see if its services are open to all, and are being used by all? Has it considered translating some of the company literature into the languages used by the markets it serves?

Policy reviews

Does the company review its policies, practices and services regularly, to make sure discrimination is not taking place? Smaller companies should not need to monitor their services in great detail. However, it is recommended that they:

- make periodic checks on complaints about the agency's services, to see if there is any reference to racial discrimination or harassment;
- make random checks on property valuations to make sure they have not been over- or undervalued because of the racial composition of the area, or the seller's racial group; and
- include a question about ethnic background in any customer or consumer surveys, and use the information to produce a 'snapshot' of the company's markets, and potential markets; and to identify any gaps in services to particular groups as well as possible marketing opportunities.

3. LANDLORDS, LETTINGS AND ACCOMMODATION AGENTS, PROPERTY MANAGING AGENTS, FACTORS (IN SCOTLAND), HOTELS, BOARDING HOUSES OR GUEST HOUSES

Equal opportunities policy

Does the company have a written equal opportunities policy or statement, saying what it will do to ensure fair and equal services for all? Is the statement readily available? Is someone sufficiently senior responsible for seeing that the policy is put into effect? Are contractors expected to meet comparable standards?

Discriminatory instructions

Have all landlords been notified that discriminatory instructions are unlawful and that the company will not accept or act on them? Have the company's employees been instructed as to their responsibilities under the company's policy on discriminatory instructions? Is the policy referred to in the company's code of conduct (if it has one)?

Property details and viewing arrangements

What does the company do to make sure information about properties for rent, and viewing arrangements is provided consistently to all prospective buyers, regardless of their racial group?

Maintenance and repairs contractors

Have contractors been told of their responsibilities under the RRA when carrying out services on behalf of the company? In particular, has the company taken steps to make sure contractors treat tenants with respect and do not subject them to racial harassment?

Racial harassment and anti-social behaviour

Has the company made it clear to staff, contractors and tenants that racial harassment is unlawful and that if a tenant is found to have racially harassed another tenant or resident, this would be grounds for eviction? Does the company give priority to repairs needed as a result of racial harassment or anti social behaviour?

Staff training

Have employees had training on the RRA and their responsibilities under it? Do they know what to do if they receive a discriminatory instruction from a seller? Are they aware of any industry standards on equality?

Policy reviews

Does the company regularly review its policies, practices and services, to make sure discrimination is not taking place? Smaller companies should not need to monitor their services in great detail. However, it is recommended that they make regular basic checks instead, such as:

- random checks on property lettings to make sure all prospective tenants have received details of all the properties that match their preferences and price range;

- periodic checks on records, to make sure they do not include any information about a tenant's or an applicant's racial group; for example, questions about an applicant's nationality;
- checks on complaints about the company's services, or its contractors, to see if there is any reference to racial discrimination or harassment; and
- random checks on the quality of repairs or maintenance carried out, and the response times, to make sure that discrimination has not taken place.

WHERE CAN I GET COPIES OF THE CODE?

The code has been produced in three versions: one each for England, Scotland and Wales (bilingual). They may be downloaded free from the CRE website (www.cre.gov.uk/housing), as can this leaflet and a general summary of the code (which are both also available in Welsh). Hard copies are available from CRE Publications (www.cre.gov.uk/publs/index.html).

CRE publications

Code of Practice on Racial Equality in Housing: England (2006) 96pp.
ISBN 1 85442 606 0. **£15.00**

Code of Practice on Racial Equality in Housing: Scotland (2006) 104pp.
ISBN 1 85442 607 9. **£15.00**

Code of Practice on Racial Equality in Housing: Wales (bilingual) (2006) 204pp.
ISBN 1 85442 608 7. **£15.00**

A Guide to The Code of Practice on Racial Equality in Housing (2006) A5 leaflet.
ISBN 1 85442 609 5 **Free.**

Code of Practice on Racial Equality in Employment (2005) 112pp.
ISBN 1 85442 562 5. **£15.00**

Code of Practice on the Duty to Promote Race Equality (2002) 80pp.
ISBN 1 85442 430 0. **£10.00**

Ethnic Monitoring: A guide for public authorities (2002) 92pp.
ISBN 1 85442 434 3. **£10.00**

Race Equality and Public Procurement (2003) 100pp.
ISBN 1 85442 525 0. **£15.00**

Race Equality and Procurement in Local Government (2003) 112pp.
ISBN 1 85442 524 2. **£15.00**



**COMMISSION FOR
RACIAL EQUALITY**

© Commission for Racial Equality 2006

St Dunstan's House
201-211 Borough High Street
London SE1 1GZ

ISBN 1 85442 610 9