

Racism in education — The law is on your side!

Race Relations (Amendment) Act tool-kit

introduction

In response to the Stephen Lawrence Inquiry report, the government strengthened race legislation in Britain. The Race Relations (Amendment) Act 2000 (RR(A)A) introduced for public authorities a new statutory duty to promote race equality providing a legal framework to insist that racism is actively tackled.

However, legislation alone will not achieve improvements in eliminating race discrimination. The Race Relations Act 1976 has been with us for 30 years, but successive reports show that Black people continue to face discrimination and harassment in the classroom and the workplace.

In the past the emphasis has been on dealing with individual complaints of racial discrimination. Now however, the law places a duty on public bodies to promote race equality. This includes colleges and universities. It is a positive duty, which means race equality has to be emphasised at the beginning of the process, rather than making adjustments at the end. It will bring about a shift from a legal framework, which relies on individual Black student complaining about discrimination, to one in which the institution has to become proactive agents of change.

The duty is a real opportunity for us as a movement. It means that colleges and universities must involve Black staff and students and ensure that Black students get equality on campus.

We have a responsibility to ask the questions, to challenge what is happening with the race equality duty and to ensure that true representation and involvement takes place.

I would like to take the opportunity to thank the Respect Trust, UNISON and the Student Assembly Against Racism who have collaborated with the NUS Black Students' Campaign to produce this briefing and toolkit, and also Diversity Solutions whose advice and support has been invaluable.

I hope that this briefing will help you to better understand your rights and empower you to start to take action in your institution.

Yours in unity,

A handwritten signature in black ink that reads "Ruqayyah Collector". The signature is written in a cursive, flowing style.

Ruqayyah Collector
NUS Black Students' Officer

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what is the race relations (amendment) act 2000?

The Race Relations (Amendment) Act 2000 (RRAA) amended the Race Relations Act 1976 by giving educational institutions (further and higher education institutions) a statutory general duty to promote race equality.

This duty has three parts to it:

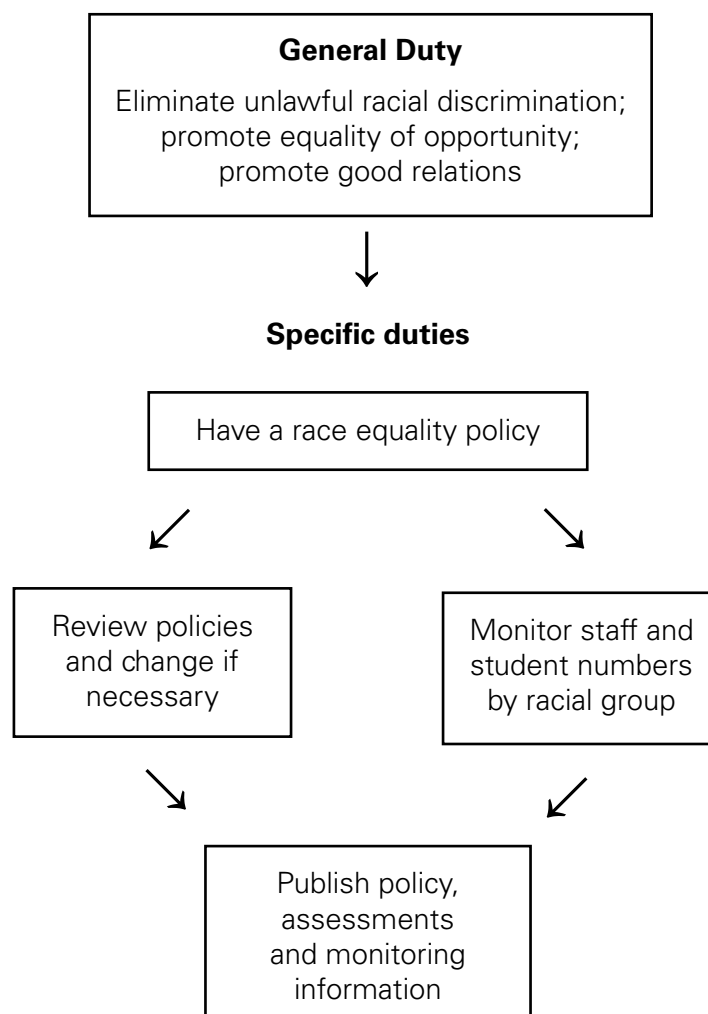
- To eliminate unlawful racial discrimination
- To promote equality of opportunity
- To promote good relations between people of different racial groups

In order to meet the duty, further and higher education institutions must:

- Prepare and maintain a race equality policy
- Conduct impact assessments (reviews) of policies on staff and students from different racial groups
- Monitor, according to racial groups, the admission and progress of students and the recruitment and career progression of staff
- Publish the race equality policy, along with the results of assessments and monitoring.

These four actions are called specific duties.

The law is organised in the following way:



how did the RRAA come about?

The inquiry into the murder of Stephen Lawrence found a catalogue of racist practices within the police force. From this inquiry, the following definition of institutional racism was provided: *The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people.*

what does the definition mean?

Institutional racism is a form of racism that can occur in the way organisations or institutions operate. It is different from a person being racist, because institutional racism is about racism in an organisation or institution's policies and/or practices. It can occur in terms of employment or the service our educational institutions provide. It can occur if policies are not acted on. This is because racism can happen informally (attitudes, ways in which a lecturer behaves etc) as well as formally.

The RRAA was created from the Inquiry, and provides practical ways in which all public authorities can take steps to eradicate racism.

key points:

- The RRAA is currently one of the strongest equality laws in Britain, and one of the strongest protections that students and working people have.
- The general duty is a positive duty, which means that institutions must take active steps to achieve it. Institutions must be proactive, and not reactive.
- The specific duties are a means by which the general duty should be met. Institutions should have a race equality policy in place, conduct monitoring and impact assessments and publish in order to show they are meeting the general duty.
- The aim of the general duty is to make racial equality a central part of how institutions function. This means race equality has to be built into all relevant areas.

what does the law mean in practice?

Institutions must have a race equality policy in place that is easily accessible to students. Institutions should also be conducting exercises in monitoring and impact assessment, and publish these results internally and externally.

To help institutions in doing this, the following areas should be pursued:

- Institutions must **consult widely**, internally and externally. This means consultation should take place with students, trade unions and students' unions.
- **Effective equality training** is a key part of ensuring that people are aware of their rights and responsibilities. Staff should receive proper training, in particularly those staff with responsibilities (e.g. recruitment and selection).
- Institutions should have **equalities or race equality groups** that are tasked with pushing forward work in race equality, such as target setting. These groups should have representation from across the institution, and include student union reps.
- Information on what the institution is doing on race equality should be **easily accessible**. The test is: would a prospective/current student know where this information is, and what it means for them?
- Institutions should review their progress in race equality on a regular basis. This is not just about compliance — but also about making sure that the legislation is put into practice in such a way that benefits staff, students and the institution.
- Institutions should ensure that people from different racial groups are aware of opportunities and the institution should celebrate good work on race equality.

This list outlines some important areas for institutions to pursue.

race equality impact assessments

the law

One of the strongest measures in the RR(A)A is the specific duty for further and higher education institutions to conduct impact assessments of their policies on students and staff of different racial groups. An impact assessment is the thorough analysis of a policy to ensure it isn't discriminating against any particular group. Impact assessments are particularly important in the recruitment, retention and progression of students.

The RR(A)A places duties on colleges and universities to ensure that they are taking action on race equality and students' unions have a vital role in ensuring that their institutions carry out their legal obligations.

As part of this we want to ensure all universities and colleges fulfil their obligations under the RR(A)A and conducting full impact assessments on issues of equality relevance.

what this means

- Further and higher education institutions are legally bound to carry out a race equality impact assessment on their policies.
- Formal and informal elements are included. This means that informal practices, provisions and criteria also come under the law.
- Impact assessments should be conducted when a new policy is being considered. Existing policies should also be reviewed.
- An impact assessment is a review of these areas and in a way is an equality 'M.O.T.', to ensure that what the institution provides meets the legal requirements of staff and students, and therefore helps the institution run effectively.
- It is important that impact assessments become part of everyday working practices.

what are the benefits?

Impact assessments enable institutions to understand what works and what doesn't in the delivery of its functions. They are a means of quality control and can be linked to other processes through which institutions can review and evaluate its work.

Conducting impact assessments can help

strengthen institutions' commitment to achieving equality of opportunity, promoting good race relations and reducing discrimination between different groups. They will also have significant advantages, such as improving the institution's corporate image with potential staff and students.

penalty for not conducting impact assessments

Failure to conduct race equality impact assessments may result in steps being taken against an institution by the CRE, which has powers of enforcement under the RR(A)A. If race equality impact assessments are not conducted then not only will the institution be acting unlawfully, but it may also face legal challenge from students and staff for race discrimination.

how should impact assessments be conducted?

There are seven stages to the impact assessment process:

1. **Screening/looking at the aims of a policy** — This involves looking at your college/university's function as a provider of learning and prioritising those areas that are more relevant to race equality. An area such as student progression will be a high priority area.
2. **Analyse data** — This involves gathering together the relevant figures and information to see if a policy has a negative effect on any racial groups. As well as looking at figures, it is important that institutions also consult widely to get accurate feedback on how well a policy works in practice.
3. **Assess impact** — At this stage, institutions should consider whether a policy is likely to have a negative effect. In the area of student recruitment, the following areas should be considered:
 - How does the institution ensure that all courses are formally advertised and open to the widest pool of candidates?
 - How is data monitoring on applications for places by racial group used to inform planning and decision-making?
 - How does the institution address differences in patterns of courses (e.g. type of course, full-

time/part-time) between students from different racial groups?

- What use is made of targets and positive action?
- How does the institution ensure that all those involved in recruitment and selection are appropriately trained and aware of what they should do to avoid racial discrimination and ensure good practice throughout the selection and recruitment process?

4. **Justifying or eliminating** — If negative impact is found, an institution will need to justify it (e.g. on health and safety grounds) or eliminate it (by amending or replacing the policy).

5. **Final consultation** — If any changes are made to the policy, the institution should conduct a final consultation to make sure that it meets the legal requirements of those it affects.

6. **Publishing the results of assessments** — Institutions are required, under law, to publish the results of assessments. This should outline:

- Aims of the policy
- Assessment of the policy based on data and consultation
- Mitigation of any adverse impact/Justification
- Results of consultation on final decision if changes have been made
- Amendments to the policy and the reasons for the ones chosen (if appropriate)
- Timetable for next review

7. **Monitoring and review** — Impact assessment is not a one-off process, but instead should be built into the institution's long-term planning processes. This includes building impact assessments into regular review systems.

co-ordinating impact assessments

It is important that institutions have a clear and co-ordinated plan for conducting impact assessments. The following recommendations are intended to help achieve this aim:

- **Co-ordinating impact assessment exercises** with the students' unions.
- **Making sure that students are aware of impact assessment exercises**, and why it would be beneficial for them to contribute to the process.
- Ensuring that **consultation exercises take place in a way that helps students to**

contribute. Timings and locations are very important considerations, for example.

- Building impact assessment exercises into **long-term strategic planning.**

what can students do?

Whilst most institutions produce Race Equality Schemes, very few are actually looking at how monitoring their policies and actions (e.g. around specific areas: recruitment, discipline, performance of students, etc.) can affect race equality. Even where monitoring exists there is little, if any, discussion with the students' union about the results and developing action plans to overcome race inequality.

Some institutions' race equality policy is nothing more than a paper policy and we want to challenge this. The questions to ask are :

- what is the impact of the policy?
- what has it achieved?
- how is it being monitored?
- what happens if targets are not met?

You could start by approaching your institution with a view to working in partnership together to achieve a positive outcome. Have a look at what exists currently and how it is being applied. Remind the institution of the legal duty (lack of resources to implement cannot be used as an excuse). The RR(A) A is still a relatively new issue, and you may be able to work in partnership with your institution over it. You can make a very good business case that the college/university has a community responsibility to promote good race relations. Highlight the social inclusion issues and that they can play a real role in promoting social cohesion.

Getting the staff unions on board will help gain the trust of the workforce. Detailed advice on how to do this is available from NUS.

questions you should ask:

- Does the college/university have an equalities committee — who is on it?
- Does it have a race equality policy?
- Is it sent to all staff and students?
- Was it negotiated with the students' union and were Black students involved?
- Does your college/university provide training on race equality?
- How well have staff and students been consulted?

- Does your college/university monitor the ethnicity of its students and staff?
- Are the results made public?
- What happens if targets are missed?
- What — if anything — has been agreed with the students' union?

It is important to remember that doing a race equality impact assessment is not an end in itself, but a means of ensuring that your policy or legislative proposals do not result in unlawful racial discrimination, and that they promote equal opportunities and good race relations.

We would like to get a clear picture of the action that institutions have taken, or are planning to take, to ensure compliance with the RR(A)A, and would like students' unions and Black students' officers to report back to us on the following:

- Has the students' union been involved in negotiating the requirements of the Act?
- Do you have a copy of your institution's race equality policy?
- Was this negotiated with the students' union, and were Black students involved?
- Do you know how your institution monitors to ensure progress in racial equality?
- Is the students' unions consulted about the monitoring results?
- Have the requirements of the RR(A)A been discussed as part of your negotiations with your institution's governing council about improving the institution?
- Has your institution undertaken, or is it planning to undertake, an impact assessment of any new arrangements to be introduced?

Please send as much information as possible to Ruqayyah Collector, email: ruqs@nus.org.uk Remember, even if there is very little to report, we are still interested in hearing this.

using the toolkit

You might find that your institution does not have a Race Equality Scheme in place, or if it does it may not be meeting its other specific duties under the legislation, or it just isn't meeting one or more elements of the general or specific duties to promote race equality. If you think that your institution is not meeting its duties and you want to find out more information from them this toolkit can help.

The toolkit is a series of standard letters which you can use to ask further questions. Copies should be kept of all correspondence.

- **Letter 1** should be used if you can't find your institution's Race Equality Scheme.
- **Letter 2** should be used if your institution has a Scheme but it is unclear how Black people have been involved or what influence this has had on the actions in the Action Plan.
- **Letter 3** should be used if you have been involved in the development of the institution's Race Equality Scheme but you can't see what impact your involvement has had.
- **Letter 4** should be used if you think your institution's Action Plan does not include the right actions, for example actions that will lead to the

most significant outcomes for Black people.

- **Letter 5** should be used if you think your institution has failed to give due regard to its general duty to promote race equality, and you want to see a race equality impact assessment for something they have done, or failed to do.
- **Letter 6** should be used if you have not received a response to your enquiries and would like to take this further. So if you do not have a response from your institution, after sending one of the above letters, you can use letter 6 to follow up your enquiry. This letter will take your enquiry to the next stage, by initiating the institution's formal complaints procedure.

If you completely exhaust the formal complaints procedure of the institution and are still not satisfied with the progress in meeting the Race Equality Duty, you may wish to consider forwarding details of your initial complaint and all subsequent communications to the CRE. The CRE will require copies of all correspondence. Information should only be forwarded to the CRE if the above process has been followed, and exhausted.

enforcement of the race equality duty (RED)

Virtually every college/university is covered by the Race Equality Duty, and thousands of them will be required to produce Race Equality Schemes. The CRE will be assessing key institutions' Schemes and how they meet the RED.

Unfortunately the CRE cannot guarantee to fully investigate every enquiry that comes through to them from Black people. As with other aspects of legal enforcement they will conduct an initial assessment of any enquiry, and prioritise those issues that are likely to have the most significant impact on the greatest number of Black people.

If the CRE is not able to investigate your enquiry/complaint you will be notified. If this is the case, there is still the potential for individual Black student to challenge the institution in certain circumstances if it feels that any element of the general duty is not being met. This would be by means of a judicial review in the High Court in England and Wales or Court of Session in Scotland.

For more information on enforcement of the RED please visit: www.cre.gov.uk and the Race Equality Duty codes of practice.

letter 1

'I can't find my college/university's race equality scheme'

Your address

Their address

Date

Dear *[insert name of Chief Executive, Principal, Chair of Governors etc]*

Re: *[Insert name of college/university]'s Race Equality Scheme*

Section 71 of the Race Relations (Amendment) Act 2000 requires public institutions, when carrying out their functions, to have due regard to the need to:

- Eliminate unlawful racial discrimination,
- Promote equality of opportunity, and
- Promote good race relations between people of different racial groups.

The Race Relations (Amendment) Act 2000 also requires public authorities to produce a Race Equality Scheme and involve Black people in the development of that Scheme. In the Scheme you should also produce an Action Plan detailing the steps that you plan to take during the lifetime of the Scheme.

As a Black student at *[insert name of college/university]* I am interested in your race equality work, and would like to read a copy of your Race Equality Scheme. I have tried to obtain a copy of your Scheme on your website / in your offices / by ringing your main number / other *[delete as appropriate]* but have not been successful.

Please send me a copy of *[insert name of college/university]'s Race Equality Scheme* within 14 days. I will contact you again if I have not received a copy of your Scheme in this time.

Yours faithfully,

[Insert your name]

letter 2

‘I can’t see how black people have been involved in the development of your race equality scheme, or how this has influenced the actions in your action plan’

Your address

Their address

Date

Dear *[insert name of Chief Executive, Principal, Chair of Governors etc]*

Re: *[Insert name of college/university]*'s Race Equality Scheme and Involvement of Black people

Section 71 of the Race Relations (Amendment) Act 2000 requires public institutions, when carrying out their functions, to have due regard to the need to:

- Eliminate unlawful racial discrimination,
- Promote equality of opportunity,
- Promote good race relations between people of different racial groups,
- Further and higher education institutions must prepare a race equality policy,
- Assess how their policies affect Black students and staff, and
- Arrange to publish their policy, and the results of assessments and monitoring.

The Race Relations (Amendment) Act 2000 also requires public authorities to produce a Race Equality Scheme, involve Black people in the development of that Scheme, and, included in the Scheme, to produce an Action Plan detailing the steps that the authority plans to take during the lifetime of the Scheme.

As a Black student of *[insert name of college/university]* I am interested in your race equality work, and have read a copy of your Race Equality Scheme. Unfortunately I cannot see how Black staff and students or the students' unions have been involved in the development of the Scheme, and how that involvement has influenced the actions in your Action Plan.

Please can you send me more details on how Black staff and students and the students' unions were involved in the development of your Scheme? I would like more information on:

- the groups of Black people you involved, as well as the individuals
- how you involved Black staff and students
- any involvement you had with the students' unions and recognised staff trade unions
- what mechanisms (e.g. meetings) and methods (e.g. online forums) you used, and
- how you used the involvement of Black people to influence your Action Plan.

Please send me this information within 14 days. I will contact you again if I have not received more information from you in this time.

Yours faithfully,

[Insert your name]

letter 3

‘I was involved in the development of your race equality scheme, but can’t see what impact my involvement has had on your action plan’.

Your address

Their address

Date

Dear *[insert name of Chief Executive, Principal, Chair of Governors etc]*

Re: *[Insert name of college/university]’s Race Equality Scheme and Involvement of Black people*

Section 71 of the Race Relations (Amendment) Act 2000 requires public institutions, when carrying out their functions, to have due regard to the need to:

- Eliminate unlawful racial discrimination,
- Promote equality of opportunity,
- Promote good race relations between people of different racial groups,
- Further and higher education institutions must prepare a race equality policy,
- Assess how their policies affect Black students and staff, and
- Arrange to publish their policy, and the results of assessments and monitoring.

The Race Relations (Amendment) Act 2000 also requires public authorities to produce a Race Equality Scheme, involve Black people in the development of that Scheme, and, included in the Scheme, to produce an Action Plan detailing the steps that the authority plans to take during the lifetime of the Scheme.

As a Black student of *[insert name of college/university]* I was involved in the development of your Scheme but cannot see what impact this has had on the Scheme’s Action Plan. *[Insert information of how and when you were involved and what suggestions you made, e.g. I was involved via a student forum in October, and I made suggestions around anti-racism training and anonymous marking].*

Please can you tell me whether this information was taken on board, and whether there is a corresponding action in your Action Plan? If my suggestions weren’t taken on board please can you tell me why this was?

Please send me this information within 14 days. I will contact you again if I have not received more information from you in this time.

Yours faithfully,

[Insert your name]

letter 4

‘I don’t think my college/university’s race equality scheme action plan includes the right actions’

Your address

Their address

Date

Dear *[insert name of Chief Executive, Principal, Chair of Governors etc]*

Re: *[Insert name of college/university]’s Race Equality Scheme and Action Plan*

Section 71 of the Race Relations (Amendment) Act 2000 requires public institutions, when carrying out their functions, to have due regard to the need to:

- Eliminate unlawful racial discrimination,
- Promote equality of opportunity,
- Promote good race relations between people of different racial groups,
- Further and higher education institutions must prepare a race equality policy,
- Assess how their policies affect Black students and staff, and
- Arrange to publish their policy, and the results of assessments and monitoring.

The Race Relations (Amendment) Act 2000 also require public institutions to produce a Race Equality Scheme, involve Black people in the development of that Scheme, and, included in the Scheme, to produce an Action Plan detailing the steps that the authority plans to take during the lifetime of the Scheme.

As a Black student of *[insert name of college/university]* I am interested in your race equality work, and have read a copy of your Race Equality Scheme and Action Plan. Having read your Action Plan, however, I don’t think it includes the right actions. Your Action Plan does not cover *[insert more info on areas that the Action Plan does not cover e.g. there is no information on how you are going to improve campus safety for Black people, there is no information on how you are going to increase the availability of student counselling etc]*.

As a student of *[insert name college/university]* I feel that the above areas/functions need to be addressed within *[insert name of college/university]’s* Action Plan and Race Equality Scheme.

Please send me more information on why these areas aren’t addressed, and what plans you have to include them in subsequent Action Plans.

Please forward this information to me within 14 days. I will contact you again if I have not received more information from you in this time.

Yours faithfully,

[Insert your name]

letter 5

‘I don’t think my college/university has given due regard to promoting race equality in something that it has done, or has failed to do’.

Your address

Their address

Date

Dear *[insert name of Chief Executive, Principal, Chair of Governors etc]*

Re: *[Insert name of college/university]’s due regard to race equality*

Section 71 of the Race Relations (Amendment) Act 2000 requires public institutions, when carrying out their functions, to have due regard to the need to:

- Eliminate unlawful racial discrimination,
- Promote equality of opportunity,
- Promote good race relations between people of different racial groups,
- Further and higher education institutions must prepare a race equality policy,
- Assess how their policies affect Black students and staff, and
- Arrange to publish their policy, and the results of assessments and monitoring.

The Race Relations (Amendment) 2001 also require public authorities to produce a Race Equality Scheme, involve Black people in the development of that Scheme, and, included in the Scheme, to produce an Action Plan detailing the steps that the authority plans to take during the lifetime of the Scheme. Public authorities must also set out their method of assessing the impact of policies and practice on Black people.

I am concerned that *[insert name of college/university]* hasn’t given due regard to *[insert element of the general duty e.g. Eliminate unlawful racial discrimination, promote equality of opportunity]* in one of its functions. *[Insert details of policy, practice, or initiative where you feel due regard hasn’t been given e.g. there’s been a reduction in the number of bursaries for students from low income backgrounds, there’s a decision to closedown a particular course which has a high concentration of Black students].*

The General Race Equality Duty requires you to consider race equality in relation to everything you do and impact assessment — which you should have set out your arrangements for conducting in your Race Equality Scheme — is the means by which you ascertain how effectively to comply with the Duty.

Please can you indicate how you have had due regard to the need to promote race equality in all its elements in your decision to *[insert details]* and in particular can you send me a copy of the Race Equality Impact Assessment you conducted before taking this decision / amending this policy / continuing with this practice *[delete as appropriate]*. If you have not conducted such an assessment, please indicate why not.

Please forward this information to me within 14 days. I will contact you again if I have not received more information from you in this time.

Yours faithfully,

[Insert your name]

letter 6

‘I haven’t received a response to my original letter (letter 1–5) and want to proceed with a formal complaint’

Your address

Their address

Date

Dear *[insert name of Chief Executive, Principal, Chair of Governors etc]*

Re: *[Insert name of college/university]’s Race Equality Scheme*

I wrote to you on *[insert date of last letter]* about *[insert details of last letter, e.g. about your involvement mechanisms, about not having a Race Equality Scheme]* and asked you to forward *[insert details of information you requested, e.g. a copy of your Race Equality Scheme]* within 14 days.

I have not received any more information from you and, as I believe that you are potentially in breach of your obligations under the Race Relations (Amendment) Act 2000, I would like to lodge a formal complaint.

Please take this letter as the first stage in the complaints process and provide me with information on how to progress this complaint within 14 days.

Yours faithfully,

[insert your name]

sources of further information

CRE — Statutory Code of Practice on the Duty to Promote Race Equality
www.cre.gov.uk/downloads/duty_code.pdf

CRE — The Duty to Promote Race Equality — A Guide for Further and Higher Education Institutions
www.cre.gov.uk/downloads/duty_fehe.pdf

UNISON / UCU — Implementing the Race Relations Amendment Act
www.unison.org.uk/education/higher/pages_view.asp?did=1564

Race Equality Consultation and Communication Report and Toolkit – JNCHES/ECU
www.ecu.ac.uk/publications/guidancepublications/RACE%20TOOLKIT.pdf

Commission for Black Staff in FE: further education leading the way
www.feonline.net/feportal/display?id=11076

ECU/HEFCE — Conducting Impact Assessments for Equal Opportunities in Higher Education
www.ecu.ac.uk/publications/guidancepublications/impactassessment.pdf

CRE — online guidance for Race Equality Impact Assessments
www.cre.gov.uk/duty/reia/what.html

glossary

action plan

A list of action points showing the steps that the authority is going to take to fulfil its general duty.

compliance notice

A legal notice served on a public authority requiring them to do certain things to meet the duty within a set time.

race equality impact assessment

The process by which a public authority assesses the impact of policies, practices or procedures for their affect on Black people.

race equality scheme

A document bringing together all the work the authority has done, and plans to do to fulfil its general and specific duties to promote race equality.

general duty

A requirement on public authorities to have due regard to the need to: eliminate unlawful racial discrimination; promote equality of opportunity and promote good race relations between people of different racial groups.

judicial review

A claim to the High Court in England and Wales or the Scottish Court of Session asking the court to review the way a public authority made a decision.

institutional discrimination

A form of discrimination that is borne out of processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and stereotyping. Institutional discrimination can arise from actions not taken as well as actions taken, and can be unintentional as well as intentional.

public authority

All bodies certain of whose functions are functions of a public nature, e.g. colleges and universities.

specific duties

Requirements that certain listed public authorities must meet to assist them in meeting the general duty, including: further and higher education institutions preparing a race equality policy; assessment of how their policies affect Black students and staff, and arranging to publish their policy and the results of assessments and monitoring.