

**Islamophobia Response Unit
MEND**

Caseworkers' Manual

Please refer to the following guide before commencing work, and refer to it as your case progresses.

The IRU is an entirely voluntary wing of MEND and as such phone contact with Supervisors should be made by appointment.

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Introduction to the IRU

Introduction

Thank you for volunteering with the IRU. We look forward to working with you.

The IRU has been founded as a direct response to the steep rise in anti-Muslim discrimination that the UK has seen in the last decade. But it also fits into a long-term aim for MEND: to help Muslims live and contribute as equals in our society by creating an environment where they feel confident and safe in practicing their faith freely. In the long run this will happen through education, political advocacy, and authoritative academic policy analysis. In the short run this will be assisted by the work of the IRU.

Specifically we aim:

- To resolve anti-Muslim discrimination incidents amicably and with an ethos of conciliation
- To use regulatory, media, political, legal or commercial pressure where appropriate
- Systematic recording and analysis of incidents of anti-Muslim discrimination to inform and influence public policy
- To educate and strengthen Muslim voices calling for equality across the UK
- To seek justice for victims by way of legal redress including court action, when other methods have proved unsuccessful

The Manual

This Manual is split into 5 sections.

- Section A is the introductory section which provides a useful list of key contacts and an outline of what we do
- Section B is the longest section and contains detailed guidance on different common areas where discrimination can occur. It is not an exhaustive collection of all that there is to know – so please use this as a starting point to your research and bear in mind there may be times you will need to research independently
- Section C contains practical guidance on how a case is to be handled
- Section D contains template documentation that you will use during the life of a case
- Section E contains information for those dealing with stressful clients or for those who are feeling stressed themselves during the course of IRU work
- Section F contains flow diagrams that summarise how a case will normally run. We include those sectors where we see most of our cases originating

Core Team & Contacts

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Legal and Strategy Guidance on Key Sectors

Equality Act 2010

The Equality Act 2010 is the core legislation which most IRU work relies upon. It outlines four key types of discrimination which all public sector bodies and most businesses must adhere to.

It protects people against discrimination. People are protected against discrimination on the basis of the following "protected characteristics":

- Age
- Disability
- Gender reassignment
- Pregnancy and maternity
- Marriage and civil partnership
- Race
- Religion or belief
- Sex
- Sexual orientation

The Equality Act 2010 states that there are four types of discrimination. The EHRC¹ defines them as:

- **Direct Discrimination:** *treating one person worse than another person because of a protected characteristic. For example, a promotion comes up at work. The employer believes that people's memories get worse as they get older so doesn't tell one of his older employees about it, because he thinks the employee wouldn't be able to do the job.*
- **Indirect Discrimination:** *when an organisation puts a rule or a policy or a way of doing things in place which has a worse impact on someone with a protected characteristic than someone without one. For example a local authority is planning to redevelop some of its housing. It decides to hold consultation events in the evening. Many of the female residents complain that they cannot attend these meetings because of childcare responsibilities.*
- **Harassment:** *people cannot treat you in a way that violates your dignity, or creates a hostile, degrading, humiliating or offensive environment. For example a man with Down's syndrome is visiting a pub with friends. The bar staff make derogatory and offensive comments about him, which upset and offend him.*
- **Victimisation:** *This means people cannot treat you unfairly if you are taking action under the Equality Act (like making a complaint of discrimination), or if you are supporting someone else who is doing so. For example, an employee makes a complaint of sexual harassment at work and is dismissed as a consequence.*

Defences to the claim of discrimination

Direct Discrimination

¹ <https://www.equalityhumanrights.com/en/advice-and-guidance/your-rights-under-equality-act-2010>

The Equality Act sets out a number of exceptions where direct discrimination can be justified. These include:

- Occupational Requirement
- Positive Action
- Statutory Provisions
- National Security

What concerns us is the first of those, as it is the most commonly-used. See also the Employment section in this Manual.

The Act sets out a number of occupational requirement (OR) exceptions that employers might rely on when facing discrimination claims. These are nicely summarised as follows²:

- “The general OR exception. This is available where, having regard to the nature or context of the work, being of a particular sex, race, disability, religion or belief, sexual orientation or age (or not being a transsexual person, married or a civil partner) is an OR (paragraph 1, Schedule 9, EqA 2010).
- Employment for the purposes of an organised religion. Where, to comply with the doctrines of the religion or to avoid conflicting with the strongly held religious convictions of a significant number of the religion's followers, the employer might apply an OR
- Employers with a religious ethos. An employer with an ethos based on religion or belief may, in certain circumstances, show that being of a particular religion or belief is an OR (paragraph 3, Schedule 9, EqA 2010)”

The OR exception applies to discrimination claims concerning the followings:

- Recruitment;
- access to promotion;
- transfer or training; or dismissal.

An OR defence of course hinges upon the OR being a proportionate means of achieving a legitimate aim.

Indirect Discrimination

An employer that acts in an ostensibly discriminatory manner can avoid liability by showing that its actions were a proportionate means of achieving a legitimate aim. This is known as "objective justification".

Key points to note on this are:

- The burden is on the entity to prove justification, and it is for the court to reach its own decision as to whether the treatment was justified. It should not allow the employer a "margin of discretion"³.

² Discrimination in employment: overview by Practical Law Employment accessible at: [https://uk.practicallaw.thomsonreuters.com/Document/13351a6dee8da11e398db8b09b4f043e0/View/FullText.html?transitionType=SearchItem&contextData=\(sc.Default\)&OWSessionId=1faeedd8d8d34b588e91138a0630438a&skipAnonymous=true&firstPage=true](https://uk.practicallaw.thomsonreuters.com/Document/13351a6dee8da11e398db8b09b4f043e0/View/FullText.html?transitionType=SearchItem&contextData=(sc.Default)&OWSessionId=1faeedd8d8d34b588e91138a0630438a&skipAnonymous=true&firstPage=true)

³ Hardys & Hansons plc v Lax [2005] EWCA Civ 846

- The employer must first show that it had a legitimate aim, and that this legitimate aim corresponds to a real business need.
- The employer's actions must be a proportionate means of achieving the legitimate aim identified. The court will carry out a balancing exercise to evaluate whether the entity's legitimate business needs are sufficient to outweigh the discriminatory impact on people generally and the claimant in particular, and ask whether the entity's aims could reasonably be achieved by less discriminatory methods⁴.

Harassment and Victimisation

There are no defences to harassment and victimisation if harassment and victimisation is proved to have actually taken place.

⁴ Allonby v Accrington & Rossendale College and others [2001] IRLR 364 (CA)

Schools

A: The laws and duties they must adhere to

This section highlights the laws, regulatory bodies, contracts, or other provisions Schools must adhere to. These are the various tools you can use to assist your clients.

The Equality Act 2010

The Act applies as per the details in the section on the Equality Act above. Below are some specific aspects of the Act in relation to the Schools context.

The Following education providers must not discriminate against you:

- Schools
- further education institutions like colleges
- higher education institutions like universities
- teachers or staff employed by the school, college or university.

You have the right not to be discriminated against if you are:

- you're a pupil or a student
- you're applying to become a pupil or student
- you're a former pupil or student.

The Equality Act applies to all schools

- it doesn't matter if the school is publicly funded or if it's a private school.

It's only unlawful discrimination under the Equality Act if an education provider treats you unfairly because of:

- disability
- gender reassignment
- pregnancy or maternity
- race
- religion or belief
- sex
- sexual orientation

Education providers must not discriminate against you in relation to:

- admissions
- the provision of education
- school policies and procedures relating to - for example, discipline, exams and school uniforms
- access to benefits, facilities or services, including school meals, sports and other activities, schools trips, libraries and IT facilities, careers services and information
- exclusions
- any other detriment.

Note: The curriculum. This isn't covered by the Equality Act. This means you can't take action against an education provider if they teach something which offends you because of your protected characteristic. For example, it wouldn't be unlawful religion or belief discrimination for a school to teach about evolution if you believe in creationism.

The following are examples where religious discrimination does not apply⁵:

- "for a school to carry out collective worship of a particular religion, or
- for a school with a religious character to discriminate against pupils in relation to admission, the provision of education and access to a benefit, facility or service on the grounds of religion or belief."

The Equalities Act also enforces a Public Sector Duty on Schools to:

- eliminate unlawful discrimination
- advance equality of opportunity between people who share a protected characteristic and those who don't
- foster or encourage good relations between people who share a protected characteristic and those who don't.

The public sector equality duty is a duty on public authorities to consider or think about how their policies or decisions affect people who are protected under the Equality Act. Private organisations and individuals don't have to comply with the duty. If a public authority hasn't properly considered its public sector equality duty, you can challenge it in the courts.

Public authorities (like schools) must do the following:

- publish equality information at least once a year to show how they've complied with the equality duty
- prepare and publish equality objectives at least every four years.

The Human Rights Act 1998

- The Human Rights Act 1998 (the Act or the HRA) sets out the fundamental rights and freedoms that everyone in the UK is entitled to
- It requires all public bodies (like courts, police, local authorities, hospitals and **publicly funded schools**) and other bodies carrying out public functions to respect and protect your human rights.

Some relevant rights for the schools' context include:

Protocol 1, Article 2 Right to education

- "Although parents have a right to ensure their religious or philosophical beliefs are respected during their children's education, this is not an absolute right. As long as these beliefs are properly considered, an education authority can depart from them provided there are good reasons and it is done objectively, critically and caters for a diversity of beliefs and world views."⁶

⁵ <https://www.citizensadvice.org.uk/family/education/discrimination-in-education/overview-of-discrimination-in-education/>

⁶ <https://www.equalityhumanrights.com/en/human-rights-act/article-2-first-protocol-right-education>

- “The right to education does not give you the right to learn whatever you want, wherever you want. The courts have ruled that the right to education relates to the education system that already exists. It does not require the government to provide or subsidise any specific type of education.”⁷

Article 9 Freedom of thought, belief and religion:

- “You also have the right to put your thoughts and beliefs into action. This could include your right to wear religious clothing, the right to talk about your beliefs or take part in religious worship. Public authorities cannot stop you practising your religion, without very good reason – see the section on restrictions below.”⁸

Defences to Human Rights Violations

- Public authorities cannot interfere with your right to hold or change your beliefs, but there are **some situations in which public authorities can interfere with your right** to manifest or show your thoughts, belief and religion⁹. This is only allowed where the authority can show that its action is **lawful, necessary and proportionate** in order to protect:
 - public safety
 - public order
 - health or morals, and
 - the rights and freedoms of other people.

Education Funding Agency Funding Agreement Terms

- **Every Academy** enters into a Funding Agreement with the Secretary of State where they outline the various “Conditions” they will meet for the Grant to be given to them.
- This is an extremely important document as it puts in place the terms dictating the ongoing financial support provided to the school. The document will usually be available on the Governance sections of the Academy’s website, or on the Academy Trust’s website if the Academy is part of a group of Academies.
- An example of such can be seen here:
http://bramptonmanor.net/MFA_Brampton_Manor_Trust.pdf
- If this Agreement is breached, then a complaint can be made to the Education Funding Agency. Caseworkers must be aware however that there is currently a jurisdictional ambiguity and the EFA does not seem to be keen to take on the increasing burden of complaints that arise as more and more schools become Academies.

Own Policies, Procedures, & Articles of Association

- i) Schools and Academies will have a robust set of policies, procedures, and guidelines which they have to follow, and Academies will also have Article of Association for the company that owns the Academy. All of these documents must be adhered to by statute.

⁷ Ibid.

⁸ <https://www.equalityhumanrights.com/en/human-rights-act/article-9-freedom-thought-belief-and-religion>

⁹ Ibid.

- The Department For Education has provided an excellent summary of all the policies that school must have in place, as well as their legislative origins:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/357068/statutory_schools_policies_Sept_14_FINAL.pdf
- i) You will find most schools' policies on the governance section of their website.
- Sometimes these policies are more stringent than the legislation and as such more in favour of the victim.

The Local Authority Guidelines

- The Local Authority (LA) is ultimately responsible for Health and Safety and Child Protection issues [however, Health and Safety may ultimately be the remit of the Health and Safety Executive in some areas, and so complaints about H&S would go to them rather than the Council]
- For Child Protection, nearly all LA's will have a Local Safeguarding Children Board which will outline the relevant policies and procedures.
- For more serious H&S and Child Protection issues, victims are advised to get in touch with the council straight away whilst also liaising with the school, while for less serious issues the school's own internal procedures can be availed of first.

The Secretary of State for Education

- The Secretary of State is a last resort after all internal school procedures have been exhausted.
- Two cases where a complaint can be made to the Secretary of State are:
 - i) a local authority (LA) or governing body of a community, foundation or voluntary school, of any community or foundation special school or of any maintained nursery school have acted or are proposing to act unreasonably in respect of any of their powers or the performance of any of their duties (section 496, Education Act 1996). 'Unreasonable' in this sense means that the governing body or the LA have acted (or are proposing to act) in a way in which no reasonable governing body/LA would act. This is a high legal threshold to establish.
 - ii) a LA or governing body of a community, foundation or voluntary school, of any community or foundation special school or of any maintained nursery school has failed to discharge any duty imposed on them (section 497, Education Act 1996).
- It is usually necessary to follow all internal complaints procedures before making a written complaint to the Secretary of State. However, if you feel that these procedures have not been followed correctly, you can complain.
- An investigation by the Secretary of State can take six months or more so this is not an appropriate remedy where matters need to be resolved urgently.

The Local Government Ombudsman

- For the purposes of the IRU, as we mainly deal with discrimination, the relevant ultimate authority of complaint will be the Secretary of State and not the Ombudsman. This is as the Ombudsman does not hear appeals against school governing bodies for anything other than admissions
- The Ombudsman investigates complaints about:

- i) local authorities (including LAs), and in the education field: independent appeals panels for admission and exclusion, school governing bodies (only in respect of admissions) and school organisation committees
- ii) In relation to injustice caused by 'maladministration'. Examples of maladministration are when the relevant body does not follow its own rules or the law, takes too long to take action without good reason, fails to provide information, gives wrong information etc. Injustice caused by maladministration can take many forms such as your child's education suffering, missing the opportunity to lodge an appeal, distress or upset etc.
- **NB** The LGO **cannot** look into any complaint about the internal organisation, teaching, curriculum, conduct, management or discipline in a school; such a complaint could be made to the School Governors or the Secretary of State (see above). Therefore decisions taken by schools in respect of children with special educational needs are usually not within the jurisdiction of the LGO.

B: The Complaints Process

Please refer to the Schools Complaints Process Diagram in the Appendix

- 1) Each school will have their own complaints process in place by law. This will usually be available on the website, and will certainly be accessible upon asking.
- 2) The procedure usually is:
 - a) Informal complaint
 - b) Formal complaint to school
 - i) Step One: Complaint dealt with by member of staff
 - ii) Step Two: Complaint deal with by head-teacher
 - iii) Step Three: Complaint heard by governing body complaints committee
 - c) Complaint to Ofsted (regarding failings concerning the school as a whole, not particular cases)
 - d) Complaint to the Local Authority (for health and safety and child protection issues only)
 - e) Complaint to the Education Funding Agency (for a school funded by the EFA, such as Academies)
 - f) Complaint to the Secretary of State (for all maintained schools)
 - g) Litigation
- 3) There are separate and specialist complaints procedures for Special Education Needs Complaints and Admissions appeals. For these matters please seek advice from your supervisor
- 4) In all cases the victim can start civil proceedings against the school to seek compensation through the courts. However, they are strongly advised to exhaust all internal complaints processes before doing so, as courts do not look favourably on their claim otherwise. The IRU will not be able to assist with these legal proceedings

C: Strategies possible during complaints process

- 1) Letter by IRU to the school
 - a) This is subject to approval by the core IRU team and Mend Management

- b) The aim of the letter is to highlight the concerns of the IRU that Islamophobic discrimination might be taking place and asking questions of the school as to how it proposes to remedy the situation
- 2) Asking the EHRC to investigate
 - a) the Equalities and Human Rights Commission have powers to make sure the Equalities Act 2010 and the HRA 1998 are being followed.
 - b) Letters written by them to institutions are usually highly successful in obtaining the appropriate response
 - c) The EHRC does sometimes also take legal action where it deems it appropriate
- 3) Getting local MP involved
 - a) This is usually quite an effective way to resolve disputes. A letter from a local MP carries weight
- 4) Getting local/national press involved
 - a) This strategy can cause friction within the school so must be used wisely and carefully and really only as a last resort

D: Further Resources

- An Excellent introduction:
<https://www.citizensadvice.org.uk/education/discrimination-in-education/taking-action-about-discrimination-in-education/>
- First tier tribunals for Special Education Needs Information:
<https://www.gov.uk/courts-tribunals/first-tier-tribunal-special-educational-needs-and-disability>
- First tier tribunal representation for SEN provided by IPSEA:
<https://www.ipsea.org.uk/>
- Complaining about an Education Funding Agency funded org:
<https://www.gov.uk/government/publications/complaints-about-post-16-efa-funded-institutions>
- Complaining about a Skills Funding Agency funded organisation (apprenticeships etc): <https://www.gov.uk/government/organisations/skills-funding-agency>

Universities

A: The laws and duties they must adhere to

Universities are bound by the same Equality Act 2010 and Human Rights Act 1998 laws as detailed in Section A of the Schools section above. Please refer to there for full details.

However there are a number of laws and duties that are unique to universities along with particular issues that crop up in relation to those:

Gender Segregation of Islamic Society events

Gender Segregation of Islamic Society events is currently a hot topic and the EHRC have written a guidance note on the matter:

(https://www.equalityhumanrights.com/sites/default/files/guidance_for_universities_and_students_unions_17-07-14.pdf)

It details that **gender segregation is not allowed** except in certain circumstances. Relevant exceptions include:

Services relating to religion in premises used for religious purposes

- “A religious organisation is permitted to provide services to benefit persons of one sex, or separate services for persons of each sex, for the purposes of that religion, in premises permanently or temporarily occupied or used for those purposes. This exemption does not apply if the organisation’s sole or main purpose is commercial. 'Religious purposes' are defined as practising or advancing the religion, teaching religious practice or principles; enabling followers to receive benefits or engage in activities within the framework of that religion; or fostering or maintaining good relations between those of different religions. For the exception to apply, it must be necessary to provide such services separately or only to persons of one sex, in order to comply with religious doctrines, or to avoid conflicting with the convictions of a significant number of the religion’s followers.”¹⁰
- This would suggest that a segregated event at an ISOC prayer room would not be problematic.

Wider exceptions for organisations relating to religion or belief

- “Non-commercial religious organisations when undertaking defined religious activities are also permitted to restrict their membership and the use of their premises on the basis of religion or belief or sexual orientation, subject to satisfying certain conditions. They can also restrict both participation in their activities (whether on or off their premises) and also access to the goods, facilities and services that they supply to individuals of the same religion and belief subject to the same conditions. Religious purposes are defined as for the exception above. The extent of these exceptions has yet to be tested in the courts. Caseworkers should bear in mind the primary duty on education providers not to facilitate or aid discrimination and the rule of interpretation that exceptions should be narrowly construed.”¹¹

¹⁰

https://www.equalityhumanrights.com/sites/default/files/guidance_for_universities_and_students_unions_17-07-14.pdf

¹¹ Ibid.

- The applicability of this exemption would be shown by successfully defining the activity as part of Islam and a “religious activity”

Voluntary gender segregation is permissible as long as it does not cause disadvantage and is permissible

- “To be voluntary, all attendees would need to be at liberty freely to choose where they wished to sit without any direction, whether explicit or merely an implicit expectation. Segregation is not voluntary where any one individual feels that their choice is constrained due to a pressure to conform to separate seating arrangements of any form in the venue, regardless of whether they have been explicitly directed or instructed as to where they can sit. Involuntary segregation will constitute unlawful discrimination on the part of the organisers of the event, except where it falls within the exception for religious worship and practice.”¹²
- N.B. A Qur’an recitation followed by a lecture would not constitute religious worship and practice.

Section 43 of the Education Act (No 2) 1986.

- This section pertains to the duty to promote free speech on the part of universities on their campuses – more precisely, universities “shall take such steps as are reasonably practicable to ensure that freedom of speech within the law is secured for members, students and employees of the establishment and for visiting speakers.”
- They must maintain an up-to-date code of conduct vis-à-vis meetings and events with this duty in mind.

Own Policies, Procedures, & Articles of Association

- Universities will have a robust set of policies, procedures, and guidelines which they have to follow, and Universities may also have Article of Association for the company(ies) that owns the University grounds and facilities. All of these documents must be adhered to by statute.
- The Department For Education has provided an excellent summary of all the policies that schools must have in place, as well as their legislative origins It is also useful as a starting point for most policies universities must also have:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/357068/statutory_schools_policies_Sept_14_FINAL.pdf
- You will find most universities’ policies on the governance section of their website.
- Sometimes these policies are more stringent than the legislation and as such more in favour of the victim.

The Local Authority Guidelines

- The Local Authority (LA) is ultimately responsible for Health and Safety and Child Protection issues [however, Health and Safety may ultimately be the remit of the Health and Safety Executive in some areas, and so complaints about H&S would go to them rather than the Council]

¹² Ibid.

- For Child Protection, nearly all LA's will have a Local Safeguarding Children Board which will outline the relevant policies and procedures.
- For more serious H&S and Child Protection issues, victims are advised to get in touch with the council straight away whilst also liaising with the school, while for less serious issues the school's own internal procedures can be availed of first.
- In the University context, the Child Protection issues will not be as relevant, however Adult Protection may well be. This would be in relation to vulnerable Adults who:
 - i) have needs for care and support
 - ii) are experiencing, or at risk of abuse or neglect
 - iii) are unable to protect themselves against significant harm or exploitation

B: The Complaints Process

Please refer to the Universities' Complaints Process Diagram in the Appendix

1) Informal negotiations and complaint to University

2) Formal complaint to University

- a) this usually has two or three layers to it. Initially the complaint is dealt with within the department. The complaint is then escalated to the central management, and finally it may end up with the Vice Chancellor.
- b) Specific procedures will be detailed in the University's complaints' procedure. These must be followed.

3) The Office of the Independent Adjudicator (OIAHE)

- a) The OIAHE is an independent body that oversees all Higher Education institutions' complaints and decisions vis-à-vis complaints. They have no regulatory powers over providers and cannot punish or fine them. However Universities will almost always respect their decisions.
- b) Its Review procedure is detailed in this document:
<http://www.oiahe.org.uk/media/100294/oia-rules-july-2015.pdf>
- c) Importantly, the full internal university procedure must be completed before the OIAHE can get involved.
- d) The matter complained of must not have happened over three years prior to complaining to the OIAHE.
- e) In deciding whether a complaint is Justified, Partly Justified or Not Justified, the Reviewer may consider whether or not the Member HE Provider properly applied its regulations and followed its procedures and whether or not a decision made by the Member HE Provider was reasonable in all the circumstances. The Review will normally consist of a review of documentation and other information and the Reviewer will not hold an oral hearing unless in all the circumstances he or she considers that it is necessary to do so. The Reviewer shall not be bound by legal rules of evidence nor by previous decisions of the OIA.

4) Judicial Review of the decision of the OIAHE

- a) The OIA has been the subject of several Judicial Review claims. The judgments, which are available below, provide a strong body of support for the OIA's approach to its role and remit.

- b) The leading case is Siborurema in which the Court of Appeal decided that decisions of the OIA are subject to Judicial Review, but the scope of any Review will be limited and it is unlikely that many claims will get through the permission “filter” stage. The court will be “very slow” to interfere with the exercise of judgment leading to a Decision that a complaint is Not Justified. The Court of Appeal also decided that the OIA has a broad discretion to determine the nature and extent of its own reviews.
- c) In practice, about a fifth of judicial review claims against the OIA are given permission to proceed. A number of judgments have provided useful guidance on the OIA's approach. In the case of Maxwell, a challenge was brought to the approach taken by the OIA in complaints raising the issue of disability discrimination. The Court of Appeal dismissed Ms Maxwell’s appeal and ruled that the OIA’s decision on her complaint was “an adequately reasoned decision in accordance with its procedures, in accordance with the law and as a proper exercise of its wide discretion.”
- d) Giving judgment on 27 October 2011, Lord Justice Mummery said: The issue for the OIA in this matter was not to decide whether Ms Maxwell was in fact the victim of disability discrimination or whether the University is liable to her for such discrimination. The OIA’s task was to review Ms Maxwell’s complaint, which included a complaint of discrimination, to see whether the University’s decision was reasonable in all the circumstances and was Justified and, if so, to what extent, and what recommendations should be made to the University.”

5) Litigation against the university

- a) Particularly where a student is seeking financial compensation, this may be the appropriate route to take.
- b) Also, please note that the OIAHE decide whether or not the proper university procedures were followed – they do not have to decide if the person was discriminated or not. In a Discrimination claim in the courts, the Judge will decide on this however.

C: Strategies possible during complaints process

- 1) Letter by IRU to the University
 - a) This is subject to approval by the core IRU team and Mend Management
 - b) The aim of the letter is to highlight the concerns of the IRU that Islamophobic discrimination might be taking place and asking questions of the University as to how it proposes to remedy the situation
- 2) Asking the EHRC to investigate
 - a) the Equalities and Human Rights Commission have powers to make sure the Equalities Act 2010 and the HRA 1998 are being followed.
 - b) Letters written by them to institutions are usually highly successful in obtaining the appropriate response
 - c) The EHRC does sometimes also take legal action where it deems it appropriate
- 3) Getting local MP involved
 - a) This is usually quite an effective way to resolve disputes. A letter from a local MP carries weight
- 4) Getting local/national press involved

- a) This strategy can cause friction within the school so must be used wisely and carefully and really only as a last resort
- 5) Getting in touch with the National Union of Students
- 6) Getting in touch with the Federation of Student Islamic Societies
 - a) They often have knowledge of similar current or past cases in universities across the UK. They may also have other resources with which they can assist the victim

D: Further Resources

- An Excellent starting point:
<https://www.citizensadvice.org.uk/education/discrimination-in-education/taking-action-about-discrimination-in-education/>
- University Ombudsman: <http://www.oiahe.org.uk/>
- An excellent summary by the EHRC on discrimination in HE and FE institution: what is discrimination, how can it manifest itself, and how to proceed in the complaint:
https://www.equalityhumanrights.com/sites/default/files/what_equality_law_means_for_you_as_a_student_in_further_or_higher_education.pdf

Goods & Services

This section deals with Discrimination arising in the course of provision of good and services. It largely comprises of excerpts (Sections A to E) taken from the EHRC guidance paper on the topic¹³. For a detailed understanding please refer to the paper directly.

A: Who is bound by the Equality Act?

- "Any business is covered if it is
 - providing a services or selling goods or
 - offering facilities provided by the business to the public or a section of the public.
- "When a business is doing this, equality law applies to it. It does not matter whether the service is given for free (for example, when a business gives you information about the business' paid-for services) or if the business charges you for what it does.
- The legal structure of the business does not matter, whether it is set up as a sole trader, a partnership, a limited company or anything else. The size of the business does not matter either."¹⁴

B: How are they bound?¹⁵

- "A business must not treat you worse because of one or more of your protected characteristics (**this is called direct discrimination**).
- A business must not do something which has (or would have) a worse impact on you and on other people who share a particular protected characteristic than it has on people who do not share that characteristic. Unless the business can show that what they have done is objectively justified, **this will be what is called indirect discrimination**. 'Doing something' can include making a decision, or applying a rule or way of doing things.
- A business must not treat you worse than someone else **because they incorrectly think you have a protected characteristic (perception)**.
- **A business must not treat you badly or victimise you because** you have complained about discrimination or helped someone else complain, or done anything to uphold your own or someone else's equality law rights.
- **A business must not harass you.**
 - Note: Even where the behaviour does not come within the equality law definition of harassment (for example, because it is related to religion or belief or sexual orientation), it is still likely to be unlawful direct discrimination because the business is giving the service to you on worse terms than it would give someone who did not have the same protected characteristic.
- **Consequently, a business must not:**
 - refuse to serve you or refuse to take you on as a client.

¹³ EHRC Guidance Note: <https://www.equalityhumanrights.com/sites/default/files/equalityguidance-businesses-2015-final.pdf>

https://www.equalityhumanrights.com/sites/default/files/what_equality_law_means_for_your_business.pdf

¹⁴ ibid

¹⁵ For examples of these types of discrimination, see the EHRC Guidance Note on this starting from pg.8

- stop serving or working for you if they still serve or work for other customers or clients who do not have the same protected characteristic in the same circumstances.
- give you a service of a worse quality or in a worse way than they would usually provide the service.
- give you a service with worse terms than they would usually offer.
- put you at any other disadvantage.”
- **A business can set standard of behaviour expected from customers/clients.**
 - “However, if a business sets standards of behaviour for their customers or clients which have a worse impact on people with a particular protected characteristic than on people who do not have that characteristic, they need to make sure that they can objectively justify what they have done. Otherwise, it will be indirect discrimination.”

Exceptions to the Equality Act duties: Services for particular groups:

- “Services provided for people with a particular protected characteristic.
 - For example: A butcher only sells meat from animals which have been slaughtered in a way that conforms to particular religious requirements (Halal or Kosher meat). The butcher does not have to sell non-Halal or non-Kosher meat, even though this means that Muslim and Jewish people are more likely to be customers than others. However, the butcher cannot refuse to sell the Halal or Kosher meat to customers who are not Muslim or Jewish.
- Services for persons of particular age groups.
- Separate services for men and women or single-sex services.
- A business is allowed to provide separate services for men and women where providing a joint service (that is, one where men and women are provided with exactly the same service) would not be as effective and is objectively justified.
- They are also allowed to provide separate services for men and women in different ways or to a different level where:
 - providing a joint service would not be as effective, and
 - the extent to which the service is required by one sex makes it not reasonably practicable to provide the service except in the different ways or to the different level
 - For example at a commercial gym and swimming pool, women-only swimming sessions could be provided as well as mixed sessions. OR separate services for men and women could be provided by a beauty therapist where intimate personal health or hygiene is involved
- Where health and safety considerations apply to pregnant women”

C: Service Provider or Association?

“Even though they may describe themselves as a ‘club’ (and many clubs are, in equality law, what are called associations which means slightly different rules apply to them), a business is really a service provider if they are offering a service to any member of the public, for example, by:

- charging an entry fee to watch an activity

- allowing anyone to join a leisure club provided they pay for the service even if the charge is described as a membership fee, or if the service is free.

If, for example, they allow a person to have a free trial session, they are still providing them with a service. If you are not sure whether an organisation is a service provider or an association, then ask yourself:

- Are there more than 25 members and is membership regulated by rules – for example, do all the members have to decide who becomes a new member?

If the answer to that is ‘yes’, then you are likely dealing with a type of association.

It is possible to be both an association and a service provider. For example: A private golf club with rules regulating membership will be an association when it is dealing with its members and their guests, but a service provider if it opens its golf course, café and shop to members of the public on certain days of the week or when spectators attend to watch club competitions. If someone does not have to be a club member to take part in a competition, then the golf club is also providing competitors with a service. If an organisation is both an association and a service provider, the question you need to think about is whether the services you are concerned with are being provided to you as a member of the public or with the special status of being a member, associate member or guest of the association. If you are using the services as a member of the public, then you are dealing with the standard "goods & services" provisions of the Equality Act. If you have the special status of being a member, associate member or guest (or someone who wants to become a member, associate member or guest), you should read the guide on associations instead¹⁶, a brief summary of which is below.”

Key excerpts from the association guide include:

- “In equality law, an ‘association’ is any group of 25 or more members which has rules to control how someone becomes a member, involving a genuine selection process.
- The rules may be written down, like a constitution, or may be unwritten.
- For example:
 - A club says that anyone who wants to join must be nominated by one or more existing members as part of the joining process.
 - A society says that anyone who wants to join must be approved by a majority of other members before they can become a member.
- “A social club offers all its members a free alcoholic drink every St George’s Day. It does not offer a free non-alcoholic alternative for its non-drinking members, most of whom are Muslim. This is likely to be indirect discrimination against the members because of their religion or belief unless it can be objectively justified.”
- “An association is not required to make reasonable adjustments that would fundamentally alter its purpose. For example: A wine-tasting club would not have to include fruit juice tastings in its activities because someone wants to join who has hepatitis B and cannot tolerate alcohol.”

¹⁶ See <https://www.equalityhumanrights.com/en/advice-and-guidance/core-guidance-clubs-societies-and-associations>

D: Why are you treated unfairly?

“If you’re treated unfairly, it’s only unlawful discrimination if you’re treated unfairly because of certain reasons. These reasons are called **protected characteristics**.

The characteristics that are protected by the Equality Act in relation to goods and services are:

- age - but only if you’re 18 or over
- disability
- gender reassignment
- pregnancy and maternity
- race
- religion or belief
- sex
- sexual orientation.”

E: What’s the unfair treatment?

“Only certain types of behaviour by a trader or service provider can be unlawful discrimination under the Equality Act if it’s because of who you are.

These are:

- refusing to provide you with goods or services, or stop providing you with goods and services
- providing you with goods or giving you a service on worse terms or of worse quality - for example, charging you more or making you wait longer
- causing you any other harm or disadvantage when providing you with goods or services - the Equality Act calls this a **detriment**.

Other types of disadvantage

If someone behaves in a way which causes you distress, or offends or intimidates you, this could also be unlawful behaviour under the Equality Act. This is called **harassment**.

If you’re punished, or treated badly because you complain about discrimination, this is called **victimisation**. Victimisation is also unlawful under the Equality Act.”

F: Complaints Process

Please refer to the Goods and Services Complaints Process Diagram in the Appendix

1. Complaint to the Company according to its complaints procedure
2. Complaint to the Ombudsman for the industry
3. Forward complaint to the EHRC
4. Litigation

With the prevalence of Islamophobic discrimination by airlines, here is a more detailed summary of the Airline Ombudsman’s Role:

1. Complaint to the Retail Ombudsman Airline Dispute Resolution division¹⁷

¹⁷ For more details on the complaints process and online portal, see <https://www.theretailombudsman.org.uk/how-to-complain-about/airlines/>

- Please note that to be eligible to make a complaint against an airline, you must have already complained to the airline directly in writing and either received a final written response (sometimes referred to as a 'deadlock letter') or given the airline eight (8) weeks to respond to your dispute. The Retail Ombudsman can only deal with unresolved complaints.
- They can direct the airline to:
 - Pay compensation of up to £500 per person in relation to a delayed, cancelled or overbooked flight.
 - Issue an apology.
 - Pay compensation for lost, stolen or damaged luggage.
 - Pay compensation for a breach in relation to an equality or disability issue.
 - Provide another appropriate form of remedy.
- If the airline is a member of Airline Dispute Resolution, they will be contractually obliged to implement our decision. However, if the airline is not a member it will be within their discretion although in most circumstances we would expect non-member airlines to reconsider their position. However, on occasions where we find in the consumer's favour and the airline does not observe our decision, consumers can take their complaint to the small claims court armed with our decision.

2. If the Airline is not a member of the ADR scheme, then the Civil Aviation Authority can be complained to.

- Detailed procedures of their complaint process can be found at <https://www.caa.co.uk/Passengers/Resolving-travel-problems/How-the-CAA-can-help/How-the-CAA-can-help/>
- The CAA will only help with complaints relating to:
 - EC Regulation 261/2004 for delayed and cancelled flights, downgrade and denied boarding,
 - EC Regulation 1107/2006 about assistance for disabled and reduced mobility passengers, and
 - The Montreal Convention for cases of lost, delayed or damaged baggage.
- This means that the CAA complaint process is less favourable than the ADR version which mentions "customer service" as a head of complaint among their list of heads of complaints:
 - Returning goods
 - Faulty goods
 - Missing parts
 - Delivery
 - Customer service
 - Pricing
 - Misrepresentation
 - Product description
 - Flights (ie: delays, cancellations etc..)
 - Boiler installations, maintenance and repair
 - Delivery of LPG or oil to homes
 - Smart Meters

G: Possible Strategies to deploy during complaints process

- 1) Letter by IRU to the Company
 - a) This is subject to approval by the core IRU team and Mend Management
 - b) The aim of the letter is to highlight the concerns of the IRU that Islamophobic discrimination might be taking place and asking questions of the company as to how it proposes to remedy the situation
- 2) Obtain the company's own internal policies on the issue – if a company has not followed its own policies then these will strengthen your argument and the company must give very good reasons for deviating from the standard procedure.
- 3) Asking the EHRC to investigate
 - a) the Equalities and Human Rights Commission have powers to make sure the Equalities Act 2010 and the HRA 1998 are being followed.
 - b) Letters written by them to institutions are usually highly successful in obtaining the appropriate response
 - c) The EHRC does sometimes also take legal action where it deems it appropriate
- 4) Getting local MP involved
 - a) This is usually quite an effective way to resolve disputes. A letter from a local MP carries weight
- 5) Getting local/national press involved
 - a) This strategy is much more successful than in other types of discrimination cases as businesses jealously want to protect their reputation.

H: Further Resources

- https://www.equalityhumanrights.com/sites/default/files/what_equality_law_means_for_your_business.pdf
- <https://www.equalityhumanrights.com/sites/default/files/equalityguidance-businesses-2015-final.pdf>
- <https://www.citizensadvice.org.uk/discrimination/discrimination-in-the-provision-of-goods-and-services1/goods-and-services-what-are-the-different-types-of-discrimination/discrimination-in-the-provision-of-goods-and-services-duty-to-make-reasonable-adjustments/>

Dealing with a Public Authority

This section of the Manual deals generally with all public authorities and discrimination complaints arising from dealings with them. There are other dedicated sections in this manual for particular public authorities (e.g. Schools, Universities, and Healthcare) as these types of authorities are where the vast majority of our complaints arise from. However, the below guidance is all still applicable to them as well.

A: What is a Public Authority?

1) There are two kinds of public authority:

- a) **Pure public authority:** An obviously public authority, e.g. a government department, local government, police, the NHS etc.)
 - b) **Hybrid (functional public authority):** A body or person that is a public authority because they are doing a public function. For example, a doctor working in the NHS would be fulfilling a public function, however the same doctors in private work would not be. Similarly a security contractor in charge of a prison would be fulfilling a public function, however if the contractor was guarding a commercial premises, they would not be.¹⁸
- 2) This distinction is important because increasingly, public functions are being outsourced to private contractors. However, as they are performing a public function, they are expected to adhere to duties public authorities would.

B: What is special about a being a public authority?

Equality Act 2010

- 1) A public authority must adhere to the Equalities Act 2010 and has a specific "**public sector equality duty**" which they must adhere to. In particular, they must:
 - a) Eliminate unlawful discrimination;
 - b) Advance equality of opportunity; and
 - c) Foster or encourage good relations between people from different groups.
- 2) The Equality Act also says public authorities should think about the need to:
 - a) remove or reduce disadvantages suffered by people because of a protected characteristic
 - b) meet the needs of people with protected characteristics
 - c) encourage people with protected characteristics to participate in public life and other activities.
- 3) They must also publish equality information at least once a year to show how they're complying with the duty, along with publishing equality objectives at least once every four years.
- 4) The public sector equality duty can be used to either:
 - a) Strengthen a complaint or court action for discrimination against the body; and/or
 - b) To initiate a separate complaint or court claim saying that the public body has breached its equality duty. In order to make this separate claim in court you must use a special procedure called the judicial review. The IRU do not currently deal with this element as this stage requires solicitors.

Human Rights Act 1998

¹⁸ <https://www.publications.parliament.uk/pa/jt200304/jtselect/jtrights/39/39.pdf>

- 5) A public authority must also adhere to the Human Rights Act (HRA) 1998.
- 6) This duty to adhere to the HRA allows you to:
 - a) Strengthen your discrimination complaint or court action; and/or
 - b) Initiate an independent complaint/court claim. However for this again a judicial review is required, and that is beyond the remit of the IRU. If such a situation was to arise IRU supervisors would liaise with their partner organisations and refer the case onwards.

Acting Unlawfully

- 7) A public authority must not also act beyond their powers. Parliament has given each public authority a limited set of powers enshrined in law. If you think a decision has been taken that goes beyond those powers, then, again, a judicial review is appropriate. Time is of the essence with judicial reviews, and proceedings must be started within three months.

C: The laws and duties they must adhere to in more detail

- 8) **The Equality Act 2010** applies. Please see the section above on this legislation. Specifically in the Public Authorities context:
 - a) **The Following are just some examples of public authorities who must not discriminate against you:**
 - i) Schools
 - ii) further education institutions like colleges
 - iii) higher education institutions like universities
 - iv) public healthcare facilities
 - v) police and emergency services
 - vi) local council
 - b) **It's only unlawful discrimination under the Equality Act if a public authority treats you unfairly because of:**
 - i) disability
 - ii) gender reassignment
 - iii) pregnancy or maternity
 - iv) race
 - v) religion or belief
 - vi) sex
 - vii) sexual orientation
- 9) **The Human Rights Act 1998**
 - a) The Human Rights Act 1998 (the Act or the HRA) sets out the fundamental rights and freedoms that everyone in the UK is entitled to
 - b) It requires all public bodies (like courts, police, local authorities, hospitals and publicly funded schools) and other bodies carrying out public functions to respect and protect your human rights.
 - c) Some relevant rights include:
 - i) **Protocol 1, Article 2 Right to education**
 - (1) "Although parents have a right to ensure their religious or philosophical beliefs are respected during their children's education, this is not an absolute right. As long as these beliefs are properly considered, an education authority

can depart from them provided there are good reasons and it is done objectively, critically and caters for a diversity of beliefs and world views.

- (2) The right to education does not give you the right to learn whatever you want, wherever you want. The courts have ruled that the right to education relates to the education system that already exists. It does not require the government to provide or subsidise any specific type of education."¹⁹
- ii) **Article 9 Freedom of thought, belief and religion:** You also have the right to put your thoughts and beliefs into action. This could include your right to wear religious clothing, the right to talk about your beliefs or take part in religious worship. Public authorities cannot stop you practising your religion, without very good reason²⁰ – see the section on restrictions below.
- d) Public authorities cannot interfere with your right to hold or change your beliefs, but there are **some situations in which public authorities can interfere with your right** to manifest or show your thoughts, belief and religion. This is only allowed where the authority can show that its action is **lawful, necessary and proportionate** in order to protect:
- i) public safety
 - ii) public order
 - iii) health or morals, and
 - iv) the rights and freedoms of other people.

10) Own Policies, Procedures, & Articles of Association

- a) Public authorities will almost always have a robust set of policies, procedures, and guidelines which they have to follow, and some hybrid/functional public authorities will also have Article of Association and/or a memorandum of association. All of these documents must be adhered to by statute and are a valuable source of guidance on what standards the authority should be living up to.
- b) You will find most public authorities' policies on the governance section of their website.
- c) Sometimes these policies are more stringent than the legislation and as such more in favour of the victim.

11) The Secretary of State for the Public Authority

- a) A public authority will almost always be under a government department that has ultimate responsibility for its running and conduct. It may be that final recourse may be had to the Secretary of State ultimately responsible. It is highly likely however that at that point the matter becomes less a complaint, and more a public policy campaign to change future practice and guidelines.
- b) **Common departments include:**
 - i) **Department for Communities and Local Government** : responsible for local councils, and the local government ombudsman;
 - ii) **Cabinet Office** : Civil Service;
 - iii) **Attorney General's Office:** the CPS, the Serious Fraud Office, and the Government Legal Department;

¹⁹ <https://www.equalityhumanrights.com/en/human-rights-act/article-2-first-protocol-right-education>

²⁰ <https://www.equalityhumanrights.com/en/human-rights-act/article-9-freedom-thought-belief-and-religion>

- iv) **Department for Culture, Media, and Sport:** BBC, C4
- v) **Department for Education:** schools, universities, Ofsted, Ofqual
- vi) **Department for Transport:** Civil Aviation Authority, British Transport Police, DVLA, assorted train services.
- vii) **Department for Health:** NHS and NHS ombudsman
- viii) **Department of Justice:** Prisons, and courts

D: The Complaints Process

See Appendix for the Public Authority Complaints Process Diagram

- 5) Each public authority will have their own complaints process in place by law. This will usually be available on the website, and will certainly be obtainable upon asking.
- 6) The procedure usually is:
 - a) Informal complaint – to the department in question, or to the manager of the member of staff concerned.
 - b) Formal complaint to the public authority's complaints department. There are often tiered complaints procedures that must be followed. At each stage more people, independent people, and more senior people will get involved.
 - c) Complaint to the ombudsman. Nearly all public authorities will have an independent third party adjudicator who will deal with all complaints that are escalated to them and have sufficient merit
 - d) Complaint to the Secretary of State – at this point the complaint becomes less a complaint and more a public policy campaign
 - e) Litigation
- 7) In all cases the victim can start civil proceedings against the public authority to seek compensation through the courts. However, they are advised to exhaust all internal complaints processes before doing so, as courts do not look as favourably on their claim otherwise. The IRU will not be able to assist with these legal proceedings however we can help source solicitors and barristers who may be able to help.

E: Strategies possible during complaints process

- 6) Letter by IRU to the public authority
 - a) This is subject to approval by the core IRU team and Mend Management
 - b) The aim of the letter is to highlight the concerns of the IRU that Islamophobic discrimination might be taking place and asking questions of the public authority as to how it proposes to remedy the situation
- 7) Asking the EHRC to investigate
 - a) the Equalities and Human Rights Commission have powers to make sure the Equalities Act 2010 and the HRA 1998 are being followed.
 - b) Letters written by them to institutions are usually highly successful in obtaining the appropriate response
 - c) The EHRC does sometimes also take legal action where it deems it appropriate
- 8) Getting local MP involved
 - a) This is usually quite an effective way to resolve disputes. A letter from a local MP carries weight
- 9) Getting local/national press involved

- a) This strategy can cause friction with the public authority and so must be used wisely and carefully and really only as a last resort – especially if the complainant has an ongoing relationship with the public authority.

F: Further Resources

- Equality and Human Rights Commission on Public Sector Equality Duty - <https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty>
- Citizens Advice Bureau on Public Authorities: <https://www.citizensadvice.org.uk/discrimination/public-sector-equality-duty/who-must-comply-with-the-public-sector-equality-duty/>
- Taking actions against a public authority in a housing context: <https://www.citizensadvice.org.uk/housing/discrimination-in-housing/taking-action-about-discrimination-in-housing/taking-action-against-a-public-authority-about-discrimination-in-housing/>
- Public Law Project – good resources on reviewing public body decisions - <http://www.publiclawproject.org.uk/>

Healthcare

A: Where to complain and what about?

This section of the Manual deals generally with all health and care service providers. This includes (but is not limited to):

- social services
- private care homes funded by a local authority
- local authority and NHS funded care homes
- NHS health services like hospitals, GPs and dentists
- other NHS bodies like NHS trusts in England, Local Health Boards in Wales or NHS Health boards in Scotland
- private healthcare organisations providing NHS services
- the Care Quality Commission in England, the Care and Social Services Inspectorate in Wales and the Care Inspectorate in Scotland.

The majority of the complaints arising in a healthcare context will involve the NHS. However the following are examples of where complaining to the NHS would not be appropriate:

- Social care alone or other services provided by the council
- Privately funded health, nursing home or home based care
- Personnel matters, such as getting staff disciplined
- Legal issues and claims for compensation
- Contractual matters and consultations about service changes

For these cases the actual service providers' complaints procedure will need to be adhered to. However, the substantive elements of the actual complaint letter will remain the same as the same overarching legislation applies to these bodies.

The Complaints procedure and investigatory steps taken during an NHS complaint are detailed in the following legislation

(http://www.legislation.gov.uk/ukxi/2009/309/pdfs/ukxi_20090309_en.pdf) . Don't worry if this looks complex. This section of the manual is written to help you navigate the process without having to resort to the legislation in most cases.

As ever, there are many things one can complain to the NHS about, however the IRU deal only with cases of Islamophobic discrimination.

B: What does your client want to achieve?

Before you start you need to be clear what your client wants. He may want:

- the discrimination against him to stop
- an apology
- the healthcare or care provider to look again at a decision they've already taken
- a change in the healthcare provider's policy
- staff training in discrimination issues
- money for financial losses or compensation - for example, for stress or injury to feelings.

For all of these, the starting point is an official complaint. However in the case of changes in policy and staff training, this may be a matter of public policy which will be better achieved by going to the local MP or councillor. Compensation will likely also only be forthcoming once legal proceedings have been commenced.

It is important to manage the expectations of your client regarding their goals and to explain clearly what the limitations of the IRU are, and the likelihood of success. If you are unsure about this, take to your Supervisor.

C: What does discrimination look like?

“The Equality Act says the following things could be unlawful discrimination by a healthcare or care provider if it's because of your religion:

- refusing to provide you with a service or take you on as a patient or client
- stop providing you with a service
- giving you a service of worse quality or on worse terms than they would normally offer
- causing you harm or disadvantage
- behaving in a way which causes you distress or offends or intimidates you
- punishing you because you complain about discrimination, or help someone else complain.”²¹

Particular examples may include:

- You can't register with a GP because you're a Muslim
- A private care home refuses you
- A social worker is verbally abusive towards you due to your religion
- You are not allocated appropriate wards/beds given that you wear the hijab
- A doctor makes a disparaging remark about a Muslim patient due to his religion

D: Healthcare Providers as Public Authorities

Healthcare providers are almost always going to qualify as "Public Authorities". This means that they have even stricter requirements when it comes to adhering to the Equalities Act 2010. Please see the section on Public Authorities for a detailed breakdown of what these duties are, what aspects of the law are particularly relevant, and how discrimination must be avoided by such bodies.

E: Complaints Process

Please refer to the Appendix for the Healthcare Complaints Process Diagram

1. Identify the correct person to complain to
 - a. For complaints about an NHS Trust (e.g. a hospital, ambulance service, mental health service provider, or community services provider) complain to the Complaints Manager or the Chief Executive of the Trust.
 - b. For complaints about local service providers such as GP surgeries, dentists, opticians, pharmacies, you can complain directly to them (addressing the Practice Manager or Chief Executive) or you can complain to the commissioner of the service instead. To find out the commissioner of the service consult either the website of the local service provider, or search for it on www.england.nhs.uk.
 - c. For independent NHS contractors – consult their website and they will outline their complaints process

²¹ <https://www.citizensadvice.org.uk/health/discrimination-in-health-and-care-services/identifying-discrimination/discrimination-in-health-and-care-services-what-s-the-unfair-treatment/>

- d. In all cases, if there is a lack of clarity on who you should be complaining to:
 - i. Contact the service provider (e.g. hospital) and ask to talk to their complaints department. They will be able to help you.
 - ii. Remember, if you are unsure you can send your complaint to where you think is correct and the complaint will be forwarded on to the right party. Do retain copies of your complaint and any attached documents however, in case your complaint gets lost.
2. Write the letter of complaint
 - a. See the manual's section on writing a good complaint letter
3. Expect a response
 - a. Usually an acknowledgement will be sent within 3 days and a full response follows within the month, though individual complaints procedures may vary
 - b. If you haven't received a response to the complaint within six months and the organisation hasn't agreed a longer timeframe with you, you can refer the complaint on to the Parliamentary and Health Service Ombudsman
4. Attend a Resolution meeting
 - a. The healthcare provider may offer you a meeting where you can come in and talk through your complaint and come to an amicable resolution as to what should be done. You should find out who will be in attendance, ask for a record of the meeting if one is being taken, and inform the service provider if you plan to bring an advocate with you.
5. Escalate to the Parliamentary and Health Service Ombudsman
 - a. Prior to doing this, it is good practice to inform the service provider why you are still unhappy with the response and your intention to escalate to the ombudsman.
 - b. Make sure you have exhausted all of the steps in the service provider's complaints procedure before escalating to the Ombudsman – as they will look at this as part of their assessment to take on the complaint or not.
 - c. The Ombudsman will either:
 - i. Rule that there were no failings or that the complaint is resolved; or
 - ii. Rule that there were failings and ask for an explanation and/or an apology and/or payment and/or recommend improvements
6. If you are unhappy with the Ombudsman's decision you can ask them to review their decision
7. Report your concerns to the relevant regulatory body – as they can then start their own internal disciplinary procedures as per their internal guidelines:
 - a. For doctors: the General Medical Council
 - b. For Dentists: General Dental Council
 - c. For Pharmacists: General Pharmaceutical Council
 - d. For Opticians: General Optical Council

F: What will the Ombudsman look at?

The Ombudsman will look at the following factors to decide if they can entertain your complaint:

- The organisation – the Ombudsman cannot consider private healthcare complaints, for example

- Time limit – unless there is a very good reason, you must raise your complaint to the Ombudsman within a year of coming to know the complained-of issue
- Legal action – if you are seeking financial redress then legal action is a more suitable route, in which case the Ombudsman may decide not to consider your complaint
- Final response – the service provider must have finished their complaints process before the ombudsman can start their investigation

Once the Ombudsman decides to investigate the complaint they will:

- Ask for an explanation from the service provider
- Obtain as much information as they need in order to make a decision
- Keep you up-to-date on the process, including sending you and the service provider a draft report and ask for your feedback
- Give a decision with recommendations (if appropriate)

G: Data Gathering & Freedom of Information Requests

As part of drafting your complaint your client may decide to obtain their patient records.

These include:

- GP and hospital doctor records
- Nursing records, and other NHS staff
- Records of your client's visits to the practice, clinic or hospital
- Visits to your client
- Details of treatment, medication, tests and their results, diagnosis, referrals, etc

These are useful to obtain as they often contain information which will strengthen your case. Under the Data Protection Act 1998 you have the right to see this information unless doctors think that to do so would seriously harm our or another person. They can also refuse if they believe that to send you the information would require "disproportionate effort" – however this mustn't be abused and is usually not a hindrance to getting your records.

There is usually a department within the hospital or a designated person within a surgery who deals with these requests. Once you ask for the records they must be provided to you within 40 days. In order to see the records you can be charged £10, and in order to copy and send the records to you, may be charged a maximum of £50. If you are asking for records on behalf of a client then you must get their written authorisation and enclose that within the application.

H: Strategies possible during complaints process

- 1) Letter by IRU to the healthcare provider
 - a) This is subject to approval by the core IRU team and Mend Management
 - b) The aim of the letter is to highlight the concerns of the IRU that Islamophobic discrimination might be taking place and asking questions of the healthcare provider as to how it proposes to remedy the situation
- 2) Asking the EHRC to investigate
 - a) the Equalities and Human Rights Commission have powers to make sure the Equalities Act 2010 and the HRA 1998 are being followed.
 - b) Letters written by them to institutions are usually highly successful in obtaining the appropriate response

- c) The EHRC does sometimes also take legal action where it deems it appropriate
- 3) Getting local MP involved
 - a) This is usually quite an effective way to resolve disputes. A letter from a local MP carries weight
- 4) Getting local/national press involved
 - a) This strategy can cause friction with the hospital and so must be used wisely and carefully and really only as a last resort – especially if the complainant has an ongoing relationship with the hospital. However this too is a highly effective strategy when done properly.

I: Further Resources

- Equality and Human Rights Commission on Public Sector Equality Duty - <https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty>
- Citizens Advice Bureau on Public Authorities: <https://www.citizensadvice.org.uk/discrimination/public-sector-equality-duty/who-must-comply-with-the-public-sector-equality-duty/>
- POhWER – an NHS complaints advocacy charity who have excellent resources on the topic: <https://www.pohwer.net/nhs-complaints-advocacy>
- Citizens Advice Bureau on different kinds of discrimination in a healthcare context: <https://www.citizensadvice.org.uk/healthcare/discrimination-in-health-and-care-services/health-and-care-services-what-are-the-different-types-of-discrimination/>

Transport

There are two preliminary points to make about discrimination suffered whilst using public transport.

Firstly, it is important to make sure it is in fact discrimination that you are dealing with. Often well-publicised incidents of islamophobia on public transport are cases of hate crime or hate incident, as opposed to discrimination. They usually involve members of the public as opposed to staff of the service. That means that this isn't usually something you can complain about to the company or service provider. If the incident involves failings by the staff of the service then this would be potential grounds for complaint. However if it solely involves other members of the public then it is going to be a hate incident or hate crime.

Secondly, public transport is a messy area with no single body covering all transport. The picture is further complicated by the subcontracting of various bus routes, railway lines, and services provided at stations, airports, and ports. However the important aspects of the complaints process remain the same: go to the organisation/institution/company who were responsible for the discrimination, or the location or service where the discrimination took place, and begin the complaint process there. Once you have tried that and been unsuccessful you can escalate further up the chain. You may eventually have to refer to a solicitor and start court proceedings if you are still not happy with the results of the ombudsman.

The IRU can help with the drafting of all complaint letters – and encourage people to get in touch with us to do so rather than write a sub-par standard letter themselves initially.

A: Public transport

Travel within London

For all travel within London please refer to the Citizen Advice Bureau's helpful summary diagram accessible at

(https://www.citizensadvice.org.uk/Global/Migrated_Documents/adviceguide/02254249-ews-dt6-complaining-about-discrimination-public-transport-in-london-flowchart.pdf)

In brief the steps are:

1. Consult the Complaints section on www.tfl.gov.uk and follow the steps
2. If you haven't heard from the TFL within 20 working days, contact www.londontravelwatch.org.uk who may be able to assist further.

Trains

For all train travel outside of London please refer to the Citizen Advice Bureau's helpful summary diagram accessible at:

(https://www.citizensadvice.org.uk/Global/Migrated_Documents/adviceguide/02254251-ews-dt7-complaining-about-discrimination-train-services-outside-london-flowchart.pdf)

In brief the steps are:

1. Identify who you are complaining to – the train service, or the company who runs the station
2. Complain to the appropriate organisation
3. If still unhappy, ask for your complaint to be reviewed by the organisation

4. Refer on to www.passengerfocus.org.uk who may be able to assist with furthering the complaint

Buses

For all bus travel outside of London please refer to the Citizen Advice Bureau's helpful summary diagram accessible at:

(https://www.citizensadvice.org.uk/Global/Migrated_Documents/adviceguide/02254247-ews-dt5-complaining-about-discrimination-bus-services-outside-london.pdf)

In brief the steps are:

5. Complain to the bus company using their complaints process
6. If the complaint is unresolved or you're unhappy, refer it on to the <http://www.bususers.org/> who will help take your complaint further
7. If Bus Users UK are unsuccessful, they will refer your case on to <http://www.busappealsbody.co.uk/> who will consider your case

B: Airports

There are multiple agencies that work in the airport and, again, it is important to identify correctly who it is you should be complaining to. For example, the Heathrow website provides a helpful summary of the different authorities responsible for different services in Heathrow (<http://www.heathrow.com/company/company-news-and-information/company-information/who-does-what>). These agencies will vary from airport to airport but broadly, they will fall into the categories outlined by the Heathrow website page.

The Airport Company

This should be your first port of call. There are a number of airport companies all over the UK. For the purposes of providing an example, we use the Heathrow Airport Company. They have an online complaints form (<http://www.heathrow.com/more/contact-us/airport-feedback>) which will help you pinpoint if your complaint is in their jurisdiction or not. For aspects such as car parking, health and safety, lost property, special assistance (of disable passengers), security, and others, the Heathrow Airport Company are the appropriate organisation to go to.

Borders Agency

The Borders Agency deal with who can enter the country and they have a separate complains procedure detailed here (<https://www.gov.uk/government/organisations/border-force/about/complaints-procedure>). In brief, there are two rounds of internal complaints, and if the matter is not resolved then it can be escalated to the Parliamentary and Health Service Ombudsman.

Airlines

Airlines are usually responsible for checking passengers in, delivering hold baggage to its final destination, cargo, providing and fuelling aircraft, boarding passengers, passenger safety and on-board catering. Each airline has its own internal complaints process which should be followed. Following this, your complaint will go to an Alternative Dispute

Resolution Body that the airline has signed up with. If the airline does not have such a relationship, then the complaint will be escalated to the Civil Aviation Authority.

For further details on this process see the section above on Public Authorities. See also the Civil Aviation Authority guidance at (<http://www.caa.co.uk/Passengers/Resolving-travel-problems/How-the-CAA-can-help/How-to-make-a-complaint/0>).

Police

The Police operate extensively at airports. However the mechanism for dealing with Complaints does not change. Please refer to the section on Police below.

Businesses

Numerous businesses operate at airports. Some of these may engage in discriminatory activities. However the mechanism for dealing with them is the same as any business outside the airport. Please refer to the section on "Goods & Services" for more guidance.

H: Strategies possible during complaints process

- 1) Letter by IRU to the relevant organisation
 - a) This is subject to approval by the core IRU team and Mend Management
 - b) The aim of the letter is to highlight the concerns of the IRU that Islamophobic discrimination might be taking place and asking questions of the organisation as to how it proposes to remedy the situation
- 2) Asking the EHRC to investigate
 - a) the Equalities and Human Rights Commission have powers to make sure the Equalities Act 2010 and the HRA 1998 are being followed.
 - b) Letters written by them to institutions are usually highly successful in obtaining the appropriate response
 - c) The EHRC does sometimes also take legal action where it deems it appropriate
- 3) Getting local MP involved
 - a) This is usually quite an effective way to resolve disputes. A letter from a local MP carries weight
- 4) Getting local/national press involved
 - a) This strategy is likely to be promising in the airport context, given how well-read stories on this area are right now.
 - b) Consideration should be given as to how media-savvy the clients are should they be put into a live interview scenario.

Employment

A: Introduction

Employment discrimination is probably the most complex area of discrimination law and it is also one of the most common reasons someone will come to the IRU. However, if you have a good grasp over the basics of the Equality Act 2010, this will give you a good handle on any case.

For any incidents of discrimination that happened before 2010 the relevant law will be either The Employment Equality (Religion or Belief) Regulations 2003 (SI 2003/1660) (Religion or Belief Regulations) or the Race Relations Act 1976. However for our purposes almost all of our cases will pertain to the Equality Act 2010. The guidelines for this section consist primarily of excerpts taken from the EHRC guidelines along with the Practical law guides to the topic, along with IRU experiences in these areas.

A: The law on discrimination in employment

The standard tests and protected characteristics apply under employment, along with the established ways one can suffer discrimination (see the Equality Act section).

However a few employment specific pointers are:

- Employers are often wary of starting complaints or proceedings against their employer as it will affect their careers and as such the IRU often write from our side to raise the concern with the employer directly. Given there is no contractual or legal reason for the employer to respond, this often requires follow-up, and escalating into other steps which will necessitate the business responding – e.g. publicising the case in the media.
- In the case of an employee who does want to complain or start proceedings, they have often left or are on the way out from an organisation. This considerably widens the options.
- IRU caseworkers should at all times try to understand that businesses are there to run efficiently and make money, and as such, reasonable adjustments should be requested for their client that are likely to be accepted and are not overly onerous.
- **Under direct discrimination**, “The less favourable treatment must be because of a protected characteristic. This requires the tribunal to consider the reason why the claimant was treated less favourably: what was the employer's conscious or subconscious reason for the treatment? (Nagarajan v London Regional Transport and others [1999] IRLR 572 (HL).)”²²

²² Discrimination in Employment – Practical Law Employment - [https://uk.practicallaw.thomsonreuters.com/Document/13351a6dee8da11e398db8b09b4f043e0/View/FullText.html?transitionType=SearchItem&contextData=\(sc.Default\)&OWSessionId=1faeedd8d8d34b588e91138a0630438a&skipAnonymous=true&firstPage=true](https://uk.practicallaw.thomsonreuters.com/Document/13351a6dee8da11e398db8b09b4f043e0/View/FullText.html?transitionType=SearchItem&contextData=(sc.Default)&OWSessionId=1faeedd8d8d34b588e91138a0630438a&skipAnonymous=true&firstPage=true)

- “An indirect discrimination claim must point to a PCP applied by the employer. "PCP" has a fairly wide meaning: an employer's action can be challenged in an indirect discrimination context even where there is no formal policy in place.”
- “Indirect discrimination is "group based": the PCP must put persons who share a protected characteristic at a particular disadvantage. To identify a group disadvantage, a pool for comparison is often identified, containing both persons who are disadvantaged and persons who are not. The pool will depend on the nature of the PCP being tested. If the claimant is challenging a recruitment policy, for example, the pool will usually comprise those people who would be eligible for the job but for the policy in question (*University of Manchester v Jones* [1993] ICR 474 (CA)). On the other hand, if a claimant is challenging a practice or policy applied throughout the employer's organisation, then the pool might be the whole workforce (*Faulkner v Chief Constable of Hampshire Constabulary* UKEAT/0505/05.”²³
- “The PCP that puts (or would put) members of the protected group at a "particular disadvantage" must also put (or would put) the claimant to that disadvantage. In *Keane v Investigo and others* UKEAT/0389/09, the EAT held that, where a job application is not genuine (that is, the applicant was not interested in accepting the role if they were offered it), the applicant will not suffer any disadvantage if they are not offered the job and therefore will not succeed with an indirect discrimination claim. The same view was taken by the ECJ in *Kratzer v R+V Allgemeine Versicherung AG* (C-423/15) who held that a job applicant who applies solely for the purpose of bringing a claim is outside the scope and protection of the Equal Treatment Framework Directive and the Equal Treatment Directive.”²⁴
- Usually in IRU cases we are dealing with indirect discrimination. However there are often borderline cases where the two merge into one. These cases are where the PCP is not ostensibly aimed at Muslims, however the effect is to exclude the whole Muslim population. For example, if a workplace only serves pork, then this would technically be simply a neutral policy, but the effect of it is so disproportionately focused on Muslims, it becomes directly discriminatory.

Who is protected?

Part 5 of the Equality Act 2010 protects a wide range of individuals within the field of work (employment, occupation and vocational training):

- "Employees and applicants. Job applicants and employees (in a wide sense - see Scope of "employment") are protected against discrimination by their potential employer, employer or former employer (sections 39 and 40, EqA 2010).
- Contract workers. Contract workers, including agency workers, are protected against discrimination by the end-user of their services (section 41, EqA 2010). See Practice note, *Discrimination in employment: who is protected and who is liable?: Contract workers*.
- The police. Police officers and applicants to join the police force are protected against discrimination by the chief constable, police authority or other body (sections 42 and 43, EqA 2010).

²³ Ibid.

²⁴ Ibid.

- Partners. Partners and those seeking partnership in a firm are protected against discrimination by the firm (or the persons proposing to set up a firm) (section 44 and 46, EqA 2010).
- LLP members. Members and those seeking to become members of an LLP are protected against discrimination by the LLP (or the persons proposing to set up an LLP) (, section 45 and 46, EqA 2010).
- Barristers. Barristers are protected against discrimination by members or clerks of chambers in which they are tenants or pupils (or to which they have applied for tenancy or pupillage), or by instructing solicitors (section 47, EqA 2010).
- Advocates. Devils (trainee advocates) or members of a stable (advocates working in shared premises), and people seeking to be a devil or member, are protected against discrimination by practising advocates or their clerks (section 48, EqA 2010).
- Office holders. Office holders and applicants for an office are protected against discrimination by a person with power to recommend, make or terminate their office or to determine their conditions (sections 49, 50, 51 and 52, EqA 2010).
- Professional or trade qualifications. Those seeking or holding professional or trade qualifications are protected against discrimination by the relevant qualifications body (for example, the General Medical Council or the Public Carriage Office) (sections 53 and 54, EqA 2010).
- Vocational training and employment agencies. Those seeking or undertaking vocational training (including work experience placements) are protected against discrimination by the training provider. Further, people using employment agencies or related careers guidance services are protected against discrimination by the agency or service (sections 55 and 56, EqA 2010). See Practice note, Discrimination in employment: who is protected and who is liable?: Agency workers and Vocational training.
- Trade organisations. Members and those seeking membership are protected against discrimination by the organisation (section 57, EqA 2010).
- Local authority members. Members of local authorities are protected against discrimination at the hands of the local authorities in relation to providing access to facilities such as training which relate to the carrying out of their official business. This was previously only covered by the DDA 1995, but now applies to all protected characteristics (section 58, EqA 2010)."²⁵

Employers' Liability

"For the purposes of the EqA 2010, anything done by an employee in the course of employment is treated as having also been done by the employer (section 109(1)), regardless of whether the employee's acts were done with the employer's knowledge or approval (section 109(3)).

So, an employer can be "vicariously liable" for discrimination or harassment committed by an employee in the course of employment. However, there is a defence available to an employer if it can show that it took all reasonable steps to prevent the employee from doing the discriminatory act or from doing anything of that description (section 109(4)).

²⁵ Ibid.

An employer will not be vicariously liable for an employee's criminal offence under the EqA 2010 (section 109(5)).²⁶

So it is relevant if the employer has in place an anti-discrimination policy, actively promotes such, and has previously taken quick action upon the occurrence of discrimination. If the discrimination policy is hidden away in a server somewhere then it is not likely the employer took all reasonable steps to prevent the employee who did the discriminatory act.

Agents

“For the purposes of the EqA 2010, anything done by a person as agent for another person (the principal), with the principal's authority, is treated as having also been done by the principal (section 109(1)). This is the case whether or not the agent's acts were also done with the principal's knowledge or approval (section 109(3)). Therefore, an employer can be liable to its employees for discrimination or harassment carried out by an agent of the employer, such as a contractor or consultant or an employment agency.

The EHRC Code explains that: "a principal will not be liable for unlawful discrimination carried out by its agents where the agent has acted without the authority of the principal, for example, by acting contrary to the principal's instructions not to discriminate." (paragraph 10.53)

As with employers' liability for the acts of its employees, principals' liability for acts of agents do not extend to criminal offences under the EqA 2010 (section 109(5)).²⁷

This is a particularly relevant point for the IRU given the increasing number of part-time and zero-hour contract employment opportunities there currently are and the number of Muslims who are employed in such a manner. In particular agency is an important concept applicable to the education sector, hospitals, and various different service and support roles. Practically speaking, it is often the case that the complaint or concern can be levelled at both parties.

Term in Contract

“Where a term in an employment contract unlawfully discriminates against an employee, that term is unenforceable against the employee (section 142, EqA 2010). The employee can seek a declaration in a county court (or, in Scotland, a sheriff court) to that effect, and removal of the term (sections 142 and 146)”²⁸

Time Limit

- “A discrimination claim must normally be submitted to an employment tribunal before "the end of the period of three months starting with the date of the act to which the complaint relates" (section 123(1), EqA 2010). However:
- Acts occurring more than three months before the claim is brought may still form the basis of the claim if they are part of "conduct extending over a period", and the claim is brought within three months of the end of that period (section 123(3)).

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid.

- Time can be extended by such a period as the tribunal thinks just and equitable (section 123(1)(b)).
- Time can be extended under the statutory Acas early conciliation process.”²⁹

In the following sections important cases and EHRC guidelines are listed. These are evolving and complicated areas of law and help should be sought from your case supervisor.

Hijab/Niqab/Dress/Appearance

- “Comparators are used in situations where a person of religious belief feels they have been discriminated against. The comparator used is someone who is in the exact same situation as the aggrieved party, save that they do not share their religion.
- An example of this is in *Azmi v Kirklees Metropolitan Council* UKEAT/0009/07, the claimant, a Muslim teaching assistant, was dismissed for refusing to remove her veil while teaching. She brought a direct discrimination claim. The tribunal held that the correct comparator was a non-Muslim who also covered their face. Since the tribunal was satisfied that teaching requirements in the circumstances of the case included face-to-face contact, it concluded that the comparator, like the claimant, would have been dismissed. Therefore, there was no direct discrimination. The EAT upheld the tribunal's decision.”³⁰
- It is important to bear in mind that in the *Azmi* case the lady in question opted to start wearing the niqab after her interview – at which she was wearing just the hijab.
- "It doesn't matter if the view of the person is not a majority view or one that will affect many people: In *Chatwal v Wandsworth Borough Council* UKEAT/0487/10, the EAT held that a tribunal had been wrong to reject an employee's indirect discrimination claim because he had not shown that a significant number of Sikhs shared his belief that touching meat was forbidden: the evidence he had shown that some other Sikhs shared that belief could be sufficient.
- The ECJ has recently dealt with the question of whether prohibiting employees from wearing visible religious symbols, in both cases the Muslim headscarf, is discriminatory under the Framework Directive. In the first case, *Achbita and another v G4S Secure Solutions NV* (Case C-157/15), the ECJ held that the employer's policy of banning all visible religious, political or philosophical symbols was not direct discrimination as it affected all religions equally. However, the ECJ considered that it might constitute indirect discrimination, it being for a national court to consider whether any interference with the right to manifest religion was justified. Somewhat surprisingly, the ECJ held that where an employer has a policy of upholding political, philosophical or religious neutrality in customer-facing roles, this must be regarded as a legitimate aim.
- In the second case, *Bougnaoui v Micropole SA* (C-188/15), concerning a French employee, the ECJ had to consider whether an employee's dismissal for wearing an Islamic headscarf at work, in breach of a direct instruction following a customer's objection to her wearing the headscarf, was directly discriminatory on grounds of religion or belief. The ECJ held that the dismissal was directly discriminatory and it

²⁹ Ibid.

³⁰ Ibid.

could not be defended on the ground that it was a "genuine and determining occupational requirement" under Article 4(1) of the Framework Directive. This was because the concept of a genuine and determining occupational requirement refers to one that is objectively dictated by the nature of the occupational activities concerned or of the context in which they are carried out, and cannot cover subjective considerations, such as customer preference."³¹

- It is important to note that this is an area of law that the IRU is willing to test if the caseworker and case supervisor hold that the facts of the case suggest discrimination. Helpful past case law is useful, however it is not necessary.

The EHRC Code contains the following examples:

- A hairdresser refuses to employ stylists who cover their hair, believing it is important for them to exhibit their flamboyant haircuts. It is clear that this criterion puts at a particular disadvantage both Muslim women and Sikh men who cover their hair. This may amount to indirect discrimination unless the criterion can be objectively justified. (Paragraph 4.11.)
- An employer introduces a "no jewellery" policy in the workplace. This is not for health and safety reasons but because the employer does not like body piercings. A Sikh worker who wears a Kara bracelet as an integral part of her religion has complained about the rule. To avoid a claim of indirect discrimination, the employer should consider allowing an exception to this rule. A blanket ban on jewellery would probably not be considered a proportionate means of achieving a legitimate aim in these circumstances. (Paragraph 17.40)

Proselytising

- In general, proselytising must not be done in a manner that is abrasive and makes others feel uncomfortable. It also should not be done when one is in a position of influence so as to take advantage of, or abuse that position. It is however acceptable to discuss religion and spirituality in a respectful manner in the workplace.
- "in *Chondol v Liverpool City Council* UKEAT/0298/08, the EAT upheld a tribunal's decision that an employee dismissed for gross misconduct because his employer believed that he had been inappropriately promoting Christianity to its service users was not directly discriminated against. The employee had not been treated less favourably because of his religion, but because of his employer's view that he was "improperly foisting" his religion on its service users.
- In *Wastenev v East London NHS Foundation Trust* UKEAT/0157/15, the EAT cited *Chondol* when it upheld a tribunal's decision that Ms Wastenev had not been disciplined because she had manifested her religious belief in voluntary and consensual exchanges with a colleague but because she had subjected a subordinate to unwanted and unwelcome conduct, going substantially beyond religious discussion without regard to her influential position.
- In *Mbuyi v Newpark Childcare (Shepherds Bush) Ltd* ET/3300656/14 an employment tribunal held that the dismissal of an evangelical Christian for expressing her

³¹ Religion or belief discrimination – Practical Law Employment - [https://uk.practicallaw.thomsonreuters.com/Document/1b5554938e83211e398db8b09b4f043e0/View/FullText.html?transitionType=SearchItem&contextData=\(sc.Default\)&firstPage=true&bhcp=1](https://uk.practicallaw.thomsonreuters.com/Document/1b5554938e83211e398db8b09b4f043e0/View/FullText.html?transitionType=SearchItem&contextData=(sc.Default)&firstPage=true&bhcp=1)

negative views on homosexuality to her lesbian colleague was direct and indirect discrimination, but not harassment. The case is a good example of an employer falling into the trap of disciplining an employee for their beliefs, rather than the inappropriate manifestation of those beliefs.”³²

Prayer Times & Religious Holidays

Some relevant case law includes:

- “In *Williams-Drabble v Pathway Care Solutions Ltd* and another ET/2601718/04, an employer introduced a new work rota that required employees at its residential care home to be available for work on Sundays. The shift changes required Ms Williams-Drabble, a practising Christian, to work from 3pm on Sunday until 10am on Monday on two occasions in May 2004. This coincided with the only service held at her usual church. She had previously stated at interview that she was unable to work on Sundays for religious reasons. She complained about the new shifts, and was told she could swap shifts with other employees. When she asked with whom, she was told it was her problem, and that if she could not find someone willing to swap, she would have to work the disputed shifts. She then complained to the managing director, who responded that the shift changes were permanent and that she would have to hand in her notice if she did not like it. When she complained of indirect discrimination, a tribunal held that the new rota, which was applied equally to all employees, had the effect of putting practising Christians at a disadvantage. The employer had not submitted an ET3 or given evidence at the tribunal and so could not establish that the new shift system was objectively justified.
- In *Fugler v MacMillan-London Hairstudios Ltd* ETS/2205090/04, a Jewish employee was refused a day's holiday for Yom Kippur which, that year, fell on a Saturday, the busiest day of the week for the employer. The tribunal accepted that the employer's policy of discouraging the taking of holiday on a Saturday put Jewish people at a disadvantage (as it is the Jewish Sabbath), and found that the employer had not been justified in refusing Mr Fugler's holiday request. It had failed to consider whether its staffing needs could have been met in some other way on this occasion.
- In *Cherfi v G4S Security Services Ltd* UKEAT/0379/10, the claimant, Mr Cherfi, worked as a security guard at a client site. His employer would face financial penalties and be at risk of losing the client contract if it failed to ensure that the requisite number of security guards were on site throughout operational hours. It therefore required the security guards to remain on site at lunchtimes, for which they were paid. When Mr Cherfi complained, the employer offered to change his contract to a Monday to Thursday pattern with the option of Saturday or Sunday work. However, he was not prepared to work at the weekend. He brought an indirect discrimination claim, pointing out that the employer's requirement placed Muslims at a particular disadvantage. A tribunal rejected his claim. Balancing the employer's operational needs with the discriminatory effect on Mr Cherfi, the tribunal found that the requirement for security guards to remain on site was a proportionate means of achieving a legitimate aim. On appeal, the EAT upheld the tribunal's decision.

³² Ibid.

- In *Mayuuf v Governing Body of Bishop Challoner Catholic Collegiate School and another* ET/3202398/04, the claimant, a maths teacher, was a member of the Maliki School of Islam. According to his beliefs, it was essential that he attend prayers at a mosque every Friday, and that it would be a matter of the utmost seriousness should he miss more than two Fridays in a row. During the 2002/2003 school year, the School allowed him a free period on a Friday afternoon (period 5) in order to attend prayers. However, in the 2003/2004 school year, the School required him to teach year 11 maths at that time. Mr Mayuuf brought an indirect discrimination claim. The tribunal found that the school's actions were objectively justified. It balanced the discriminatory effect on Mr Mayuuf against the following factors: there had been declining standards in GCSE maths and new arrangements had been put in place; it was essential to those arrangements that all the year 11 maths classes take place at the same time, so that pupils could be moved up or down between sets according to ability; it would have been practically impossible to rewrite the timetable to free up period 5; providing a supply teacher would have affected the continuity of education and would, as a secondary consideration, have been too costly.³³
- It is interesting to note that the cases involving Friday prayers were unsuccessful, and the facts of the Mayuuf case in particular would suggest that the courts may have erred in their understanding of "objective justification". This is again an area of law the IRU is keen to test.

The EHRC Code offers guidance for employers on religious holidays and prayers. In summary, it states:

- If an employee requests annual leave for a religious occasion, employers should seek to accommodate the request, provided that the worker has sufficient holiday entitlement and it is reasonable for them to be absent from work during the period requested. Employers who require everyone to take leave during an annual closedown should consider whether this creates a particular disadvantage for workers sharing a protected characteristic who need annual leave at other times; for example, during religious festivals. Although the operational needs of the business may be a legitimate aim, employers must consider the needs of workers in assessing whether the closure is a proportionate means of achieving the aim. (Paragraphs 17.36 and 17.38.)
- Employees may request access to an appropriate quiet place (or prayer room) to undertake their religious observance. Employers are not required to provide a quiet or prayer room. However, if a quiet place is available and allowing its use for prayer does not cause problems for other employees or the business, employers with sufficient resources may be discriminating because of religion or belief by refusing such a request. On the other hand, employers should be careful to avoid creating a disadvantage for workers who do not need a quiet room (for example, by converting the only rest room), as this might amount to indirect religion or belief discrimination. It would be good practice to consult with all workers before designating a room for prayer and contemplation and to discuss policies for using it. If possible, employers

³³ Ibid.

may also wish to consider providing separate storage facilities for ceremonial objects. (Paragraphs 17.58 and 17.59.)

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The EHRC Code offers guidance for employers on religious holidays and prayers. In summary, it states:

- If an employee requests annual leave for a religious occasion, employers should seek to accommodate the request, provided that the worker has sufficient holiday entitlement and it is reasonable for them to be absent from work during the period requested. Employers who require everyone to take leave during an annual closedown should consider whether this creates a particular disadvantage for workers sharing a protected characteristic who need annual leave at other times; for example, during religious festivals. Although the operational needs of the business may be a legitimate aim, employers must consider the needs of workers in assessing whether the closure is a proportionate means of achieving the aim. (Paragraphs 17.36 and 17.38.)
- Employees may request access to an appropriate quiet place (or prayer room) to undertake their religious observance. Employers are not required to provide a quiet or prayer room. However, if a quiet place is available and allowing its use for prayer does not cause problems for other employees or the business, employers with sufficient resources may be discriminating because of religion or belief by refusing such a request. On the other hand, employers should be careful to avoid creating a disadvantage for workers who do not need a quiet room (for example, by converting the only rest room), as this might amount to indirect religion or belief discrimination. It would be good practice to consult with all workers before designating a room for prayer and contemplation and to discuss policies for using it. If possible, employers may also wish to consider providing separate storage facilities for ceremonial objects. (Paragraphs 17.58 and 17.59.)

Doing certain tasks as part of employment

- “In *Khan v Direct Line Insurance plc* ET/1400026/05, a Muslim employee (who did not drink alcohol for religious reasons) claimed that he had suffered indirect discrimination because his employer awarded alcoholic drinks as incentives to improve sales performance. The tribunal found that, although the only incentives specifically referred to were alcoholic drinks, the employer would replace the alcohol with gift vouchers if an employee refused to accept it, and had done so on another occasion with a Muslim employee. The tribunal concluded that any disadvantage suffered by Muslims was, in this case, so trivial that it could be ignored. However, in case it was wrong about that, the tribunal went on to consider whether an employer could be justified in having an incentive system whereby the only specified incentive was alcohol. It held that, although the encouragement of sales was a legitimate aim, and awarding a prize could be a proportionate means of achieving it, “it could not realistically be argued that only identifying alcohol as a prize while not specifically mentioning an alternative” was within the terms of the justification defence.
- In *Ahmed v Tesco Stores Ltd and others* ET/1301492/08; ET/1301830/08, a Muslim warehouse worker claimed that requiring him to handle alcohol constituted indirect discrimination. Tesco successfully argued that supplying alcohol to stores was a

legitimate aim, and that requiring Mr Ahmed to handle it was a proportionate means of achieving that aim. The fact that Mr Ahmed had been made aware, at interview, that his duties would entail handling alcohol clearly influenced the tribunal in Tesco's favour.

- In *McFarlane v Relate Avon Ltd* [2010] IRLR 196, Mr McFarlane, a Christian relationship counsellor with Relate, was dismissed because he did not feel that he could provide psycho-sexual counselling to same-sex couples as it conflicted with his religious beliefs. A tribunal found that the employer had the legitimate aim of providing a full range of counselling services to all sections of the community regardless of, among other things, their sexual orientation. Since Mr McFarlane could not give an unequivocal assurance that he would provide those services, the tribunal concluded that his dismissal was a proportionate means of achieving that aim. Mr McFarlane argued that same-sex couples in need of such counselling could be allocated to other counsellors. However, the EAT's view was that where an employee refuses to comply with principles that are fundamental to an employer's ethos (in this case, Relate's equal opportunities policy), and which the employer has pledged to the public to maintain, the employer does not have to compromise those principles by making or considering arrangements to accommodate the employee's requests.³⁴
- This is a developing area of law and must be dealt with sensitively and on the facts. It is important to note that where the employer actively goes into a role knowing that they will be morally conflicted, then they will be in a very weak position if claiming discrimination.
- Generally speaking, there are no good reasons to refuse to serve or treat or sell to a customer on the grounds of their protected characteristic.

B: Complaints Process

There is a set procedure to follow when bringing a discrimination claim against one's employer:

1. An employee or job applicant who thinks that they might have been discriminated against contrary to the EqA 2010 can submit questions to the employer to help determine whether they have a claim. The employer's answers might also help them to formulate the claim and present their evidence in the best way. This can help to address the evidential imbalance inherent in discrimination cases, where the employer usually holds most of the information tending to support or disprove the allegations. This is supported by an Acas guide, *Asking and responding to questions of discrimination in the workplace*.
2. At all times Tribunals must take account of any provisions of the *Acas Code of Practice on Disciplinary and Grievance Procedures* (Acas Code) so it is important to consult this right from the earliest stages. Falling foul of the Code can reduce the eventual award by up to 25%.
3. It is now mandatory for any discrimination claim to go through the Acas conciliation process. This has the following steps:

³⁴ Ibid.

- a. Step 1: A prospective claimant who wants to institute relevant proceedings must provide "prescribed information" in the "prescribed manner" to Acas. This may be done using an EC form or by telephoning Acas.
 - b. Step 2: An early conciliation support officer (ECSO) will make initial contact with the prospective claimant. The ECSO will explain the EC process, take some details from the prospective claimant and check that they wish to proceed with conciliation. As long as they do, the prospective claimant's information will be sent to a CO.
 - c. Step 3: The CO will contact the prospective claimant. In addition to discussing their complaint, the CO will check that the prospective claimant agrees to the CO contacting the prospective respondent. As long as the CO is able to contact the prospective respondent and the prospective respondent is willing to participate in EC, the CO must try to promote a settlement between the parties within the "prescribed period" (EC period). The EC period is one calendar month from the date on which the prospective claimant made initial contact with Acas. It may be extended once, by up to 14 days.
 - d. If it is not possible to contact the parties or if either party does not wish to participate in EC, an EC certificate must be issued. If a settlement is not reached, either because the CO considers that settlement is not possible, or because the prescribed period expires, an EC certificate must be issued. The EC certificate will give the prospective claimant a unique reference number which they will have to include on their ET1 should they go on to present a claim.
4. Submit ET1 form and start formal proceedings in the Employment Tribunal
 5. Appeal to the Upper Employment Tribunal
 6. Appeal to the Court of Appeal and Supreme Court

C: Strategies possible during complaint process

- 1) Letter by IRU to the relevant organisation
 - a) This is subject to approval by the core IRU team and Mend Management
 - b) The aim of the letter is to highlight the concerns of the IRU that Islamophobic discrimination might be taking place and asking questions of the organisation as to how it proposes to remedy the situation
- 2) Asking the EHRC to investigate
 - a) the Equalities and Human Rights Commission have powers to make sure the Equalities Act 2010 and the HRA 1998 are being followed.
 - b) Letters written by them to institutions are usually highly successful in obtaining the appropriate response
 - c) The EHRC does sometimes also take legal action where it deems it appropriate
- 3) Getting local MP involved
 - a) This is usually quite an effective way to resolve disputes. A letter from a local MP carries weight
- 4) Getting local/national press involved

This strategy is likely to be promising in an employment context, given that employers are usually averse to bad publicity.

- a) Consideration should be given as to how media-savvy the clients are should they be put into a live interview scenario.

D: Further resources

1. <http://www.acas.org.uk/media/pdf/m/p/Asking-and-responding-to-questions-of-discrimination-in-the-workplace.pdf>
2. <https://www.equalityhumanrights.com/en/publication-download/religion-or-belief-law-working>
3. <https://www.equalityhumanrights.com/en/advice-and-guidance/creating-faith-friendly-workplace-muslims>
4. <https://www.equalityhumanrights.com/sites/default/files/employercode.pdf>
5. <http://www.acas.org.uk/media/pdf/d/n/Religion-or-Belief-and-the-workplace-guide.pdf>
6. <https://www.equalityhumanrights.com/en/publication-download/religion-or-belief-workplace-explanation-recent-european-court-human-rights>

Police, Stop & Search, and related issues

Discrimination may arise in interactions with the Police either in relation to special powers given to them by law, such as the power to stop and search or arrest, or in relation to their everyday dealings with members of the public.

With regards to police discrimination in the exercise of their special powers, the IRU will, in almost all cases, be referring to either a solicitor, CageUK, or Prevent Watch. This is as in most cases these cases are highly litigious, require expert input, and involve anti-terror legislation.

With regards to everyday discrimination, such as comments by a police officer, or dealing with a case too slowly, if this is done on grounds of Islamophobic discrimination then this is something the IRU can deal with. For more information on how to deal with this see the sections on Public Authorities.

A: What laws/regulations are the Police bound by?

- 1) Equality Act 2010 – see the above relevant section
- 2) Public Sector Equality Duty – see Public Authorities section for more details
- 3) PACE – this is the Police's code of conduct that they must adhere to. It governs procedure for arrest, detention, stopping and searching, and surveillance. It is not usually relevant for IRU work
- 4) The Police Code of Ethics – this is a broad Code of Practice introduced and being rolled out nationwide. Its authority varies from police force to police force but it is useful for buttressing any discrimination argument with. It can be accessed at:
http://www.college.police.uk/What-we-do/Ethics/Documents/Code_of_Ethics.pdf

B: Complaints Process

The best way to make a complaint is to contact the police force involved. Police force websites include information about how to complain or you can visit any police station.

You can complain to any force by using the online form on the IPCC website. Forms are also available to download, complete and email or to print off, complete by hand and post to the relevant police force.

The victim can bring someone with them to make a complaint – for example, a friend or advocate. If they prefer, someone can make a complaint on their behalf, but they must give their permission in writing for them to do this.

When you make a complaint, you can expect the police force to listen to you, act in a fair and balanced way and seek to put things right.

Extremely detailed guidelines are listed in Statutory Guidance issued by the IPCC here:
https://www.ipcc.gov.uk/sites/default/files/Documents/statutoryguidance/2015_statutory

[guidance_english.pdf](#) . You will need to consult this at every stage of a Police complaint to make sure the procedure is being correctly adhered to. In brief, the process is as follows:

- 1) Local Police Force: Local Resolution Stage
 - a) Most complaints resolve at this stage. Minor steps such as an apology, a change of policy, or a reprimand to a member of staff can happen at this point.
 - b) Make sure you get your Complaint recorded as an official complaint. This means that it must then be dealt with according to specific rules outlined in the Police Reform Act 2002.
- 2) Local Police Force: Local Investigation Stage
 - a) This is the next stage where the investigating officer will carry out a more thorough investigation of the complaint. He should keep you informed and update you at least every 28 days.
- 3) Appeal stage: IPCC or Local Police Force
- 4) Department of Justice

C: Further Resources

- 1) Police Code of Practice: Ethics - http://www.college.police.uk/What-we-do/Ethics/Documents/Code_of_Ethics.pdf
- 2) PACE rules - <https://www.gov.uk/guidance/police-and-criminal-evidence-act-1984-pace-codes-of-practice>
- 3) IPCC guide to complaints about the Police - <https://www.ipcc.gov.uk/complaints>
- 4) IPCC Statutory Guidance: https://www.ipcc.gov.uk/sites/default/files/Documents/statutoryguidance/2015_statutory_guidance_english.pdf

Hate Crimes & Hate Incidents

A: Hate Incident

The police and Crown Prosecution Service have agreed a common definition of hate incidents.

They say something is a hate incident if the victim or anyone else think it was motivated by hostility or prejudice based on one of the following things:

- disability
- race
- religion
- transgender identity
- sexual orientation.

This means that if you believe something is a hate incident it should be recorded as such by the person you are reporting it to. All police forces record hate incidents based on these five personal characteristics.

Examples of Hate Incidents include:

- verbal abuse like name-calling and offensive jokes
- harassment
- bullying or intimidation by children, adults, neighbours or strangers
- physical attacks such as hitting, punching, pushing, spitting
- threats of violence
- hoax calls, abusive phone or text messages, hate mail
- online abuse for example on Facebook or Twitter
- displaying or circulating discriminatory literature or posters
- harm or damage to things such as your home, pet, vehicle
- graffiti
- arson
- throwing rubbish into a garden
- malicious complaints for example over parking, smells or noise.

B: Hate Crime

When hate incidents become criminal offences they are known as hate crimes. A criminal offence is something which breaks the law of the land.

Any criminal offence can be a hate crime if it was carried out because of hostility or prejudice based on disability, race, religion, transgender identity or sexual orientation.

When something is classed as a hate crime, the judge can impose a tougher sentence on the offender under the Criminal Justice Act 2003.

Examples of Hate Crimes include:

- assaults
- criminal damage
- harassment
- murder
- sexual assault
- theft
- fraud
- burglary
- hate mail (Malicious Communications Act 1988)
- causing harassment, alarm or distress (Public Order Act 1988).

C: IRU's role in reporting Hate Crime/Hate Incidents

A Hate Crime is a criminal matter and we at the IRU cannot handle the actual prosecution or investigation – that is a matter for the Police and the Crown Prosecution Service.

We do however liaise with the Police in these cases and make sure they are responded to appropriately. So cases where a hate crime isn't being taken seriously by the Police, for example, would be something the IRU can get involved with.

Clients who have suffered a hate incident or hate crime should be referred to the True Vision Police reporting website (<http://www.report-it.org.uk/home>) to report the hate crime/incident and also refer to the guidance on the CAB website (<https://www.citizensadvice.org.uk/law-and-courts/discrimination/hate-crime/how-to-report-a-hate-incident-or-hate-crime/>).

Location of the hate crime

The location of the hate crime is relevant for the IRU. This is as if a hate crime has taken place in or in the vicinity of a child's school, or an individual's workplace then there may be recourse to the school or employer respectively, under the Equality Act. If the hate crime takes place in the public, from a neighbour perhaps, and is regular, then there may be good grounds to raise the issue the Local council or the landlord – particularly if the landlord is an institutional landlord. If the Police have been informed of this regular pattern of hate crimes, then they too have powers to address the issue. Again, if they are being lax in dealing with the matter, then the IRU can get involved. For more information on the powers of the local authority, landlords, and the Police in this regard, see <https://www.citizensadvice.org.uk/housing/problems-where-you-live/anti-social-behaviour-in-housing/>.

Media

The IRU remit does not extend to most Islamophobic activity in the media.

Islamophobic activity can arise in the media context in two primary ways:

- 1) Stories that distort facts and misrepresent Islam and Muslims
- 2) Stories about specific individuals that misrepresent and defame them

(1) is dealt with by complaining to either IPSO or OFCOM. A helpful guide has been produced by MEND accessible at http://mend.org.uk/wp-content/uploads/2015/03/MEND_Media_Toolkit_v2.pdf

Mend often lead the complaint to IPSO or OFCOM on certain prominent Islamophobic stories or coverage, however it is primarily the responsibility of ordinary Muslims to do this complaining themselves. The IRU's remit does not extend to handling complaints to the IPSO and OFCOM.

(2) is dealt with through litigation. The IRU can assist with placing individuals who have suffered Islamophobic defamation with the appropriate solicitors or barristers who can take the matter further.

Prevent

Prevent is part of the Government Counter-Terrorism strategy and particularly affects Muslims. This has been doubly so following the introduction of the Prevent statutory duty which requires employees in public organisations such as schools, hospitals, and prisons to report vulnerable individuals to the Police.

Prevent Watch are an organisation that specialises in dealing with all issues arising out of this Government policy. Cases that do raise these concerns should be referred on to: <http://www.preventwatch.org/>

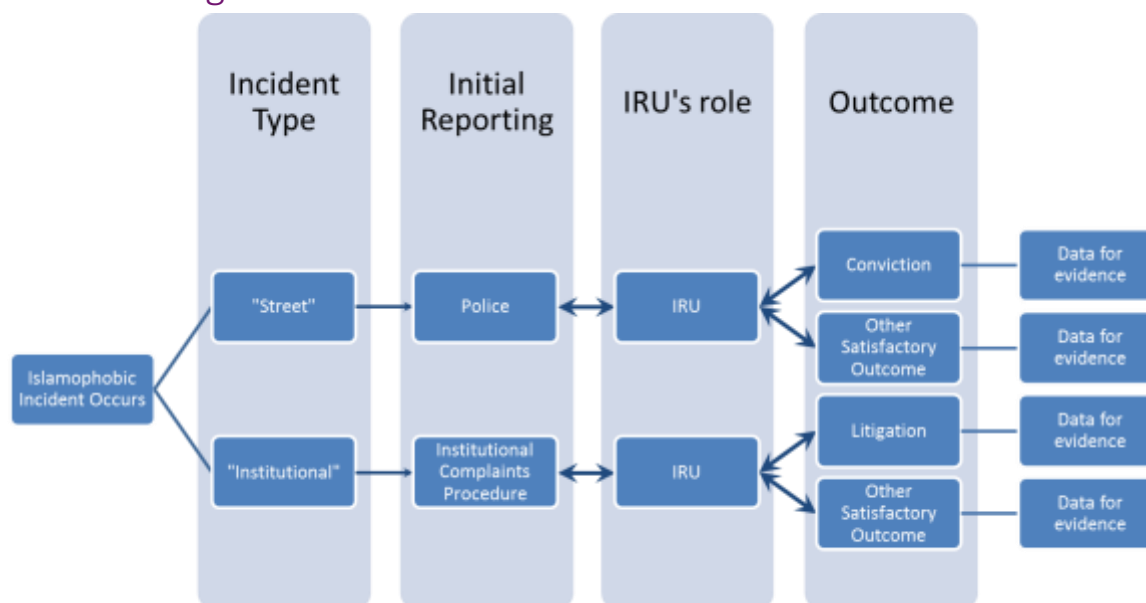
Immigration

The IRU does not deal with these cases. For such matters we refer individuals on to their local Law Centre.

Terrorism and Extremism-related Cases

The IRU does not deal with cases related to Terrorism and anti-extremist legislation. For such matters we refer on to <https://cage.ngo/> who are experts in this field.

Case Handling



The process of the average case is outlined in the above diagram. As you can see, there are two types of incidents that may occur. The first type - "street" - are incidents involving members of the public and are classified as either hate incidents or hate crimes. For these the Police is the appropriate organization to report to. The IRU can help facilitate the report to the police and assist with following it up, however the IRU's primary work is in relation to the second type of incident – "institutional" incidents. These involve initiation of a Complaints process. Often we receive cases where the initial complain has already been made by a member of the public and we are being asked to assist with escalating the matter. However sometimes we are required to draft the complaint letter itself.

Once the IRU have assisted with the complaints process and the complaint has not been resolved, we will then refer the client on to one of our partner solicitor firms or barrister chambers who may be able to assist them further by starting legal proceedings in court.

The caseworker is expected to stay in touch with the client during the litigation stage in a counselling and emotional-support role, and at the culmination of the case the caseworker should report back to the administrator and supervisor as to the outcome so that we can process the data for research on islamophobia.

The Lifecycle of a Case

1) A Case comes in:

- a) When a case comes through, **the case will be assigned to a case worker** based upon: their time availability, their skills and area of expertise and in some cases, other factors such as ethnicity, gender and proximity to the client.
- b) **The case supervisor** (a senior case worker within the IRU with a suitable legal background) **will also be assigned to the case**. The administrator will apply only a basic filter to incoming cases, such as for situations where the case is beyond the remit of the IRU (for example, cases relating to immigration), and the case will not process any further. However, further screening as to the applicability of the case to

the IRU will be up to the caseworker to determine based upon a more detailed understanding of the case and the client.

- c) When assigning the case, **the case number will appear in the subject line** and the administrator's name will appear at the bottom of the email. The email is most likely to come from the general IRU email address.
- d) **Case workers will need to confirm their availability to take on a case within 24 hours** – therefore, if you are unlikely to take on a case for a considerable period of time, please let the administrators know beforehand so we don't send you the email in the first place.



2) Once the case has been allocated:

- a) **The first step is the introductory email.** This is written by adapting the template IRU introductory email and is to be sent to the client within one day of accepting the case. It is extremely important to make contact with the client soon after they have come to the IRU for help.
- b) The email should have attached to it a Client Care letter which outlines the IRU's role, lays out expectations, asks for the client's basic details, and gets the client's agreement for the IRU and the caseworker to hold the client's information. It is vital you get a signed copy of this before proceeding any further with the case. **Do not make the first phone call until you have the signed copy of the letter sent back to you by email.**
- c) **The second step is to do preliminary research into the matter** before the phone call. Read the client's initial email over and identify the questions you would like to ask her on the phone call to clarify things further. Work out some preliminary options in your mind about where the case could do. Using that, work out what further things you will need to know in order to decide which next step is the best option. Talk to your supervisor if you are unsure. He will usually be in touch with you to give you his thoughts if the case is a difficult one. It is good practice to draw up some of your preliminary research and draft questions in an email and ask your supervisor to comment on them.

3) The phone call:

- a) The initial phone call is designed to be a fact-finding mission to get all the data you need to decide on next steps and to inform your drafting. It is also an important step

for you to introduce yourself and the role of the IRU. You should use the Client care letter for talking points on this subject.

- b) It is also good practice to start filling out the file note while you are on the call, as it is often easier and quicker to do the file note this way. Otherwise, you will have to do a file note separately after the call. A file note is simply a bullet-point summary of the phone conversation.
- c) You must take instruction from your client - not from his family.
- d) You can only act on the instructions you are given, not the instructions you would like to receive. Your remit only extends to discrimination matters. The IRU's insurance covers discrimination and islamophobia but it does not extend to any other problems your client may have. These issues must be referred on.

4) Discussion with the case supervisor

- a) Send your supervisor and the administrator your file note after the call and arrange for a time to speak with them. If the case is very simple, or you are an experienced caseworker, it may be that the issue can be resolved by an email exchange. However if that is not the case, it is normal to have a phone call with the Supervisor who will help you work out next steps.

5) Next Steps

- a) In almost all cases the next steps will be one of: (a) drafting assistance for the client to further complaint; (b) close the case as not a matter of discrimination; (c) refer the matter to one of our legal partner firms to consider litigation.
- b) For Drafting – your supervisor will normally ask you to draft the document and then will edit it and provide comments on it. This stage of editing may have a couple of rounds. Once you have received sign-off from your supervisor, you are able to send the document back to the client for them to send off.
- c) For closing a case – this is often a tricky conversation and email to write however it is in the best interest of the client to know, and important for the IRU to focus on work that we are specialists in, as opposed to legal matters that others – such as Law Centres – can help with. Your supervisor will help you draft an email to send out to the client. However it is best to not send this email until you have actually called the client and talked them through it. Only then send this email as a follow-up to the phone conversation. Inform the administrator and case supervisor once the case is closed so the records can be updated accordingly.
- d) For referral – this will usually be handled by the supervisor who will be aware of the most suitable legal partners for the case. Following the referral it is good practice to send follow-up emails every few weeks to check in with the client to see if they need any support from us and to see how their case is progressing.

Conduct Guidelines

This section is intended as a general guideline only. It cannot cover every situation you may encounter. If you encounter any problems you should consult a supervisor. They are there to help you.

Once you have taken on a case it is your responsibility: you may not just return it without very good reason.

Generally, once you are instructed it will not be possible to stop acting for a client. If you believe a case should be withdrawn or that you are professionally embarrassed and should withdraw from a case you must speak to the relevant supervisor before taking any action. This is a serious step, and should not be taken without authorisation from a supervisor.

As an IRU representative you have sole responsibility for the conduct of the case.

1) Emails:

- a) please ensure that important emails, such as a write up of what was discussed within a call, advice given to a client and any feedback from the client **is copied in to both the case supervisor and an administrator**. This will ensure that if there are any problems or additional support is required, the case supervisor and administrator are aware and can assist where needed.
- b) As some cases may take time, it is important to keep in touch with both the client and, if needed, any other institutional bodies related to the case. Even if you have nothing to report, the provision of service (including emotional support where needed) is essential. However, if the need of the client becomes too great, please ask for assistance in either referring the client for more specialized help or to spread the workload.

2) Use of personal email address and mobile numbers:

- a) Use of personal mobiles and email addresses is fine within parameters. The IRU encourages caseworkers to create and use a separate email for IRU-related work. Please make sure all email correspondence with the client has the administrator and supervisor cc'ed in, and is uploaded and saved to the IRU system.
- b) When using your personal phone to make calls, please dial 141 before entering the telephone number to withhold your own number. Please make the client aware that you will be calling at a certain time from a withheld number so that they are expecting your call. This is to ensure your own security and to help you maintain a distance between your personal life and IRU work.

3) Face-to-Face meetings with the Client

- a) Face to face meetings with clients can be arranged should the client and caseworker deem it appropriate (for example, for sensitive issues). However, in such cases, the location and attendees should be logged with the case supervisor and administrator. It is highly recommended that such meetings should have 2 representatives from the IRU and should take place in a public location.

- b) MEND have various offices nationally which are available for use by IRU caseworkers (subject to availability). Please contact the offices via one of the administrators if office space is required. Where this is not feasible or practical, the caseworker should make all endeavours to ensure that the discussion cannot be overheard and confidentiality is not compromised or breached.

4) Reliability & Deadlines

- a) If, for any reason, you are unable to meet a deadline, contact your client in good time or keep an appointment, you must speak to a supervisor. You must not neglect your professional responsibilities.

5) Insurance

- a) While conducting an IRU case you are covered by our insurance policy. If anything leads you to believe a claim against you may arise, you must speak to a supervisor immediately. Failing to act promptly can invalidate the insurance policy. The supervisors can ascertain if there is a problem, and if so, will be able to help you deal with it /will deal with it for you.

6) Conflict of Interest

- a) If you work for a legal firm, or a similar agency, or are a pupil in a chambers which is acting for one of our respondents, or you think this may be the case, or that otherwise there might be a conflict of interest, you must notify the supervisor as soon as possible.

7) Professional Conduct

- a) Do not speak to the press about any aspect of a case unless this is an express direction of the case supervisor. It is highly unlikely that the caseworker will be asked to talk directly with the press. Mend have in-house trained media spokespersons to handle this. If there is media interest in a case you are handling please inform the relevant supervisor, who will advise you.
- b) You must not solicit remuneration from your client. This is a very serious contravention of the IRU's rules and the Solicitors' and Barristers' Code of Conduct. You should discuss any conduct issue with one of the supervisors.

8) Confidentiality & Data Protection

- a) Caseworkers must respect a client's right to confidentiality. Details of a client's case must not be discussed with anyone outside of the IRU. In addition, a caseworker must not identify the client (expressly or by implication) to anybody outside of the IRU.
- b) Details of the client's case can only be discussed with third parties with the client's express permission.
- c) Care must be taken in relation to any client papers where they may be seen.
- d) At the culmination of a case, all documents related to the client should be uploaded to the IRU system and deleted from caseworkers' hard drives. Any hardcopies must be discarded in a manner that maintains client confidentiality (i.e. by ripping up the piece of paper before binning).

Supervision

All caseworkers will be appointed a senior caseworker as a supervisor on allocation of a case. The supervisor will be responsible for:

- Discussing the initial case strategy and helping formulate a plan of next steps;
- Ad-hoc assistance when an urgent/unexpected issue arises or where you come across a matter that is complex or upon which you require additional guidance;
- A weekly review of the case to discuss progress;
- Chasing caseworkers and admin if a case is not being progressed quickly enough;
- Review of all/any substantive correspondence with the client prior to it going out. (Substantive correspondence includes any advice that is provided about the matter or where there is a difficult issue being advised upon. Correspondence where you are merely chasing items, arranging meetings and not giving any advice or guidance do not need to be approved);
- An outcome discussion at the conclusion of the matter including discussing learning points that can be fed into the quarterly audits of the IRU.

If in doubt you **must** consult your supervisor or another senior caseworker in their absence.

Please do bear in mind that Supervisors are often supervising a number of cases at the same time and they too are volunteers. Given that, make sure you text or email before calling and call at appropriate times.

If there are any concerns about your supervisor then you should raise this in the first instance with the senior administrator who will advise on next steps and escalate to senior personnel within the IRU if appropriate.

Complaints

Due to the nature of the work done by the IRU there is the possibility that a client may complain about a caseworker.

Caseworkers should be aware that these sorts of cases often involve highly emotive matters and clients may be more inclined to make a complaint. A caseworker should not be disheartened or dejected by the prospect of or in the instance of a complaint.

Your supervisor should be informed immediately if a caseworker suspects that there will a complaint, and you should set out the nature of the potential complaint.

Clients are provided with details of how and where to complain to in the introductory letter they are sent.

Your supervisor will contact you and obtain any further details. He/she will keep you updated on matters and the conclusion of inquiries into the complaint.

Caseworkers should not try and resolve any aspect of a complaint themselves.

Funding

If it becomes apparent that “reserved legal advice” is required (see manual section "Remit as a Caseworker" for details) then the matter will be referred to an external legal partner. If this is a realistic prospect then the caseworker must address the issue of funding with the client.

If a client is able to privately fund their case then the process is very straightforward and we will be able to quickly refer the matter to a solicitor or barrister who can take the matter forward. Enquiries should be made with the client to establish their means. See the "Funding Questionnaire" in the Templates section. For more details.

For clients who cannot afford to pay for legal advice/representation please work through the list in consultation with your supervisor:]

- **Legal Aid**

Use the legal aid toolkit by going to <https://www.gov.uk/check-legal-aid>. This is a good starting point. For more complicated issues, the Civil Legal Advice helpline can be contacted on 0345 345 4345.

- **Law Centres**

Where legal aid is not available, then a law centre may be able to give free advice. They are often staffed by solicitors and specialist caseworkers and cover discrimination cases.

You can get the address of the local law Centre from the Law Centre's Network, or you can search their website www.lawcentres.org.uk.

Please be aware that once a matter goes to a Law Centre, the IRU does not retain any control. The client should be told about this and advised that we will step away from the matter. This may not be ideal where a client needs a lot of support and other options should also be looked at.

- **Solicitors – fixed fee or conditional fee agreements**

Please refer to the section on external legal partners and discuss this option with your supervisor.

- **Legal expenses insurance**

This is often sold as part of a household contents insurance policies. Legal expenses insurance that comes with household insurance tends to include legal help with personal injury, employment disputes, property disputes (for example about boundaries) and disputes about goods or services you bought or hired. It is important to consider carefully what the client’s specific policy agreement. Many policies will exclude certain kinds of legal

expenses or may not meet the total cost of the case. Clients must contact the insurance company themselves although guidance can be given on what to speak to them about.

- **Trade Union**

If the client is a member of a trade union then the union may provide free legal representation for a variety of problems, not just employment matters. Enquiries should be made at the outset with the client and assistance given with enquiries and any calls/discussions that the union representative may want to have.

- **Bar Pro Bono Unit**

The Bar Pro Bono Unit provides people with free legal advice and representation in court and tribunal cases from volunteer barristers. It only helps people who cannot afford to pay and cannot get legal aid. Caseworkers must therefore ensure they have exhausted the option for Legal Aid and made enquiries via the Funding Questionnaire to ensure there are no alternative funding options.

The case must be referred to the Bar Pro Bono Unit by a solicitor or advice agency. The IRU falls within this category as it is part of MEND and a “not for profit” community organization.

Further information should be obtained as follows:

The Bar Pro Bono Unit
The National Pro Bono Centre
48 Chancery Lane
London
WC2A 1JF
Tel: 020 7092 3960 (Monday, Wednesday and Friday, from 10.00am to 2.00pm)
E-mail: enquiries@barprobono.org.uk
Website: www.barprobono.org.uk

- **Ad-hoc pro Bono**

The IRU’s external legal partners may be willing to take on a matter as an ad-hoc pro-bono case. Please speak to your supervisor about how to approach them.

Caseworkers should assist a client who is trying to ascertain whether they are eligible for any of the above.

Remit as a Casework

The IRU is an advisory only service that assists individuals who may be the victims of Islamophobia whether it is in a criminal or civil context. As caseworkers you are expected to deal with all non-hate crime/hate incident related matters. Broadly speaking, these cases will involve discrimination/prejudice by one or more bodies or organisations.

You will be expected to provide advice and guidance as required as part of the case. You cannot however provide what is known as “reserved legal activity” and which is regulated by the Solicitor’s Regulation Authority. Reserved legal activity falls into the categories below:

- Exercising rights of audience only given to solicitors and barristers;
- The conduct of, and the preparation of documents in, court and immigration tribunal proceedings
- The preparation of instruments and the lodging of documents relating to the transfer or charge of land; *(not relevant to the work of the IRU and included only for the sake of completeness)*
- The preparation of trust deeds disposing of capital; *(not relevant to the work of the IRU and included only for the sake of completeness)*
- The preparation of papers on which to found or oppose a grant of probate or a grant of letters of administration; *(not relevant to the work of the IRU and included only for the sake of completeness)*
- The administration of oaths and statutory declarations; *(not relevant to the work of the IRU and included only for the sake of completeness)*
- To undertake immigration work not included under the list above *(not relevant to the work of the IRU and included only for the sake of completeness)*

Even if a caseworker is a solicitor or barrister in their personal professional life, they will not be insured or regulated to carry out any reserved legal activity on behalf of the IRU. All caseworkers should make the limits/parameters of the advice and guidance clear to clients. This is covered in the disclaimer (contained within the email footer) and the initial letter to client. However, experience has found that clients need reminding of this (in particular if the caseworker is a legal professional outside of their voluntary role).

The IRU does assist in the provision of legal advice however this is all through external legal partners who the matter is referred on to should there be a need for formal legal advice or if the matters enters into litigation. Please see manual section on "External Referral Partners" for details of the procedure for involving external legal partners.

What you can do:

- Help a client draft a letter of grievance or a letter of complaint;
- Make a call on their behalf to an organisation, institution or individual;
- Write on a letter for the client from the IRU (please speak to your supervisor and follow supervision protocol in the usual way as set out in manual section on "Supervision").
- Attend a meeting with them at their request;
- Review policies (e.g an HR policy in an employment matter) and advise on compliance with the requirements;
- Discuss the matter with an external legal partner and check progress of the matter.

The above is not an exhaustive list and individual steps will be discussed and agreed with your supervisor at the start of a matter and at regular intervals as part of the supervision process. If in doubt you must consult your supervisor before agreeing to or before completing a task on behalf of a client.

Hate crime and hate incidents will be dealt with a separate department within the IRU. Please see relevant manual sections for brief details on what is a hate crime and what is a hate incident. It is important that if you come across aspect of these within your matter that you refer on to the appropriate individual and, if in doubt, to your supervisor.

You will not be expected to deal with matters concerning media queries, immigration, or the Prevent strategy.

External Referral Partners

As discussed in previous sections, the IRU cannot undertake "reserved legal activity." In our work this primarily means we cannot start litigation and sue people in court. Once we have assisted a client through the complaints process and not had a successful resolution of the issue, and both we and the client believe that we have a strong case, the matter should be referred on to an organisation that can start court proceedings and move the case along to the next stage.

Your supervisor will advise you if we will be referring on. They have access to a list of our external legal partners who may be willing to take on the matter either in a pro bono capacity or on a fixed fee or conditional fee agreement.

Clients with insurance or personal means

Limitation Period

Templates

First Contact Email

As salam 'alaykum **Client name**,

I am a volunteer case worker for the MEND's new Islamophobia Response Unit (IRU): an advisory-only service designed to assist individuals that may be victims of Islamophobia. I am pleased to confirm that I will be handling your case and liaising with you in order to help you achieve your desired outcome.

IRU is a totally free-of-charge service and you will therefore not be required to pay anything for my help. The IRU cannot, however, pay for, or subsidise, any expenses which might arise as a result of your case (e.g. sending letters, tribunal fees, etc.).

Whilst I am familiar with the general background information of your case based on the initial contact form you submitted, it would be very useful at this point for us to have a more in-depth conversation so that I can work out how best to help you going forward.

As such, I would be grateful if you could reply to this e-mail with the following:

- 1) Your phone number; and
- 2) A list of days and times which are convenient for you to speak with me.

We can then arrange a suitable time to discuss your matter in more detail and begin an action plan.

I look forward to hearing from you.

Yours sincerely,

Caseworker name

IRU Volunteer

This e-mail (and any files transmitted with it) is intended solely for the use of the individual or entity to whom it is addressed. It contains information that may be privileged, confidential or copyrighted under applicable law. Any unauthorised dissemination or copying of this e-mail or its attachments, and any use or disclosure of any information contained therein, is strictly prohibited. If you have received this e-mail in error please notify us on info@mend.org.uk and delete it from your system. Any views expressed by an individual within this e-mail do not necessarily reflect the views of the company and should not be construed as advice constituting reserved legal activities. Whilst we have taken reasonable precautions to ensure that this e-mail and any attachment has been checked for viruses, we cannot guarantee that they are virus free and we cannot accept liability for any damage sustained as a result of software viruses. We would advise that you carry out your own virus checks, especially before opening an attachment. Please note that Mend monitors e-mails sent or received. Further communication will signify your consent to this. Mend is a marketing name of MEND UK Limited and is a not for profit company limited by guarantee, number 9094528.

Formal Letter with Client sign-off

MEND
Islamophobia Response Unit
Bow Business Centre
153-159 Bow Road
London E3 2SE

Client name
Client address

Date

Dear Mr./Ms. Client surname,

Representation

I am happy to confirm that I will be handling your case in my capacity as a volunteer caseworker for the Islamophobia Response Unit ('IRU').

Charges

The IRU offers a totally free-of-charge service thanks to its volunteers. As such, my assistance with your case will bear no fee.

Expenses

The IRU will not be liable for (either in full or in part) any expenses which arise in the course of your case. If you are unsure of whether or not you will be responsible for the costs of something which arises during your case, you should contact me for clarification.

The IRU will not charge you for in-house incidental expenses such as telephone calls, facsimile transmissions, etc. If a third party is engaged (e.g. barrister), the cost will be borne by you and this will be confirmed with you before instructing the third party.

Expectations

I will make every effort to ensure you achieve your desired outcome. However, it is vital to recognise that this might not be possible. You might achieve a partially satisfactory outcome or a totally unsatisfactory outcome depending on the facts of the case. This is the nature of contentious matters, and you should not assume that my assistance will definitely result in a satisfactory outcome. You can, however, rest assured that I will work hard alongside you to try to achieve the desired outcome.

In order to do this, it will sometimes be necessary for me to contact you and discuss matters, fill in paperwork, or other such matters to progress your case. As such, I kindly ask that you be flexible in your approach and make yourself available to facilitate me in helping you.

Case Handling

I will give you my honest and objective assessment of the prospects of your case as it progresses. Whilst I will only ever act according to your instructions, it is natural that at some point, my opinion on your prospects of success might differ from yours. I can only offer my objective, honest view and handle your case in accordance with the law. If you are unhappy with my handling of your case for any reason, IRU will not be able to re-allocate your case to an alternative caseworker.

Complaints

The IRU aims to deliver excellent service. If, however, you are unhappy with the conduct of your case, please raise the issue with me first so that it can be resolved. If you feel the need to escalate matters, you can make a complaint to my supervisor whose details can be requested either from me or directly from the IRU.

Data

Your data will be stored in accordance with the Data Protection Act 1998 purely for the handling of your case.

Termination

By us

The IRU reserves the right to cease acting on behalf of you if:

- a) There is a serious breakdown in confidence and trust between us;
- b) Your conduct makes it impossible for the case to progress; or
- c) A conflict of interest arises.

By you

You reserve the right to withdraw instructions for any reason. This is to be done in writing.

Liability

My assistance extends only so far as the matter on which you have instructed the IRU. I am unable to advise on any other matter. The IRU

Queries

If you have any further queries or are unsure of anything that has been set out in this letter, you should contact IRU for clarification.

I would like to take this opportunity to thank you for your instructions and hope that we can achieve together a satisfactory outcome.

Yours sincerely,

Caseworker name

Volunteer caseworker for the IRU

Please sign and return this page to:

MEND

Islamophobia Response Unit

Bow Business Centre

153-159 Bow Road

London E3 2SE

I have understood the contents of the engagement letter and agree to it.

Signed:

Name:

Date:

Please also complete the following Client Details Form and enclose a copy of an Identification document such as your passport or driving license.

Client Details Forms

Full name	
Address	
Date of Birth	
Home Number	
Mobile Number	
Email address	

File Note

File Note

Matter number:

Client name:

Date:

Call Notes

Please put these in succinct bullet-point format

-

Action taken:

- 1.

Proposed next steps:

- 1.

Supervision Note

Supervision note

Matter number:

Client name:

Caseworker name:

Date of supervision:

Summary of issues:

-

Review of steps taken thus far and progress:

-

Next steps (including deadlines):

-

Letter of Complaint

In this section of the manual we outline how to write a letter of complaint, give you a template to work from, and give you a real example letter previously written by the IRU to give you an idea of how to approach your own drafting.

General Tips

1. Be brief
 - a. Try to keep your complaint to no more than two pages
 - b. Do not bury your main points in a long letter
 - c. If the complaint is long and complex, attach a log sheet or diary of events with details
2. Be clear and straightforward
 - a. Use short sentences
 - b. Don't be afraid to say what has upset you, but avoid aggressive or accusing language
 - c. Try not to repeat yourself
3. Be constructive
 - a. Your complaint is an opportunity to improve things
 - b. Put your concerns politely but firmly.
4. Keep copies
 - a. Keep a copy of all letters sent and received and in date order
 - b. Send photocopies of documents, not originals
5. Make sure your letter is received
 - a. Send it by guaranteed or recorded delivery.
 - b. Also send by email if you have it and ask for confirmation of receipt

Structure of Complaint letter

[Client' Address]
[Client's Telephone number]

The Complaints Manager
[Address]
For the attention of xxxxxxxx

[Date]

Dear Sirs
Official Complaint Over [incident] on [Date]

I am writing to complain about the treatment I received from [name(s) of staff] at [place where incident happened/treatment received] on [date of incident/period of treatment].

Please consider this letter the first stage of the [Service provider's name]'s complaint procedure.

I intend to act in a conciliatory manner in order to help resolve what I feel amounts to Islamophobic discrimination.

The Complaint

- What happened
- When, and
- Where
- If you have a log sheet or list of events, you can attach this as a separate sheet and refer to this here.
- Explain what, if anything, you have already done to try and resolve matters.

Next Steps

I would like the following points addressed in the response to this complaint:

- Explain why you are not satisfied.
- Put the most important matters first.
- Be clear and brief.
- Number or bullet your points.
- Ask the questions you would like the answers to and list them in order of importance.

Yours Faithfully

[Client's name]

Example Letter 1

A concerned group of parents

For addresses see annexed Signatories page

RETRACTED Academy

[ADDRESS]

For the attention of [HEAD TEACHER]

10 December 2016

Dear Sirs,

The afterschool prayer complaint

We are a concerned group of parents and we write in regard to RETRACTED Academy's recent introduction of restrictions (the "**restrictions**") on prayer after school hours.

We have considered the school's complaints procedure, and in light of that, please consider this letter the informal complaint stage of that process. Given the number of complainants, we believe written correspondence is the most effective and efficient way of stating our complaint.

Restrictions

Prior to the restrictions, we understand that Muslim pupils would pray their Asr and Maghrib prayers in vacant classrooms with the permission of the teacher whose classroom it was.

In phase one of the restrictions were put in place, no Muslim pupils were allowed to pray in this, or any other fashion on school premises after school hours. This was clearly in breach of the Academy's duty to not indirectly discriminate any pupils on the grounds of religion. Thankfully the Academy did not persist with this state of affairs.

Following discussions and consultation, in phase two of the restrictions the Academy allowed Muslim pupils with a genuine requirement for staying behind after school hours, e.g. to attend

interventions or attend a club, to pray Asr between 3.30pm and 3.45pm in the designated prayer facility under the supervision of a teacher. Maghrib prayers are then allowed at 4.20pm at the earliest for the pupils staying behind for genuine reasons.

However Muslim pupils who are not attending an intervention or club, are not allowed to pray. In the case that they live at a distance from the Academy, the Academy is willing to judge their cases on an individual basis. Pupils attending RE lessons between 3.30pm and 4.30pm are not permitted to pray at all.

As we understand it, this is the current situation. Please confirm that this is so.

Two outstanding issues

We welcome the school's concern for safeguarding, as do we welcome the school's outlining of a prayer policy that will allow Muslim students to participate on an equal footing with their peers in afterschool activities.

However, we have two outstanding issues which we would like to raise with the Academy.

1. Muslim pupils, other than those staying behind for genuine reasons such as clubs and revision, are not permitted to pray on the premises.
2. Pupils attending RE lessons between 3.30pm and 4.30pm are not permitted to pray at all.

We are unhappy with these two restrictions, we believe they are a clear-cut case of indirect discrimination under the Equalities Act 2010, and we would like the school to reverse these restrictions. We propose below constructive possible ways in which the school could allow pupils in both situations to pray in a safe and well-supervised manner.

We will deal with each outstanding issue in turn.

1

We understand that the Academy does not want pupils to stay on the premises unsupervised after school hours. However, restriction (1) carries implications that are indirectly discriminatory, and there are better, safe alternatives. Currently, a Muslim pupil who is not attending a club or revision class, must pray Asr prayer, which takes about five minutes, within the 3.30-3.50pm timeframe between school ending, and Asr time ending. Given that the prayer must be started at the latest by 3.45pm in order to be within time, a pupil has approximately 15 minutes in which to leave school

premises, do his or her ablution (which itself takes about 2-3 minutes), commute home, and get to a point where they are ready to pray. Clearly this is going to be tight or impossible for most pupils to achieve, regardless of how close they live to the school.

Our conclusion is borne out by the recent incident of three Muslim pupils praying in a public location immediately outside the school, due to the school's restriction. It can be seen therefore, that as a natural corollary of the school's restrictions, pupils are being asked to choose between (a) compromising on their religion or (b) praying in unsuitable and unsafe public locations.

The restriction also raises the further issue that a Muslim pupil is indirectly discriminated against as he is put at a particular disadvantage by attending the final session of school in a way that a non-Muslim pupil is not. By the school finishing at 3.30pm (as opposed to 3.20pm, for example) and not allowing prayer for a Muslim pupil, it is simply impossible for the pupil to adhere devoutly to his faith. The point is not that the Academy should bring back the school ending time, it is to bring out the indirect discrimination faced by all Muslim pupils attending the final session of school which carries with it these implications.

2

For the same lines of reasoning outlined in (1), and in an exacerbated manner, there is indirect discrimination being suffered by a Muslim pupil attending this RE lesson where he or she is not also allowed to pray during this hour at all. A Muslim pupil who faces the gauntlet of making it home in time to catch Asr prayer time has the possibility of making it back at least, however for pupils in the RE lesson there is no possibility that they will be able to pray. This is clearly not acceptable.

Towards a better characterisation prayer

RETRACTED Academy prides itself for its long history as being at the heart of a multicultural community and with strong ties with the local civic and religion institutions. As part of this tradition, as well as its duties under the Education Funding Agreement signed by the governing Trust, it is important for the Academy to understand the role of prayer in the lives of its pupils, circa 70% of whom are from Muslim backgrounds. We feel this understanding can be deepened and improved in two ways.

Firstly, prayer should not be seen as a major activity. Given that Muslims pray five times a day and often pray on the go, a prayer by a pupil should not be seen as an activity to constitute an afterschool club around, rather it should be seen in the same ad-hoc part-of-daily-life fashion as a bathroom visit, or a visit to a teacher to collect homework, or a trip to the locker to pick up the PE kit or drop off books is. The difference between a pupil doing these ad-hoc actions and praying is that the former activities are seen as mundane activities that are part of the fabric of everyday life, while prayer is seen as a special spiritual activity. However, we would suggest that prayer too is seen as part of the fabric of the devout Muslim's life, and as such the Academy policies should be drawn up in light of this more nuanced understanding.

Secondly, making a big deal out of prayer, for example by asking pupils in front of their classes to state that they will be praying, in order to sign them up to a register of permitted users of the prayer room, is not an appropriate way to address the issue. For many young Muslims being confident about their faith is a challenge, and an elaborate procedural dressing around the act of prayer is likely to make it onerous on pupils. That is not to say that the school is asking pupils such a question in front of their classes, but it is simply to say that as light a regulatory regime vis-à-vis prayer should be maintained when we understand in its proper place: an everyday activity. To not do so, would risk falling into direct discrimination under the Equalities Act.

Possible ways the Academy could amend these restrictions

We would welcome the provision of prayer facilities for all pupil, with supervision, as happens for the dhuhr prayers at noon. We are indifferent as to the location, be it in the hall, or in a teacher's classroom – where that teacher is present.

For the RE lesson that takes place afterschool, we would request that pupils are allowed to turn up five minutes late to do their Asr prayers, or better still, that the lesson itself starts five minutes later. If the location of the classroom is moved next to the designated prayer facility, this will reduce time lost even further, and allow for pupils wanting to pray Maghrib at around 4, to leave for 2-3 minutes to do so. These pupils can be held back for a further 5-10 minutes to make up for any work that they have missed.

A Reminder of the Academy's contractual and statutory duties

As the Academy will doubtless be aware, it has contractual duties under s.12(a) the Funding Agreement, to be at the heart of its community and promote community cohesion. Broadly speaking, the Academy does this and we encourage the Academy to do so in this case as well. We are cognizant of the importance of the Academy's good reputation in its ability to deliver quality education, and as such we have written this discrete letter, as opposed to writing to the press, involving the Equalities and Human Rights Commission (the "EHRC"), the local MP, the Secretary of State, or Ofsted. This is as we are very hopeful that the Academy is and will be reasonable in regards the issues raised.

The Academy will also be aware that it has a general duty under the Equalities Act to not discriminate, either indirectly or directly, along with a more onerous public body duty. Without labouring the point with unnecessary legalese, a brief consultation of the Technical Guidance for Schools in England³⁵ issued by the EHRC – a document that is highly regarded in the courts during litigation involving the subject matter – throws up some important excerpts:

- "A school's obligation to pupils covers everything that a school provides for pupils and goes beyond just the formal education it provides. It covers all school activities

³⁵ https://www.equalityhumanrights.com/sites/default/files/technical_guidance_for_schools_england.pdf

such as extracurricular and leisure activities, afterschool and homework clubs, sports activities and school trips, as well as school facilities such as libraries and IT facilities.”

- “A school with a number of Jewish pupils ensures that any residential trips it arranges are at venues that can provide kosher food. If it did not do this, then religiously observant Jewish pupils might not be able to participate in the trip, which could constitute indirect discrimination unless the policy could be objectively justified.”
- “Example: A school with a significant proportion of Jewish pupils arranges extracurricular drama sessions on a Saturday morning. This is likely to result in indirect religion or belief discrimination unless the school can justify holding the sessions at a time when Jewish pupils may not be able to attend. If the same school arranges school football matches for Saturday morning, because this is when the local school league matches are played, this is likely to be a proportionate means of achieving a legitimate aim and therefore lawful.”

The other relevant duties include, inter alia, the Human Rights Act, and child protection duties. Points made in this correspondence also pertain to these duties, but again the point is not laboured here.

Concluding remarks

RETRACTED Academy is your and our school, and where our children are nurtured in readiness for their future, as confident and able British Muslims who participate actively in society. We think RETRACTED Academy broadly does a good job in producing such individuals.

We feel that the restrictions arise out of a sincere misapprehension or misunderstanding, and the Academy is genuinely seeking a solution to the problem that will be suitable to its various stakeholders.

We are more than happy to discuss these matters further in person or over the telephone and look forward to hearing from you shortly.

Yours faithfully

The concerned group of parents

Funding Questionnaire

Do you have legal expenses insurance? (e.g. through home/car insurance)	
Are you a member of a Trade Union? If so, which one?	
Does your Trade Union assist with legal expenses?	
Do you have the financial capability to fund your own case ? <i>Please bear in mind that court proceedings and solicitors fees can range anywhere between £2000 up to £50,000 or more.</i>	

Note to caseworkers: if the answer to all of the above is no, go through the legal aid eligibility test with your client. There is a calculator at: <http://civil-eligibility-calculator.justice.gov.uk/>.

Referral to external legal partner

MEND
Islamophobia Response Unit
Bow Business Centre
153-159 Bow Road
London E3 2SE

External partner address

Dear **insert name**,

Our ref: **[matter number]**

We write in respect of the above matter.

We have been acting on behalf of our client in a discrimination case. Since we are a volunteer organisation, our capacity to see cases through to their conclusion is limited. In cases where we believe that there are sufficient prospects of success, but we are unable ourselves to continue acting due to constraints, we refer clients to law firms whom we think have the right expertise to help them through to the conclusion of the matter.

The present case in question fits the criteria to be referred to you, and we therefore think that you would be right firm to act for the victim.

We have been given permission to furnish you with the relevant details for you to initiate contact yourself with the client in order to ascertain whether or not you wish to take on this case.

We would, of course, be happy to discuss the case further with you either in writing or on the phone.

We look forward to hearing from you.
Yours sincerely,

Supervisor name
Islamophobia Response Unit

Case conclusion note

Matter Number	
Client name	
Caseworker name	
Date of Closure	
Reason for Closure	
Outcome	
Date documents to be destroyed (6 years from date of closure)	

Wellbeing

Introduction

It is accepted that many people who contact the IRU will be emotionally distressed to some extent. This will vary from mild irritation in an incident where they may have been overlooked for an internal promotion to frank mental illness following a violent physical assault. This emotional or psychological reaction may thus affect the nature of how their case is presented to the Caseworker and thus it is important to have some basic knowledge of the types of such psychological reactions since some people may need to be referred on for further medical or psychological help

Similarly it is also recognised that such work can be stressful for the Caseworker, and thus will also briefly discuss the nature of this impact and how Caseworkers can minimise and manage their own wellbeing when undertaking such work

Psychological reactions to discrimination

The effects of racial discrimination on mental health is well recognised. Pascoe and Richman (2009) undertook a meta-analysis on the effects of perceived discrimination on mental and physical health and found significant negative effects on both mental and physical health.

Wallace et al (2016) undertook a large longitudinal survey and found similar negative effects on psychological wellbeing for various ethnic groups, but also a cumulative effect for those people who had experienced discrimination on more than one occasion, suggesting that undertaking simple cross-sectional surveys may underestimate the impact of such discrimination. This cumulative effect was more pronounced in Pakistani and Bangladeshi groups suggesting that muslims were affected more than other religious groups.

The range of psychological reactions can be varied and we will briefly only discuss the common ones here

Adjustment Disorder

An Adjustment Disorder is the commonest psychological reaction. These are defined as *“states of subjective distress and emotional disturbance, usually interfering with social functioning, arising in the period of adaptation to a significant life change or stressful life event”*. We have all experienced these to some extent. The majority of the time, such states are self-limiting and do not require any formal treatment or support. Typical symptoms of adjustment disorders are usually severe types of emotion, including depressive symptoms, anxiety, tearfulness, worry, tension and anger

Most Adjustment Disorders resolve spontaneously within 3-6 months. However they can become 'chronic', and may then develop into full-blown mental illness, such as depression, anxiety disorders and Post-Traumatic Stress Disorder, and require specific treatment.

Depression/ Depressive illness

These are a more 'severe form of reaction and is a recognised mental illness. Typical symptoms include

- Depressed mood
- Loss of interest in activities that are usually pleasurable
- Decreased energy
- Loss of confidence
- Excessive guilt/ self-reproach ('Why me?')
- Recurrent suicidal thoughts
- Decreased concentration
- Sleep disturbance
- Change in appetite/ weight (especially loss)

Anxiety / Anxiety Disorders

Anxiety is a normal human emotion. We have all experienced anxiety, especially before stressful situations such as prior to job interviews or an examination. Typical symptoms include 'butterflies' in our stomach, sweating, a dry mouth etc. A degree of anxiety may also be quite positive, e.g. it might spur us to revise for an exam. However in anxiety disorders, such anxiety is severe, uncontrollable and interferes with usual social functioning.

There are types of symptoms in anxiety disorders; psychological and physiological (physical symptoms). There are many such symptoms hence only common ones are given here;

Psychological symptoms include;

- Feeling anxious, worried or tense
- Feeling as if your mind is 'going blank'
- Restlessness, inability to relax
- Fear of dying or passing out

Physical symptoms include;

- Palpitations/ pounding heart
- Sweating
- Trembling/ shaking
- Dry mouth
- 'Butterflies' in the stomach
- Sickness and vomiting
- Dizziness or unsteady
- Chest pain,

- Breathlessness / rapid shallow breathing (hyperventilation)

A panic attack is a severe attack of anxiety, where the person will report many of the above symptoms suddenly appearing and rapidly increasing over the course of a few minutes, before subsiding.

Post-traumatic Stress Disorder (PTSD)

This is a special type of anxiety-based condition which arises out of a catastrophic or traumatic life event. Although we traditionally associate such conditions as occurring in the aftermath of wars or natural disasters, they may occur as a result of a physical or sexual assault, and even in extreme causes of emotional assaults, such as harassment or stalking.

As well as typical anxiety symptoms, sufferers experience;

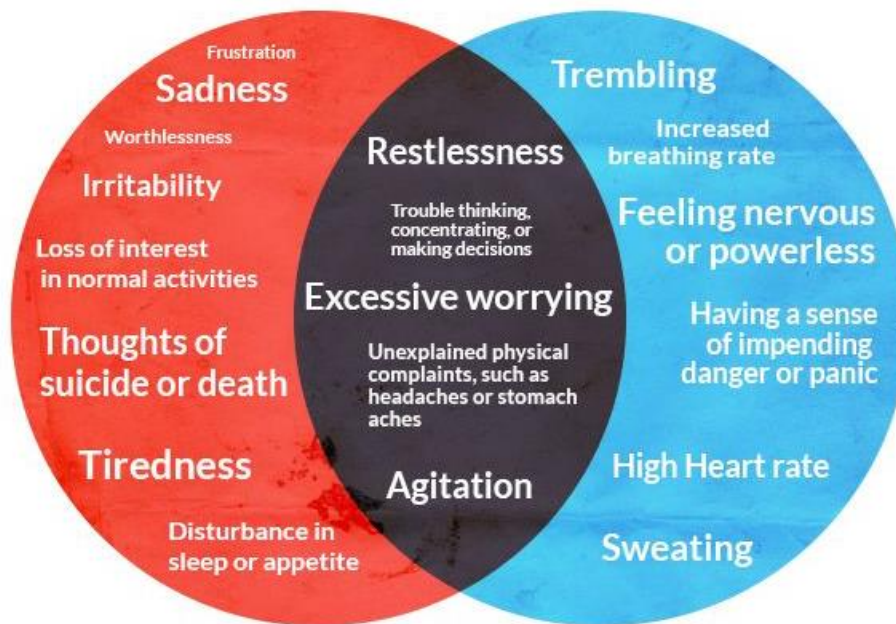
- avoidance of things that remind them of the original attack (e.g. the place it happened or going out altogether)
- flashbacks (vivid imagery relating to the original incident),
- nightmares,
- hyperarousal (always on edge or easily startled)

Avoidance of activities that the victim used to do, e.g. going out shopping, collecting the children from school or going to work is often a good indicator of the presence of a more significant psychological reaction requiring professional help

In reality victims will not present with symptoms of just Depression or just Anxiety. They will have a mixture of both as the diagram below shows.

Depression

Anxiety



What should a Caseworker do if they suspect the victim may be suffering a psychological reaction or mental illness?

The first thing should be the Caseworker should elicit as much information as possible in a supportive, non-judgemental manner. They should encourage positive ways of coping, including;

- obtaining family support,
- disclosing their concerns to a supportive family member or friend
- trying relaxation techniques such as deep breathing , yoga or meditation
- praying, du'aa (supplication), reading Qur'an

With regards to the latter, it must be remembered that in some mental illness the victims' ability to undertake acts of worship such as praying (salah) may be reduced due to poor concentration and short-term memory and it is important that this is understood since in such cases telling the victim to simply pray more may further their distress, guilt and be ultimately counter-productive

In some cases however the Caseworker needs to recognise more psychological reactions that may be suggestive of the conditions outlined above and refer or signpost the victim to the relevant professionals

In some cases victims will be reluctant to seek help due to the stigma of mental illness, which is especially prevalent in Asian and Muslim communities. However it is likely with gentle encouragement and the involvement of family and friends that over time, the person can be encouraged to seek help.

Signposting is especially important where there are 'red flags' i.e. symptoms to suggest that the person may be in imminent danger. **These centre around the patient having suicidal thoughts or plans. In such cases, a referral needs to be made urgently,** and the person (or family member) needs to be encouraged to seek help. In cases where the person is living alone, the Caseworker may need to contact the person's GP themselves if the victim is reluctant to do so. In such cases confidentiality needs to come secondary to the victim's personal safety.

This will be either an urgent appointment with their GP, or attendance at their local A&E (Emergency Department). The victim will then be assessed and may be treated with medication or types of psychotherapy, and in more severe cases will be referred to more specialist psychiatric services for ongoing treatment and monitoring

It is important that Caseworkers do not attempt to manage such psychological conditions themselves and in all such cases should discuss the case with their Supervisor and keep detailed and accurate records of the advice given. Although you may have formed a close relationship with the victim, it is important to remember at all times that you are NOT their counsellor, doctor or psychologist.

Most cases will not be urgent and in addition to the above NHS resources other sources of help may include;

The Samaritans (www.samaritans.org)

This is a national charity that is very experienced at dealing with emotional problems, and offer counselling and support to people in distress. They are available 24 hours, 365 days a year.

Victim Support (www.victimsupport.org.uk)

This is also a national charity focussed on helping victims of crime or traumatic events. In addition to emotional support they can also assist the victim through various aspects of the 'victim's journey' including practical help such as filling in forms for compensation claims, installing burglar alarms, dealing with the Court process including attending Court to give evidence or writing a Victim Personal Statement

Caseworkers' Wellbeing

It is also important that Caseworkers look after themselves from a psychological perspective. It is recognised that many Caseworkers will be experienced professionals themselves, and used to handling stressful situations or dealing with patients, customers or clients under stress. However it is still important to recognise that dealing with IRU cases will also be stressful in its own right, and Caseworkers need to be aware of the effect that listening to stories of discrimination and physical attack can have upon them

This where it is important that when Caseworkers are finding it emotionally difficult to handle a case that they discuss this with their Supervisor. We are all human, and to do so is not a sign of 'weakness'; indeed it is the opposite. We do not expect Caseworkers to be able to deal with all cases alone.

One of the key concepts in determining our ability to handle stress is that of Emotional Resilience. This is defined as the ability to adapt to stressful situations, and 'bounce back' from adversity. It is correlated with psychological and physical wellbeing. Although there is some debate as to how much it reflects personality traits within us, it is accepted that there is an extent to which it can be developed and learned

A Government Review of emotional resilience in 2015 found that resilience was considered a predictor of wellbeing and enhanced by the following;

- Personal characteristics
- Social support/ networks
- Cultural factors
- Spiritual factors

Another common model of resilience is given by the RobertsonCooper Model. This suggests that there are four factors underlying emotional or personal resilience.

These are;

- Confidence – feelings of effectiveness in coping with stressful situations
- Purposefulness - having a clear sense of purpose, values and drive
- Adaptability - flexibility in adapting to changing situations
- Social Support - building good relationships with others and seeking support



A more detailed discussion is outside the scope of this manual but further details can be obtained at www.robertson.cooper.com

How can I become more resilient?

From the above we can see the characteristics that need to be developed to enhance resilience. In practical this suggests that we need to do the following;

- Ensure a healthy work-life balance (easier said than done)
- Practice relaxation techniques (prayer, yoga, meditation etc)
- Look after our physical health by a healthy diet, adequate exercise and sleep
- Take breaks
- Talk to people – become part of a team that you can identify with
- Keep on learning – strive to develop new skills or enhance those you have

Caseworkers can measure their own levels of resilience by using the *i-resilience* tool on the RobertsonCooper website at <http://www.robertsoncooper.com/iresilience/>

i-resilience provides an understanding of personal resilience and gives a personal *i-resilience* report that allows users to build on existing areas of strength. This will then allow the user to develop their resilience in line with the results of their report.

Part of a sample report is give below;

Adaptability

Based on your responses to the personality questionnaire, the areas below are likely to generally help or hinder your resilience:

Hinders your resilience		Helps your resilience
Level of frustration		
	Impulse control	
		Level of imagination
		Degree of emotional awareness
	Preference for variety	
		Degree of openness to ideas
	Level of sympathy	
		Preference for order

- **FRUSTRATION:** Being prone to feelings of irritability and impatience may make it difficult for you to deal with problems and everyday frustrations in a calm and flexible manner.
- **IMPULSIVITY:** Your self-control is average; you can control your response to respond to situations in a constructive, adaptable way but you may sometimes give in to your impulses.
- **IMAGINATION:** You are likely to spend time looking ahead to anticipate future developments, but may not focus enough on immediate practicalities.
- **EMOTIONAL AWARENESS:** Alertness to your own and others' emotional reactions should help you to respond adaptively in a changing situation.
- **VARIETY:** You are generally comfortable with necessary change, although you do not need constant variety in your life and work.
- **IDEAS:** Your interest in intellectual challenges and new ideas will help you to adapt to different situations and demands.
- **SYMPATHY:** Your sympathetic attitude should help the flexibility of your response as long as you do not put yourself under unnecessary pressure by being too sympathetic.
- **ORDER:** You should be able to achieve a good balance between being organised and being flexible.

References

Pascoe, E. A., & Richman, L. S. (2009). Perceived Discrimination and Health: A Meta-Analytic Review. *Psychological Bulletin*, 135(4), 531–554. <http://doi.org/10.1037/a0016059>

Wallace, S., Nazroo, J., & Bécares, L. (2016). Cumulative effect of racial discrimination on the mental health of ethnic minorities in the United Kingdom. *American journal of public health*, 106(7), 1294-1300.

Bennett, K. (2015). Emotional and personal resilience through life. *Foresight, Government Office for Science, London*. <https://www.gov.uk/government/publications/future-of-ageing-emotional-and-personal-resilience>