



**EHRC Consultation on Draft Code of Practice on
Employment**

UNITE – the Union Response

March 2010

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Introduction

This response is submitted by Unite, the union. Unite is Britain and Ireland's largest trade union with 1.5 million members across the private and public sectors. As the union's members work in a range of industries including manufacturing, financial services, print, media, construction, transport, local government, education, health and not for profit sectors, we have extensive experience of representing men and women workers who are faced with discrimination on all grounds. We believe that the codes of practice are an important tool for union reps as well as employers to ensure action to prevent and tackle discrimination in employment and in the wider community.

Unite the Union Response - Key Points

1. Unite welcomes the consultation on the Employment Statutory Code of Practice.

We have found the current codes of practice very useful and our officers and reps have used the EOC, CRE and DRC codes of practice to deal with cases, in collective bargaining, and to assist in preventing discrimination. The future codes of practice for the Equality Act must at least be as good, practical and positive a tool as the current ones. The production of new codes also gives the opportunity to improve on them.

2. Sadly, however, our initial overall response to the current consultation is that the code is confusing, extremely hard to follow, sections are difficult to find, and the weight in content given to specific forms of discrimination is unequal, sending further confusing messages. We are also very concerned that throughout the code, there is very little mention of the vital role of trade unions, including no reference to the role of union equality representative, a position clearly included in ACAS Code which could be cross-referenced. All the major equalities cases that have tackled discrimination have included trade unions – such an oversight is unacceptable. Additionally, there is a continued reference to “Networks” or “Network groups” which is very unclear. Trade unions clearly need to be included and there needs to be a reference to specific role of the union equality representatives and joint equal opportunities and diversity committees/councils which exists in many workplaces particularly in larger ones.

3. The current codes are simple, easy to carry and clearly relate to one area of discrimination to be addressed. In seeking to simplify by bringing the codes together, and including a more co-ordinated and comprehensive approach, the draft employment code is in danger of creating more complication and undermining some forms of discrimination eg the cursory reference to sex discrimination on page 34, which includes 3 clauses, two of which refer to what is not covered, is completely inadequate.

4. Although it is helpful to cover all areas of equality under subject areas such as recruitment, retirement and dismissal (chapters 6-10), the coverage of individual areas of equality needs to be equally easy to access throughout. This could be done electronically by ensuring links to all specific paragraphs for one form of discrimination are accessible via the list of 'protected characteristics' in Chapter 2, and through the production of a set of booklets on each area of equality, so that for example action to tackle sex discrimination, disability or race discrimination can be clearly identified.

5. While we are aware that using the documentation electronically may assist with a number of the points we are raising, the current document does not clearly suggest where different levels of electronic access may fall. Many will need to use a hard copy of the code for preparation or during a meeting or training event, and access to the internet is not universal, so the written format also needs serious consideration.

Unite the Union Response – More Detailed Points

In this response, in addition to the points above and in support of the TUC submission, we first highlight overarching points that apply to the whole code, and then raise more detailed specific points under each Chapter/section, following the format of the response document.

OVERARCHING POINTS COVERING THE DRAFT EMPLOYMENT STATUTORY CODE OF PRACTICE

1) ACCESSIBLE FORMAT AND LAYOUT

While it is helpful to have the references to clauses in the Act at the side of the relevant paragraphs, the layout does not clearly separate legal sections of the act from commentary on the legal sections. The examples are however very easily identifiable and currently stand out as the most important sections of the text. We would suggest that the legal quotes should stand out in this way, with the examples highlighted in a less striking way.

The code needs a clear Contents Page covering all Chapters after the Foreword, and then on the first page of each Chapter, a separate list of the contents of that Chapter.

The code needs an Index and a Glossary of Terms eg. the word “asymmetrical” should be in italics to indicate it is included in the glossary.

Also, where actual case examples are used it is important to reference to the actual case as a footnote for further reading.

A paragraph is included in most Chapters stating what is to be covered however, this is missing in Chapters 4, 8 and 10. Also, in Chapters 9 and 12 this needs to be stated much sooner in the introduction.

2) ACCESSIBLE LANGUAGE

The language used is generally, like the Act, helpful and easy to follow. However, throughout the text, there are specific phrases that are not sufficiently clear, accessible or readily understood. Phrases like ‘protected characteristics’ and ‘prohibited conduct’ for example, are more helpfully written in full, so it is clear they refer to people and specific forms of discriminatory behaviour. For this reason throughout the document use of the terms “age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation” should replace as much as possible ‘protected characteristics’. We have noted that the draft EHRC Guidance at the beginning of Chapter 4 on Recruitment is a good example of how this can be done.

The use of plain English is necessary to make this code accessible and sentences like “unlawful discrimination occurs when protected characteristics and prohibited conduct are connected in specific ways” on page 18, should be rephrased and abbreviations like “CEO” instead of manager or chief executive should be avoided.

Clear headings and sub-headings make it much easier to find subject areas particularly when dealing with cases. The Code of Practice on Employment and Occupation for the Disability Discrimination Act 1995 can be used as a good example.

For clarification “**the Equality Act**” should be used throughout the document instead of “**the Act**”, as it is likely that sections will be referenced separately, and having to constantly check back to other parts of the code for clarification is very unhelpful.

Many examples used to illustrate sex discrimination refer to childcare which we agree is a major issue for women but it is not the only one. Therefore, other causes of sex discrimination need to be included, for example part-time work, pensions and promotion. Also, since women mainly take the role of the carers in the family it is more comprehensive to use “caring responsibilities” instead of “childcare responsibilities” in at least some of the examples used in the code.

For race discrimination there needs to be some examples on segregation, low pay and lack of promotion which has a great impact on black, Asian and ethnic minority workers.

There are not enough examples on the new areas of discrimination on grounds of sexual orientation, age and gender reassignment. These need to be included in different sections in the code and not just under their own section heading.

3) FOREWORD

As said above, the codes do not refer to the role of trade unions in combating discrimination and it is important that this becomes clear from the start of the document. Therefore, the first paragraph on page 2, could say “it will make it easier for employees and their representatives ie. trade unions to use the codes to deal with discrimination in the workplace.”

4) CHAPTER 1

It is vital that the code sets out from the start that discrimination is unfair, illegal and should be avoided rather dealt with after it has taken place. This has been addressed to some extent on page 12 but it is not a strong statement or a positive encouragement for employers. Therefore a section on “How can discrimination be avoided” as in the Code of Practice on Employment and Occupation for the Disability Discrimination Act 1995 is necessary in this chapter to set the tone of the whole code.

Although the introduction explains the Act and the purpose of the code, it has no introductory explanation to frame the following contents. Therefore, the chapter should start with an introductory sentence on the code and its purpose similar to page 6 of the EOC Code of Practice.

As explained above the vital role of trade unions should be clearly stated in the code therefore, “trade union representatives” should be inserted at the start of the third bullet point on page 8.

There is also a need to insert a section on the role of trade unions and union equality reps to include the ACAS Code of Practice on union equality reps.

“How to use the codes” on pages 13-16 should form a separate section and be signposted in the Contents page. It should also be clearly separated and marked as are Chapters 1-4.

The first 4 lines at the beginning of page 4 are irrelevant and unnecessary and to avoid confusion need to be deleted.

5) CHAPTER 2

As stated above, sex discrimination has not been covered in any detail and the examples on page 19 do not even refer to sex discrimination. Therefore, the unlawful discrimination examples should include both sex discrimination and

disability discrimination. The first example could say that the employee is a “woman or black or Muslim”. The third example could state a “female employee treated less favourably because she has a disabled son.”

Also, 2.57 on page 34 refers to gender reassignment and sexual orientation which is very ambiguous and confusing and we recommend it is deleted.

Some of the quotes from the Act are incorrect and all need to be checked and copied exactly. For example, the definition of disability under 2.9 on page 22 is missing “normal” in the “day to day activities”.

2.62 on page 35 is useful and it needs to be referenced to Gender reassignment section on page 23.

6) CHAPTER 3

We understand that there is a need to use legal terminology in the code but this should be used in a way that is user friendly. For example, the chapter title, “Prohibited Conduct” on page 36 would be more accessible and easily understood if it were replaced by “Types of Discrimination” (as in the Statutory Code of Practice on Racial Equality in Employment). The phrase ‘prohibited conduct’ could then appear next to it in inverted commas.

The section headings are not clearly visible and are lost in the text, for example “Indirect Discrimination” on page 75. They should all be in bold larger fonts with the quote from the Act highlighted.

The sub-headings are mostly clear but some need to be reviewed and changed to make sense to the user. For example:

- “Knowledge” on page 66 needs to say “Employer’s knowledge of disability”.
- Page 72 under 3.80 needs to change to “Employer’s knowledge of pregnancy”.
- Page 83 under 3.104 needs to say “The intention to discriminate”.
- 3.185 on page 120 should read “Rights after leaving employment”.
- “Aiding contravention” on page 128 should say “Helping someone to discriminate”.
- Page 129 under 3.207 needs to change to “Liabilities of the person who helps someone to discriminate”.
- The sub-heading of 3.91 on page 76 needs to be bold.

The examples in the code are very helpful but some of them are either incorrect, vague or they stereotype. For example:

- 3.5 on page 39 does not as it stands constitute less favourable treatment on grounds of sex as to do this it would need to include a male comparator who had also had a complaint about his report, but was allowed to continue to carry out appraisals

- The statement “who was born physically female” in the example under 3.6 on page 39 is derogatory and should be deleted.
- The first example under 3.17 on page 44 needs more explanation or context ie. the religion of the employer, employee or others at the workplace
- The example under 3.29 on page 49 need to change “ans” to “means”
- The last sentence in the third example under 3.29 on page 50, appears to be saying that if the 50 year old worker was in a customer facing role it would be alright to discriminate based on age
- The first example under 3.4 on page 53 could state the presumption about the black male applicant to be the stereotype of being lazy rather than a thief
- The first example on page 63 under 3.52 does not make it clear why there is unfavourable treatment unless the end of second line changes to “He **cannot move because** he needs a quiet office space....”
- To make it clear that alternatives are available to work practices, the example on page 65 needs to state the manager’s suggestions

The word “prohibited” has been used instead of “protected” in two occasions in the code: line 9 of page 36 and line 2 of 9.63 on page 240. These need to be amended.

It is very important to make it clear in this chapter that there is no need for a comparator for discrimination arising from disability. Therefore, 3.49 on page 61 should be rearranged to make this point. It should read “There is no need for a comparator when considering whether there has been discrimination arising from disability. It is only necessary to demonstrate that the unfavourable treatment is because of something arising in consequence of their disability. There is no need to show that a person without a disability or with a different disability would not have been treated unfavourably in the same circumstances. Both direct and indirect discrimination however do require a comparator.”

Also, to explain disability discrimination the meaning of “something arising in consequence of their disability” should follow right after 3.45. Therefore, 3.51 on page 62 should become the new 3.46.

To make it easier to find parts relevant to disability discrimination and employers duties then the section “Duty to make reasonable adjustments” from pages 87 to 102 should form a section on its own and follow on from 3.69 on page 69.

Agree with the TUC on sections for sexual harassment and victimisation under 3.164, 3.208 as well as examples on page 114 and the second example on page 125.

The word “principal” in the fourth example under 3.179 on page 119 has not been explained before and needs to be referenced to 11.3 on page 305.

In the section “Instructing, causing or inducing discrimination” on pages 125 to 130, the word “help” has been used throughout and it is confusing in some parts. Therefore use of “assist” as stated in the Act should be used to replace some of them.

7) CHAPTER 4

The general approach to equality in this chapter is positive with the Code encouraging the establishment, implementation and monitoring of equality policies. However, the chapter starts with the negative statement that there is no legal requirement for employers to have equality policies. This can discourage some employers. We believe it is very important to begin with the benefits of having equality policies and particularly include the positive and vital role of trade unions as part of the process.

Trade unions play a vital role in avoiding and combating discrimination in the workplace. Therefore, we are very concerned that trade unions are not mentioned as being integral to dispute resolution procedures in this chapter. Neither is there any mention of trade union equality representatives, whose important role has been continuously recognised in parliamentary debates around the Act, and included in the ACAS Code of Practice. This is a serious oversight.

Although trade unions are mentioned in some parts of the chapter, this is not as part of the whole process of ensuring legislation is applied in the workplace. For example, trade union and union/employer training for union reps should be part of the list on page 139. Also, active involvement of trade union reps in monitoring, identifying issues, action to remedy, reviewing and auditing should be included at all stages in this chapter. Unite agrees with the TUC’s suggestions for inclusion of trade unions in different Chapters.

8) CHAPTER 5

Examples should not state that there is or isn’t a definite case of discrimination since Employment Tribunals can decide against even the most obvious cases of discrimination eg. the examples under 5.3, page 157 should read “This **could** be an act of ..”

An example or further explanation similar to 5.12 is necessary under 5.11, on page 160.

As mentioned above some of the sub-headings are ambiguous and should change to make it easier to follow and understand, for example:

- “Past Characteristics” under 5.12 on page 160 could change to “current protection for people who had a ‘protected characteristic’ in the past”

- 5.15 could change to “protection for those who are not employees”
- 5.24 on page 164 could change to “Others with obligations under the Act”
- 5.30 on page 166 could change to “Employers’ defence”

9) CHAPTER 6

The positive tone at the start of this chapter needs to be followed through to paragraph 2 and it should read “The Act prohibits unlawful discrimination in the recruitment process. Employers must not directly or indirectly discriminate (there are certain limited exceptions as explained in Chapter 3) when recruiting and they must make reasonable adjustments for disabled candidates where appropriate.”

Trade unions play a very important role in ensuring equality throughout the recruitment process including monitoring and follow up action. Therefore, the introduction needs to make a reference to the involvement of trade union representatives at all stages.

Use of examples throughout the code has helped to clarify the Act. However, this is lacking in this chapter. Some useful examples have been taken from the Code of Practice on Employment and Occupation for the Disability Discrimination Act 1995, but more of them should be included to clarify the points. Also examples can be taken for example from Chapter 4 of the Statutory Code of Practice on Racial Equality in Employment.

To emphasise the importance of non discriminatory recruitment practices it is important that before “Job descriptions” on page 172, there is a quote from the Act as well as a section on “principles of good practice” similar to page 45 of the Statutory Code of Practice on Racial Equality in Employment.

The positive encouragement for employers to follow good practice in advertising should start the section on “Job advertisement” on page 176. Therefore an introduction similar to the EOC Code of Practice or the Statutory Code of Practice on Racial Equality in Employment is needed.

6.8 and 6.9 in this section should be written as laid out in the current Codes. Also the first bullet point of 6.9 should read “solely or in the first instance” as its original version in the Statutory Code of Practice on Racial Equality in Employment.

A bullet point similar to “Careers Service/Schools” on page 10 of EOC Code of Practice, amended to cover the Equality Bill ‘protected characteristics’ should also be added to this section. This is particularly important as stated for example in the evidence from the Women and Work Commission and the Ethnic Minority Task Force. These reports both raise concerns that advice and guidance currently provided by school’s careers advisers does not encourage young

women into “traditional men’s” jobs, or young black men and women into well paid and skilled jobs. Also, evidence from government initiatives such as SET for Work Scheme for women in science and REACH and PATH National programmes, which highlight the importance of tackling under-representation.

It is necessary to have all the exemptions and not just one listed under 6.10 on page 181 with the quote from the Act. Also, 6.10 refers to ‘occupational requirement’ but the example is not relevant to this requirement. Therefore, new examples covering the Equality Bill ‘protected characteristics’ need to be inserted.

It is important that the recent DWP findings on the use of CVs are included in the code through indicating that discrimination might be reduced by the use of standard application forms. There should be a reference to this as best practice in 6.13 on page 182.

Unite welcomes the fact that 6.21 on page 185 covers ex-offenders who are a very vulnerable group in our society. To strengthen this paragraph an additional quote “If the holding of any information on criminal convictions of workers is justified, ensure that the information is deleted once the conviction is ‘spent’ under the Rehabilitation of Offenders Act” from the Employment Practices Code should be added. It is also helpful to make a reference to two documents by NACRO on *Disclosure, law and practice* and *Ex-offenders and employment – the way forward*.

A new first bullet point, similar to or the same as 21(a) on page 10 of the EOC Code of Practice should be added in “Selection tests and assessment centres” on page 192. Also a new paragraph, similar to or the same as 21(b) on page 10 of the EOC Code of Practice should be added after 6.45 on page 194 making a new 6.46. Therefore the current 6.46 becomes 6.47 and so on.

The Interview recommendation in the EOC Code of Practice is much stronger than the statement used here from the Statutory Code of Practice on Racial Equality in Employment. Therefore, 6.53 on page 196 should be similar to paragraph 23(a) on page 11 of the EOC Code.

Paragraphs 4.30, 4.31 and 4.33 of the Statutory Code of Practice on Racial Equality in Employment should be adapted and included in the Interview section.

The points in 6.58 on page 197 have already been covered and should be deleted.

The medical examination recommendation on page 109 in the Code of Practice on Employment and Occupation for the Disability Discrimination Act 1995 is much stronger and should replace 6.60 on page 198.

10) CHAPTER 7

This chapter needs to start with a quote from the Act.

The second paragraph is repetitive and needs to be simplified.

Also, an example to illustrate this point needs to be included.

Use of the word “discrimination” in the first bullet point under 7.2 on page 201 and in the example on page 202 gives the wrong message. The correct word therefore, should be “favourable treatment towards disabled people”.

The example under 7.8 on page 205 needs to change from “consider” to “have evidence”.

For clarification, the sub-heading under 7.13 on page 207 needs to read “Types of positive action measures”.

The use of the word “soft” in the first paragraph and “more substantial” later is not needed and may act as an unnecessary artificial barrier to employers taking action.

The first sentence of 7.14 on page 207 is long and incomprehensible. It could be reworded eg. “The Act also specifically provides that in a recruitment or promotion situation an employer may choose a candidate from a disadvantaged group or a group where there is low participation provided they are as qualified as other candidates. This is allowed provided that the employer does not have a policy or practice of automatically choosing people from that group in these circumstances.” However this paragraph is repeated and could be better placed later in the chapter.

The example under 7.21 on page 209 is misleading. It is not clear whether this it is an “as qualified” example relevant to the subject being covered or an “equally suitable” one. Therefore, either the example needs to be re-written or replaced.

7.22 on page 210 has been covered previously and needs to be deleted.

7.23 on page 210 is unnecessary and negative and should be deleted.

For clarification, the sub-heading under 7.24 on page 210 should read “what is an automatic preference in recruitment and promotion?” Also, in the second paragraph the example should clarify the point rather than being a different version of what has already been said in the paragraph.

11) CHAPTER 8

The code should encourage non-discriminatory policies and practices in the workplace. Therefore, the phrase “A can discriminate” should not be used. For example, 8.1 on page 212, and 8.8 on page 214, 8.9 on page 215 and 8.12 on

page 217 need to be rephrased to show that in some instances direct discrimination is not unlawful.

In 8.4 and 8.10 on pages 213 and 216 replace “must not also be a sham or pretext” with “must be genuine”.

The sub-heading of “When can an OR be used” on page 213 needs to be bold. Also, the example under 8.5 on page 214 is confusing since it refers to GOR instead of OR.

8.6 on page 214 is unclear and needs to be rewritten.

There needs to be an example in 8.7 on page 214 to explain what is meant by the “arrangements A needs to make”.

The sub-heading of 8.8 on page 214 needs to be bold.

The first example under 8.10 on page 216 is about celibacy and not the sexual orientation of the youth worker. This example needs to be replaced with one that has a relevance to religious requirement.

8.11 on page 216 is unclear and should be rephrased. Also an example needs to be included to clarify this exemption.

8.14 on page 217 is long and ambiguous and should be rewritten.

12) CHAPTER 9

As said before the role of trade unions is missing in preventing and resolving discrimination issues. Therefore it is vital that where policies and procedures are mentioned for example, equal opportunities, harassment, disciplinary and grievance agreements and procedures then there should be a reference to the role of trade unions, recognition of union equality representatives, and jointly negotiated agreements.

To make the first paragraph on the first page of this chapter more positive, the second sentence “sometimes, the contract of employment... to accept.” needs to be deleted. The third paragraph needs to read : “Employers need to ensure that no contractual terms and conditions or practices and processes or written policies and procedures directly or indirectly discriminate against employees. Separately, reasonable adjustments will be required to any provision criterion or practice that puts a disabled employee at a substantial disadvantage.”

The insertion that there is no legal obligation on employers to provide a written employment contract on page 219 under 9.1, is confusing and misleading. This paragraph can be re-written for example by using the explanation from Directgov website as “All employees have an employment contract with their employer, be

it verbal or in writing. If an employee does not have a written employment contract, their contract would have automatically been created when they started work. Employees are entitled to a written statement of particulars of employment, under sections 1-3 of the Employment Rights Act 1996 detailing the main terms and other basic information about the employment relationship. This must be provided to the employee within 2 months of the start of their employment. It would however, be best practice to provide an employee with a detailed contract of employment covering more than the minimum statutory requirements.”

Agree with the TUC on 9.6 on page 220. The rest of the paragraph needs to change to encourage employers to pay the going rate regardless of age, as best practice. For example, the code can say that many employers pay the rate for the job and although it is not unlawful to pay by age bands it is best practice to pay a competitive rate to all its employees.

9.7 and its example on page 221 should be amended to cover the new apprentice pay coming into effect from October 2010 covering those under 19 and aged 19 and over, but in the first year of their apprenticeship.

9.11 on page 222 is unclear and needs to be simplified. For example “It is unlawful to design terms and conditions in a way that prevents or restricts discussion...”

There is a “to” missing from line 11 of the example under 9.14 on page 224, “access to the”.

Sub-heading, “Absence” on page 228 needs to be bold.

The example on 231 under 9.36 is not useful and just repeats what has been stated in the paragraph already.

9.37 on page 232 needs to encourage employers to disregard absences related to a ‘protected characteristic’ rather than to “consider whether it is reasonable” to do so.

The fourth and fifth sentence under 9.44 at the beginning of page 235 contradicts not only what has been said at the start of this paragraph but also the example. This needs to be amended to encourage best practice by making changes to work practices. This is clearly stated in the Code of Practice on Employment and Occupation for the Disability Discrimination Act 1995.

Agree with the TUC on 9.93 on page 257 to include a reference to trade unions.

9.96 on page 258 should include those on sick leave.

The code should encourage employers to adopt a zero tolerance policy in the workplace and not only when it is “sufficiently serious”. This phrase needs to be deleted from line 5 of 9.76 on page 246. Also, on line 4 it should read “protected”.

The second example under 9.76 on page 247 should include gender reassignment in its fourth sentence.

Line 4 of 9.77 should read “refer”. Also the example should say “caring responsibilities”.

The statement that “Employers are not required to provide a quiet or prayer room.” in 9.83 on page 251 negates the positive tone of this section and needs to be deleted. Consequently, “However” needs to be deleted from 9.84 on page 251.

The code does cover different provisions the employer can provide so in 9.87 on page 253 it is useful to add “Also, some religions require washing facilities enabling them to clean their hands, face, arms and feet before prayer. It would be good practice to provide this wherever possible.”

We agree with the TUC on 9.88 on page 254 to make it more positive and encourage good practice.

The second sentence in 9.97 on page 259 needs to be rephrased to say “employees covered by a protected characteristic under the Equality Bill” instead of “employees with a particular protected characteristic”.

The examples need to varied and cover all areas of equality eg. one of the examples under 9.104 on page 262 could be on a different Equality Bill ‘protected characteristic’, other than a disability.

Point (d) under 9.105 on page 263 is unclear and could change to “inappropriate ice breakers such as games that could cause offence or embarrassment”.

The example under 9.114 on page 268 does not seem relevant and it may be more appropriate to use a sexual orientation example on benefits for partners.

Delete ‘minimum’ in 9.154 on page 283.

13) CHAPTER 10

The introduction is confusing and it needs to be rewritten as the TUC suggests. Otherwise it should be replaced with a quote from the Act and then delete 10.1.

The terminology “automatically unfair dismissal” under 10.3 on page 288 needs to be explained. TUC suggestion to insert this in the introduction is helpful.

Victimisation is unlawful therefore “unlawful” should be deleted from the last line of the example under 10.4 on page 289.

The phrase “Those responsible for deciding whether or not an employee should be dismissed should understand the legal requirement not to discriminate.” is unnecessary and should be replaced by “They should understand the legal requirement not to discriminate.”

10.6 would be clearer if it were reordered as “The employer must ensure that there is no discrimination where a disabled person who is dismissed or selected for redundancy or for compulsory early retirement (including compulsory ill-health retirement). It may, in particular, be necessary for the employer to make reasonable adjustments.”

The example under 10.7 needs to state why length of service could amount to race discrimination as it is explained for sex and age.

It would be helpful to have an example in 10.8 on page 290 to illustrate the point.

It is necessary to list the “certain public bodies” in 10.11 on page 291. Also, the wording “full time staff” is misleading and suggests that part time staff are not included.

Line 11 in the example under 10.16 on page 294 should say “who require”. Also, the last sentence encourages employers to use “pressure on profit margins” not to make reasonable adjustments and needs to be rephrased.

Top of page 295 needs to say “the employer’s successor” for clarification.

The differences in what is a retirement age need to be clearly outlined to help with these quite confusing concepts. Therefore, 10.22 on page 296 needs to be rewritten and should include a good example to illustrate the issues.

It is unclear whether the example under 10.27 on page 299 is making the point that there could be other forms of discrimination or is explaining the procedure for intended retirement. This needs to be revised. Also, “employee” should be deleted in line 8.

Under 10.31 on page 302 a reference to the definition of “relevant workers” in 10.19 page 296 would be helpful.

The reason for 10.34 on page 302 is unclear. Both examples on page 303 are about a law firm and the second one is very confusing and doesn’t seem to be correct.

14) CHAPTER 11

The subject covered under this Chapter is quite complex and should include more examples as well as best practice advice.

The first sentence of 11.5 on page 306 needs to change in line with the explanation above under Chapter 9, referring to Directgov.

The point of the example under 11.6 on page 306 is not clear. It needs to be revised or replaced.

15) CHAPTER 12

In the introduction to this Chapter it is important not to exclude workplace procedures to resolve issues. A reference to the trade union role would be appropriate here.

The sub-heading “Introduction” on page 332 should change to ‘Employment Tribunal’. This section should state that an employee covered by a ‘protected characteristic’ and who believes they have been discriminated against has the right to go to an Employment Tribunal with their case.

A short introduction needs to be inserted at the beginning of the chapter.

“Questionnaire Procedure” on second paragraph of page 332 should be in bold and signposted to the explanation under 12.14. The Questionnaire Procedure has, in our experience over many years, on occasions assisted in ensuring an issue of discrimination is taken seriously and addressed, sometimes positively preventing the need to engage in a tribunal case.

In the third paragraph of page 332, “a claim must be brought within 3 months of the act” should be in bold.

In fourth paragraph of page 332, change ‘ofa’ to ‘of’.

The sub-heading under 12.14 on page 340 should be amended to read ‘Obtaining Information – Questionnaire Procedure’.

12.17 on page 341 needs to explain what alternative could be used for Questionnaire other than a specimen form and where you obtain the specimen form from.

16) APPENDIX

We have found the sample policies in the current codes for example, in the Statutory Code of Practice on Racial Equality in Employment very helpful. Therefore, the new code needs to include sample policies on eg. equal opportunities, zero tolerance as well as EHRC recommendations.

To be in line with the Regulations, the sub-heading “Religion and belief” on page 363 should change to “Religion or belief”.

Sub-heading “sexual orientation” on page 364 does not pay enough attention to the fact that monitoring sexual orientation is different from other areas of equality. Although there is legal protection, monitoring is still a very sensitive issue which therefore needs a clear explanation due to the very personal nature of the question and also due to harassment and other forms of discrimination. The code should refer to the different nature of sexual orientation monitoring and should include reference to the need for agreement and genuine consultation with trade unions, before employers add questions on sexual orientation to existing monitoring, or produce separate lesbian, gay and bisexual (LGB) monitoring. Therefore, employers need to be referred to the following advice, including¹:

- There must be a full LGB equality policy already in place, and action to implement it
- Everyone should be clear why monitoring for sexual orientation is being carried out, and what will be done with the results
- There should have been a process of consultation on, and explanation of, the first two bullet points, prior to completion of the plan and implementation
- There needs to be an absolute guarantee of confidentiality of the information collected
- It should be made clear that answering questions is voluntary
- There can be monitoring of many things:
 - Most commonly, of the profile of the workforce, including distribution of people through grades; this can be used to check whether the workforce is representative of the community, and to identify whether there are obstacles to the career development of particular groups that should lead to remedial action by the employer. But with LGB workers one can only compare with previous surveys, not against a national count of how many workers would be representative
 - The attitudes of staff or clients
 - The take up of employee benefits
 - Internal grievance and disciplinary cases, to check whether there is fair treatment of all groups in the system, or if there is a greater proportion of cases of a particular kind (for example, harassment on grounds of sexual orientation, and whether and how it is being dealt with). It should be noted that the absence of data here might conceal a serious problem. Also, an absence of cases does not necessarily mean an absence of discrimination, it could mean that LGB workers don't feel confident to complain about problems.

¹ *LGBT Equality in the Workplace - A TUC Guide for Union Negotiators on lesbian, gay, bisexual and trans issues* has been used to form Unite's comments on sexual orientation monitoring in the Appendix.

Monitoring can be carried out:

- By questionnaires attached to application forms, during recruitment. For this, separate the monitoring form and make it anonymous
- By surveys of all staff, included with other questions with the commitment to repeat the exercise at specified intervals (for example, two years) so as to compare results and draw conclusions over the effectiveness of the plan.
- By surveys of all staff, but only on specific questions, such as the areas of equality covered by employment law on sexual orientation and religion or belief (as previous point)
- By exit interviews

On page 364, “Gay man” needs to change to “gay”, “Gay woman/lesbian” needs to change to “lesbian”, “Heterosexual/straight” with “Heterosexual” and delete “Other”.

Considering the above, the second paragraph “Some employers...gay woman.” and the third paragraph “It also...not suitable” on page 364 should be deleted.

In line with the Act, the sub-heading on page 365 could helpfully change from “Transgender status” to “Transgender”. The code can state that it is acceptable for employers to use the term trans. This covers both people undergoing gender transition, and people who identify as someone with a different gender from that in which they were born, but who may have decided not to undergo medical treatment. Additionally, the points raised above also apply to Transgender monitoring.