

# **TACKLING RACIAL ATTACKS & HARASSMENT**

## **MODEL PROCEDURES FOR SCOTTISH HOUSING PROVIDERS**

positive action in housing

the chartered Institute  
of Housing in Scotland

Scottish homes

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## **Introduction**

Racial Harassment is a serious and increasing phenomenon. It is estimated that people from black and ethnic minority communities are 50 times more likely than white people to be victims of racially motivated crimes. The figures speak for themselves. All housing providers therefore have a responsibility to ensure that they are exercising their powers to protect their tenants from racial attacks in and around the home.

The Commission for Racial Equality, in its statutory code of practice for rented housing recommends that housing providers should adopt a formal Racial Harassment policy that commits them to give support to victims and take action against perpetrators.

It has been argued that all harassment is bad, and that there is no reason to single out disturbances on the grounds of race. This type of argument misses the point. Of course all types of unreasonable and anti-social behaviour are deplorable and organisations should have or develop systems for dealing with these problems. However, what is of concern is the large and growing number of cases where individuals are specifically picked on because of their racial origin.

This document sets out a model for tackling racial attacks and harassment. It is guidance to help housing providers stop and prevent harassment and to deal effectively with perpetrators. It may also provide a model for dealing with other forms of harassment and antisocial behaviour.

In putting this procedure together we drew on a number of good practice guides. We would particularly like to acknowledge the following publications which provided useful source material:

Racial Harassment Policies and Procedures for Housing Associations, National Federation of housing Associations (1989)

Living in Terror, Commission for Racial Equality(1989)

Action on Racial Harassment, Duncan Forbes (1988)

HMSO Racial Attacks and Harassment: the Response of Social Landlords (1996)

We would also like to thank Derek O'Carroll of Govan Law Centre for contributing a summary of legal remedies to tackle racial harassment in housing.

We would encourage every housing committee in Scotland to consider the implications of this document and implement its guidance.

We are pleased to note that the government is consulting on the desirability of introducing specific new offences of racial harassment and of racially motivated violence.

The creation of specific new statutory offences would undoubtedly send out a very high profile message, both to society at large and to practitioners within the criminal justice system, that behaviour involving racial harassment or racially motivated violence is entirely

unacceptable in Scotland and that the full weight of the criminal law will be brought to bear on those who carry out such acts. New offences would signal the government's commitment to ensuring that all reports of racial crime are thoroughly investigated and prosecuted where possible.

Positive Action in Housing would like to thank May Fong of Scottish Homes and acknowledge the financial assistance of Scottish Homes and the Chartered Institute of Housing towards the publication of this document. Finally, we welcome your feedback and constructive criticisms. These will contribute to a review and enhancement of these model policy and procedures.

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## 1 Racial Harassment - Where to Start?

*This section sets out some of the issues housing providers will need to address in the process of developing the racial harassment procedure, including:*

- *Committee Responsibilities*
- *the distinction between racial harassment and acts of antisocial behaviour.*
- *a definition of racial harassment*
- *a 'no harassment clause' in the tenancy agreement*
- *publicising the organisation's stance*
- *racial harassment within the allocations policy*
- *reciprocal arrangements with other housing providers*
- *nomination arrangements with voluntary organisations, especially ethnic minority groups.*

### **Committee Responsibilities**

Below is a straightforward checklist of the actions which need to be taken by the management committee (for housing associations/co-operatives) or Housing Committee (for the local authority).

- Agreeing that a policy and procedures to deal with racial harassment should be adopted by the organisation.
- Agreeing that an additional clause should be included in the tenancy agreement which relates to harassment and agreeing a timetable for this to be done.
- Designating a senior member of staff to be responsible for the various aspects of policy implementation.
- Agreeing to consult and consider the views obtained from tenants and establishing a method and timetable for this to be done.<sup>1</sup>
- Agreeing a programme of training for staff and committee members about the new policy and procedures.
- Monitoring the Performance of the Housing Organisation: Once the policy and procedures are established, the Committee's task will be to monitor the performance of the organisation. As far as monitoring the policy is concerned, the key points are:
  - how many incidents are reported
  - the nature of the incidents
  - the wishes of the victim(s), e.g. request for transfer
  - the effectiveness of action taken by the staff and by other agencies involved (for example, the police, community groups, the organisation's solicitor or legal section).
  - the number of offers of accommodation refused where the reasons are related to the prevalence of racial harassment in an area. With this information, it will then be possible for the Committee to assess the

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<sup>1</sup>This provides an ideal opportunity for tenants to air their views about the organisation's stance and for the organisation to raise a greater awareness of the problem of harassment in their area.

extent to which the procedures have helped those experiencing harassment and deterred further incidents.

- Agreeing any necessary changes to the transfer policy and agreeing to participate in reciprocal arrangements between housing associations and the local authority.

### **Training**

Everyone who might come into contact with complainants or perpetrators needs to have a clear understanding of what the racial harassment policy means and how it applies to their own role.

Specific skills required for a narrower range of staff include interviewing (complainants, other witnesses and perpetrators) and collecting evidence. A working knowledge of legal remedies is also useful although this does not rule out the need for professional legal advice. Training can also be used to impart confidence: people may be anxious about their own ability to handle such an emotive issue.

It may be appropriate to involve tenants organisations, voluntary organisations or the police in staff training sessions. The exchange of views can develop mutual understanding and lead to joint initiatives.

Refresher courses can be used to obtain feedback from staff on any problems or suggested improvements in service delivery and review any success or failure.

### **How do crimes amounting to racial harassment differ from other crimes?<sup>2</sup>**

*Racial harassment victims are likely to be victims again*

Crimes which form part of a campaign of racial harassment are different in that the motive of the crime is not money, but racism. The complainants are chosen because of their racial origin or that of a family member. Where the harassment is being committed against one family, the members of that family are 100% likely to be the next victims of a criminal offence committed by that perpetrator.

*Racial Harassment and Antisocial Behaviour*

There is no comparison between racial harassment and most acts of anti-social behaviour, which is usually committed by people who do not care who suffers. Racial harassment is behaviour committed by people who want a particular family or person to suffer.

*Racial Harassment and Neighbour Disputes*

Racial harassment may be committed by a neighbour. To that extent alone, it could be classed as a 'neighbour dispute'. However, the classification 'neighbour dispute' is misleading because it is assumed that two parties are partly to blame. A wide variety of grievances go unacknowledged by being labelled as 'neighbour disputes' but racial harassment should not fall into that category.

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<sup>2</sup>Legal Action on Racial Harassment, Duncan Forbes (1993)

## **Definition of Racial Harassment**

Racial harassment refers to a range of criminal and offensive behaviour motivated by hostility towards someone because of their ethnicity, culture, community, religion, appearance, "race" or national origin. It includes not only physical assaults but verbal abuse, threats and insults, damage to buildings and property<sup>3</sup>. Attacks and harassment are presumed to be "racial", if:

- they involve explicit racist insults or abuse.
- the offenders belong to a different community, culture or ethnic group from the victims;
- they are targeted only or primarily at members of specific groups or communities;
- the offenders have been known in the past to engage in racist abuse and threats;
- the offenders have previously been warned that their behaviour causes distress, and that it has the appearances of being racially motivated;
- the offenders are members of, or are associated with, an organisation known to promote or support racist views;
- their effect is to make the victim feel that they have been attacked or threatened because of their ethnicity, culture, community, religion, appearance, "race", or national origin, and therefore feel less safe and secure in their homes and less free to walk the streets of the neighbourhood.

A racial incident can be defined as any incident in which it appears to the reporting or investigating officer that the complaint involves an element of racial motivation, or any incident which includes an allegation of racial motivation made by the complainant.

Examples: Harassment can take many forms. The following list is illustrative but not exhaustive:

### Threats to the person

- unprovoked physical assaults
- threatening or abusive letters and telephone calls
- verbal abuse, including name calling and swearing
- repeated and unfounded or trivial complaints against a tenant or group of tenants.
- threatening or abusive behaviour including spitting
- failure to control dogs.

### Damage to the home

- vandalism to property
- graffiti
- arson or attempted arson, including pushing litter or inflammable materials through doors or windows.
- "flooding out" properties intentionally
- activities intended to deter a person from occupying a particular dwelling.

### Harassment Outside the Home

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<sup>3</sup>Based on Commission for Racial Equality's definition, Living in Terror (1987)

- placing excrement or rubbish near or in homes
- placing offensive items near homes
- damage to property used by a particular group including places of worship, community centres or shops
- vandalism of vehicles
- attacks on shops or businesses

### **A ‘No Harassment’ Clause in The Tenancy Agreement**

#### Example 1:

The Tenant agrees not to commit or allow members of his/her household or persons visiting the house to commit any form of harassment on the grounds of race, colour, religion, sex, sexual orientation or disability which may interfere with the peace and comfort of, or cause offence to, any other neighbours or members of their household.

*(Model Assured Tenancy Agreement, S.F.H.A.)*

#### Example 2:

- 1 The tenant shall act in a reasonable manner and must not do anything which causes nuisance, annoyance or offence to other tenants or their family, lodgers or visitors, or damage to any property or possessions belonging to the landlord, or to its tenants, their family, lodgers or visitors or to the tenant’s neighbours.
- 2 The clause applies to acts of discrimination, intimidation or harassment on any of the following grounds: race, nationality, sex, sexual orientation, religious beliefs, age or disability.
- 3 The tenant will be responsible for the conduct of all members of the tenant’s family and other residents at or visitors to the premises.
- 4 Breach of this clause will normally lead to eviction proceedings, in which the tenant may not be eligible for re-housing.

*(Model ‘no harassment’ clause in local authority tenancy agreements)*

#### Example 3:

You, those living with you and your visitors must not cause nuisance or annoyance to your neighbours or any person in the neighbourhood including our employees, agents and contractors by ... harassing or assaulting any person in the house or neighbourhood for whatever reason. This includes that person’s race, colour or ethnic origin, nationality, gender, sexuality, disability, age, religion or other belief. *(Taken from the Chartered Institute of Housing in Scotland Model Secure tenancy Agreement)*

### **Make your stance on racial harassment clear**

Inform your existing and new tenants of your stance on racial harassment and what actions will be taken to deal with perpetrators. The tenants Handbook should include the formal statement of policy (See Chapter 3: model policy statement). Inform the local police, other housing agencies, local tenants organisation and local voluntary and ethnic minority organisations of your stance on Racial Harassment. Send copies of your procedure to each of these agencies.

**Allocations Policy**

Ensure that the issue of Racial Harassment is given high priority within the overall allocations policy. It is good practice to identify racial harassment as an area of social priority within the allocations policy and procedure and allocate it high priority, depending on the scale of racial harassment.

**Reciprocal Arrangements with other housing providers**

Set up reciprocal arrangements with other housing providers operating in the area, to allow victims of racial harassment the maximum opportunity for rehousing. This issue is particularly important for local authorities who may find it difficult to offer suitable transfers because of the fear of racial harassment victims that racial harassment is likely to continue.

**Nomination Arrangements With Community Groups**

Consider giving nominations for victims of racial harassment to local black and ethnic minority groups as a way of targeting housing opportunities at the black and ethnic minority communities.

## 2 Policy Statement

*This section outlines a model policy statement on racial harassment which can be circulated to the association's tenants, tenants organisations, the police, ethnic minority community groups and other agencies.*

This policy statement outlines how we deal with racial harassment and how our tenants and other agencies can support us in challenging racial and other forms of harassment.

This Housing Department/Association/Co-operative is committed to ensuring that our tenants can live in safety and security within their homes and neighbourhood. We recognise that all tenants, regardless of their racial group, may experience neighbour disputes, antisocial behaviour or vandalism. However, we also recognise that racial harassment is far more insidious and more likely to be experienced by individuals and/or their families because of their colour, racial and/or ethnic origins.

We will take action against tenants who we have grounds to believe are carrying out racially motivated attacks or harassment. Such acts may be physical or verbal and would include:

- i) interfering with the peace and comfort of the victim;
- ii) Causing nuisance or annoyance to the victim;
- iii) Causing the victim to fear for his or her safety.

We will:

- deal vigorously with racial attacks and harassment
- work in partnership with other agencies to create an environment which encourages racial harmony
- use every available legal action against perpetrators, including prosecution and eviction
- provide practical support for victims of racial harassment to protect them from further harassment and identify and take action against the perpetrators of harassment.
- regularly monitor incidents of racial harassment and the effectiveness of the procedure.

### **Victim Centred Approach**

We operate a victim-centred approach i.e. where the complainant believes that the harassment is racially motivated, the investigation will begin from that premise and the racial harassment procedure will be implemented.

### **Investigation**

We will investigate complaints received in person or by letter or by phone with the minimum of delay between receiving the complaint and a formal interview of the complainant being carried out. If the complainant prefers to speak in their mother tongue, we will take all reasonable steps to ensure that a professional interpreter is present to assist in the interview.

### **Action against perpetrators**

It is our policy to take firm action against any tenant perpetrating racial harassment including interdicts, prosecution for criminal damages, seeking compensation from the perpetrators and the ultimate sanction of eviction. We will take practical measures to identify the perpetrators of racial harassment, especially where the harassment has taken place over a sustained period of 6 months or more.

## **Property Repairs**

We will treat repairs, including the removal of graffiti, arising as a result of racial harassment as an emergency, and where possible will provide such additional security measures as are necessary. Where the perpetrators have been identified we will charge the cost of any repairs to them.

## **Rehousing of Complainants**

We will offer emergency rehousing where there is damage to the property or injury to the tenant or members of the tenant's household. We recognise that victims of harassment may wish to move from the property/area where problems are being experienced. We will deal with each case sensitively and on its merits based on the evidence it is possible to gather.

## **Challenging Racial Harassment**

### *The Role of Our Tenants*

Tenants who live near victims of racial harassment can play an important role in helping to support victims. They can establish a climate where harassment is unacceptable. This can help deter perpetrators.

### *The Role of Tenants Associations*

Local tenants' organisations will be encouraged to become involved in developing strategies to help counter racial attacks. We will discuss and develop our policies with tenants' associations to obtain their support and to agree a common front in tackling harassment.

### *The Role of Other Agencies*

We will work with other agencies, including the police and community support agencies to ensure that evidence is gathered which satisfies legal requirements. We will also ensure that systematic records of all complaints and decisions taken in relation to complaints are kept. We will ensure that the complainant is kept fully informed of the course of the investigation and the choices available.

## **Training**

We will make all our employees and management committee members aware of the policy. We will provide all employees with on-going training in the actions they should take in cases of racial harassment.

## **Monitoring the Policy**

All incidents will be recorded, monitored and treated in confidence. Regular reports will be presented to the relevant housing committee on a regular basis, and treated in confidence.

## **Review**

This policy will be continuously monitored and reviewed annually.

## the Procedure

*This section provides the guidelines which should be followed in devising the procedures to deal with racial harassment. The exact detail of procedures will vary depending on the organisational structure but the flow chart of possible actions gives a clear idea of different action which may be taken.*

It is extremely important that the procedure allows a speedy and sympathetic response to the complaint/report received. This will achieve two objectives:

- demonstrate to the complainant that the organisation is committed to ensuring their safety and security; and
- demonstrate to the perpetrator(s) that the organisation will not tolerate racial harassment and will take action to prevent it.

## THE INITIAL REPORT

- The initial report of the incident of harassment will be recorded immediately by which ever member of staff receives it in the **Initial Report Form RH1** (Appendix 1). This will include the following information:
  - Complainant's name/address
  - brief details of incident, e.g. verbal abuse, assault, graffiti, physical assault, etc. incl. Date, time and place(s).
  - whether the perpetrator is known and their perceived ethnic origin.
  - details of any witnesses.
  - whether there have been any previous incidents.
  - any interpreting requirements.
  - whether the police have been informed.

Be alert to the fact that the initial report may come from the complainant, their representative or a community organisation. Furthermore, there may be a history to the first report which you have not previously been alerted to by the complainant or their representative.

*Emergency action at this stage:* if it is necessary to order emergency repairs or arrange temporary accommodation - especially in case of violence against the complainant - then this should be carried out immediately.

**Remember:** the complaint will be treated as a racial incident if the victim or their representative suspects a racial motive for the incident.

- Pinpoint the incident on the **neighbourhood map**<sup>4</sup>
- This completed form to be passed to the investigating officer

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<sup>4</sup>The neighborhood map will visually highlight racial harassment trouble spots.

and a copy placed in the Central File. Inform the Investigating Officer.<sup>5</sup>

<b>Timescale:</b>	Same Day
<b>Responsibility:</b>	whichever member of staff receives the complaint.

## Investigating the Complaint

The aims of the investigation are to:

- give practical support to the complainant.
- deal promptly with any physical damage.
- ensure swift action against the perpetrator(s), if known.

## Interviewing the Complainant

The initial interview with the complainant is very important. The complainant is in the situation of needing to know what is going to be done. The investigating officer is in the situation of needing to gather as much information as possible so that a decision about what help the organisation can offer and a programme of action devised.

The investigating officer should arrange:

- to visit the complainant at a location of their preference
- for a professional interpreter to be present, if required
- for a female interviewer, if the complainant requests this.

<b>Time scale for first interview:</b>	within three working days of being alerted to the initial report
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The investigating officer will:

- photograph any damage
- inform the tenant of the organisation's racial harassment policy.
- complete form **RH2** (see appendix 2) to establish the nature of the incident, the extent of the problem and collect any evidence
- establish what additional security measures may be required by the tenant, e.g. personal alarm, fireproof letterbox, plastic windows, etc.
- implement any other repairs

At the end of the interview, the investigating officer should:

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<sup>5</sup>This is usually the housing manager or other officer designated with responsibility for implementing the racial harassment procedure.

- explain to the tenant the importance of reporting immediately any further incidents to the investigating officer and the police, as well as any additional support organisation. This will help to provide a record when taking further action.
- encourage the tenant to record any further incidents on the Diary Sheets. These will be left with the tenant.
- Explain the options and discuss measures to support the complainant, and action that might be taken against the perpetrators. (Do not proceed against the complainant's wishes).
- explain the transfer policy as an option to the complainant. If there is reasonable evidence that racial harassment has occurred then an application for a transfer will be accepted as a high priority. There will be discretion to approve a transfer where it proves difficult to establish evidence of racial harassment. The investigating officer will also consider reciprocal arrangements with other housing providers in the area.
- Agree future weekly contact arrangement with complainant and the best way of maintaining contact throughout the case (properly recording the outcome of each contact in the **follow-up report form RH7** (see appendix 7)).
- Give the tenant a list of relevant emergency phone numbers - and an outline of how the complaint will be investigated.

#### **Follow-up Letter to the Complainant**

Send acknowledgement letter confirming the report of racial harassment, and any support arrangements;

### **Dealing With Emergency Repairs/Graffiti**

The investigating officer will inform the **maintenance section** of any repairs required.

<p><b>Time Scale:</b> Within 24 - 48 hours of receiving notification of the complaint</p> <p><b>Responsibility:</b> the 'investigating officer', i.e. whoever is given responsibility for investigating complaints of racial harassment within the organisation or department.</p>
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Window repairs and graffiti removal should be carried out **within 48 hours** of the maintenance section being informed by the investigating officer. The security of the property should be treated as emergency work and therefore completed **within 24 hours**.

<p><b>Time scale:</b> As above</p> <p><b>Responsibility:</b> Maintenance Manager</p>
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## The Role of the Maintenance Manager

The maintenance manager has overall responsibility for ensuring that:

- reported repairs are ordered and completed within agreed priority time scales.
- damage to property is properly photographed, which can be used as evidence if necessary and that where the perpetrator is known, they are recharged the cost of the repair.
- a separate record of expenditure for additional works in cases of racial attacks and harassment is kept.
- the Investigating Officer is notified where racial harassment has not been reported but is suspected due to the nature and frequency of repair requests.

## Options for Practical Support

- Security measures - doors, windows, lighting, fences, fireproof letter boxes, video cameras, closed circuit TV, smoke and burglar alarms, security patrols (a code of practice on the use of surveillance equipment is desirable, covering for example, consultation with residents and access to tapes).
- Temporary rehousing (this may be required in the immediate aftermath of an attack, or around the time that witnesses are giving evidence in court).
- Personal alarms or mobile phones

•	REMEMBER:
•	Believe the complainant until and unless there is CLEAR EVIDENCE to the contrary.
•	Seek agreement with the complainant to involve the police\other agencies.
•	Explain the options and discuss measures to support the complainant, and action that might be taken against the perpetrators. Do not proceed against the complainant's wishes. <sup>6</sup>
•	Back this up with written advice/support pack and an agreed action plan.
•	Stay in touch and check if there have been further incidents (this still applies if a complainant is subsequently transferred).
•	Protect the confidentiality of complainants (except where they have agreed that details should be passed to other agencies).
•	Keep records in a secure place (this is also necessary for evidence purposes)

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<sup>6</sup>Some organisations make an exception here if they feel the safety of others is at stake, e.g. through the risk of an arson attack.

- Order repairs and agreed security measures to a strict deadline.

## Interviewing Witnesses

The investigating officer should visit any witnesses and complete the **witness report form RH5** (See Appendix 5).

**Time scale:** Within 1-2 working days of interviewing the complainant

## Dealing With the Alleged Perpetrator

### *Action where the perpetrator is a tenant of another organisation*

If the perpetrator has been identified beyond reasonable doubt and they are a tenant of another housing association or a local authority, a full report should be sent to the landlord requesting appropriate action, with the permission of the complainant.

### *Action where the perpetrator is unknown*

It may be the case that the complainant does not know who the perpetrator is. The housing organisation should take every step in trying to find out who was involved in harassing the complainant. If the complainant has agreed that the police should be informed of what has happened, they similarly should make all possible investigations and regular contact should be maintained by the organisation with the police investigating the case.

### *Where the alleged perpetrator is a tenant of the organisation*

With the agreement of the complainant, the alleged perpetrator may be contacted and interviewed. Consideration should be given to the location of the interview and the presence of an additional staff member during the interview - one member to carry out the interview, the other to record it.

**Time scale:** Within two days of interviewing the witnesses

At the interview, the investigating officer should:

- explain the nature of the complaint
- explain the association's policy
- ask the alleged perpetrator for his/her comments

The intention of the interview is to discover the alleged perpetrator's side of events and to ensure that further incidents do not occur and this fact should be made clear in the interview.

The interview should be recorded be noted on the **Perpetrator Interview**

**Form RH6** (See Appendix 6).<sup>7</sup> A meeting should then be arranged between the investigating officer and senior members of staff so that a detailed programme of action can be devised.

As far as the alleged perpetrator is concerned, the programme of action may involve:

- warning letters and interviews, varying in severity;
- charging the perpetrator for damage caused to the housing organisation's property;
- Institute legal proceedings, with the agreement of the complainant.
- **Follow-up Letter to Alleged Perpetrator**  
Where the investigating officer has grounds to believe that the alleged perpetrator was responsible for the harassment:  
a follow up letter should be sent to the perpetrator confirming the discussion that took place, re-stating relevant clauses in the tenancy agreement and the organisation's objectives to stop harassment, support the person being harassed and take legal action against perpetrators.

<b>Timescale:</b> Within 1 day of interviewing perpetrator
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- **Follow-up Letter to the Complainant**  
Confirming any action taken to deal with the complaint, and a date and time to meet again to review the situation.

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| <ul style="list-style-type: none"><li>• <b>Remember:</b></li><li>• Obtain advice at an early stage if it looks as if legal action may be required. Maintain close liaison with solicitors experienced in dealing with cases of racial harassment.</li><li>• Gather a high standard of evidence - liaise with the police and consider the use of surveillance equipment, professional witnesses and private investigators if necessary.</li><li>• Encourage complainants to keep diary sheets and take photographic evidence of injuries if possible.</li><li>• Be prepared to use verbal and written warnings and to charge perpetrators for damage. Seek an interdict or eviction if necessary - but be guided by the complainant's wishes.</li><li>• If perpetrators are unknown, consider a more general warning letter, surveillance; preventative work; involvement of tenants associations. Liaise with the police to see if they would be willing to visit local residents and increase their presence in the area.</li></ul> |
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<sup>7</sup>See also >Interviewing Perpetrators of Racial Harassment: A Guide for Housing Managers (Lemos Associates 1993).

## Follow-up Action

Once the details of the investigation have been established, it will be possible for the investigating officer and senior members of staff to meet to determine an appropriate course of action in that particular case at that time. The time scales outlined in the procedure are only guidelines to help ensure that complaints are dealt with speedily. However, these time scales may vary according to the situation but the following points give an idea of the programme of action that should be devised:

- 9Regular visits to the complainant and, with their agreement, encourage and assisting additional help from local groups, if appropriate.
- 9Priority action on a transfer request to ensure that it is dealt with promptly - liaising with other organisations if necessary to obtain a transfer offer and ensuring that the victim is fully informed of progress.
- 9Setting out a range of interviews, warning letters and pursuing legal advice and which is considered to be appropriate as far as the alleged perpetrator(s) is concerned, i.e. warning letter, the use of interdicts, seeking eviction, charging the cost of repairs to the perpetrator(s). It is important that the organisation seeks legal advice early and informs the complainant of the action being taken at every stage.
- 9Setting out the range of repair work needed and ensuring that the emergency status of these repairs is adhered to.

The programme of action can be amended as circumstances change but it is important that staff are clear about their role in each case.

Each follow-up visit or action taken in relation to the complainant should be carefully recorded and kept on their file (if they are a tenant) using the monitoring forms devised for these situations. Similarly, in the case of the perpetrator, each follow-up interview or action should be carefully recorded and placed on their file.

## Ongoing Contact with the Complainant

The investigating officer will keep the complainant informed of action taken, at least once a week for the first month, to ensure that harassment has not re-started. The weekly contact will also provide an opportunity for the investigating officer to note the contents of the completed diary sheets and decide how the investigation or action against the alleged perpetrator(s) should proceed. Where regular visits are not possible frequent contact by telephone with the complainant or their interpreter, may be maintained.

<b>Time scale:</b> once a week for the first month since the initial complaint.
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The investigating officer should also make sure that the police and any other agency contacted at an early stage are kept informed.

### **Examples of Preventative Measures**

- Educational initiatives in local schools.
- Publicity campaigns can be used to:
  - encourage victims to come forward;
  - influence the behaviour of people who might otherwise collude with the harassment;
  - warn potential perpetrators of the consequences of their actions.
  - If possible, campaigns should be repeated at regular intervals.
- Communicate the policy to potential complainants and perpetrators - use tenants handbooks, newsletters, annual reports, conferences, local media, leaflets, videos and posters.

# Flowchart of Action in Racial Harassment Cases

Complaint received and recorded

Investigating Officer  
Contacted

Arrange investigation within 1-2 days

Visit to Complainant to gather information and take details of repairs

Determine action to be taken by staff

1 Report to police if complainant consents  
2 Interview witnesses  
3 Arrange practical support for complainant i.e. repairs, transfer, rehousing, security measures etc.  
4 Interview alleged perpetrator

Warning letters/interviews

Civil Proceedings Court

Legal Proceedings by Housing Provider

Management Committee's  
Endorsement

Eviction proceedings  
Interim Interdict  
Criminal proceedings by the police/procurator fiscal

## Legal Remedies

*There are a large number of legal remedies potentially available to those who are the victim of racial harassment in housing. There are remedies both under the criminal law and the civil law. These terms are explained more fully below. What follows is a simplified summary of the law as it concerns racial harassment in a housing context.*

### ***Criminal Law***

There is at present no specific criminal offence of racial harassment. Thus the criminal law comes into play where the action of the perpetrator breaches the general criminal law. Where there is proof of a racial motive, this may aggravate the offence producing possibly a heavier sentence. The principal criminal offences associated with racial harassment of tenants or other occupiers are noted below. It is important, however, to understand the following:

- Under the criminal law, it is the police who investigate and the Crown (i.e. the procurator fiscal or Lord Advocate) to decide whether to prosecute. Generally speaking, in Scotland, unlike in England, it is not possible for an individual to take a private prosecution. Thus, in practice, if the procurator fiscal decides not to prosecute (or if the police decide not to submit a report to the Crown) there is little that one can do.
- The criminal law demands a higher standard of proof than the civil law. To obtain a conviction, there must be proof "beyond all reasonable doubt" that the accused committed the crime. In addition, all material aspects of the crime must be corroborated. This means that essential facts (such as an eye-witness to a racial attack), must be supported by some other independent piece of evidence pointing to the same conclusion (for example analysis of clothing fibres). Without corroboration of material facts, there can be no conviction.
- If the complainant is unwilling to complain to the police or to pursue a complaint, any criminal action against the accused will generally fail.

On conviction, the court has a variety of Sentences available, including community service, fines and imprisonment.

### ***Specific Criminal Offences***

a)

#### *Public Order Act 1986*

It is an offence to use threatening, abusive, insulting words or written material which is intended to "stir up" racial hatred or is likely to do so. It is also an offence to publish or distribute material intended or likely to stir up racial hatred. These provisions are rarely in practice invoked.

b)

#### *Assault*

It is a criminal offence to touch, strike or otherwise harm the body of a person,

or to threaten to do so. Assault can also be constituted without any physical contact if the complainant reasonably feared violence from the perpetrator. Assault may also be aggravated by the use of weapons or the threatened use of weapons and if proved, will increase the severity of the sentence.

c) *Breach of the Peace*

This is a very widely defined crime and covers all forms of behaviour which have or are likely to lead to alarm or annoyance to any individual, including a police person. It is typically used to deal with screaming or shouting or using abusive speech. It is sometimes also used as an alternative to charges such as assault.

d) *Vandalism or Malicious Damage*

It is an offence to damage another person's property in any way including using graffiti.

e) *Malicious Telephone Calls*

Under the Telecommunications Act 1984, it is a criminal offence to make malicious or threatening telephone calls.

## **Civil Law**

### *Introduction*

The civil law differs from the criminal law in a number of respects:

- 1 Any citizen may make use of the civil law in appropriate cases. It does not require the permission or intervention of the police or procurator fiscal.
- 2 The standard of proof in civil cases is "on the balance of probabilities" rather than the criminal standard of "beyond all reasonable doubt". In other words, it is only necessary to show that it is more likely than not that the civil wrong was done.
- 3 In civil cases, corroboration is not required.
- 4 Hearsay evidence is admissible. Accordingly, a wider range of evidence may be led in the civil courts to make out a claim of wrong doing of some sort and proof of the facts is, in principle, easier.

The principal legal issues applicable to racial harassment are as follows:

### *Eviction of Harasser*

If the perpetrator of racial harassment is a tenant, it is highly likely that the racial harassment will be a breach of the terms of the tenancy agreement. This is the case for both assured tenants (such as tenants of Housing Associations and private landlords) and secure tenants (such as tenants of local authorities and Scottish Homes).

Grounds for eviction are contained within the Housing Acts. However, action can only be taken by the landlord and it is not possible to take legal action to force a landlord to take eviction action against a perpetrator of racial harassment. However, if the landlord is a local

authority and fails to act reasonably in dealing with complaints of anti-social behaviour by one of its tenants against neighbours, a complaint can be made, ultimately, to the **Local Authority Ombudsman**. In similar circumstances, a complaint could be made to the **Housing Association Ombudsman** where racial harassment is being perpetrated by the tenant of a Housing Association against his/her neighbours.

### *Interdict*

An interdict is an order from the court ordering a person not to do something which is unlawful. Interim interdict is an order that one can obtain very swiftly from the court to regulate the position whilst waiting for a full court hearing on the full interdict. An interdict can be obtained by any person against another person or organisation where that person or organisation is likely to carry out some action which is unlawful. Although racial harassment as such is not a crime, the actions constituting racial harassment would certainly be unlawful. If the interdict is broken, an application can be made to the court to bring the perpetrator before the court to explain his/her actions. The court has the power to fine and/or imprison if it finds that the interdict has been broken.

### *Lawburrows*

This ancient Scottish remedy is rarely used. However, it has certain advantages over the use of interdict. Where a person has good cause to fear actual damage to himself, family or property from another person, s/he can seek an order for Lawburrows from the court. The effect of the order, if granted, is that the person accused of threatening such behaviour is ordered to lodge a sum of money (often around ,500.00) in court or face imprisonment. If the behaviour is repeated, on proof of this being shown, the sum of money is forfeited. (If the money was not lodged, a fixed period of imprisonment -usually three or six months- will automatically follow). An advantage of this procedure over interdict is that the perpetrator knows in advance precisely what the sanction will be if s/he offends once more and the court has no discretion in the matter. One disadvantage, as compared to interdict, is that there is no equivalent of *interim* interdict in the Lawburrows procedure.

### *Statutory Nuisance*

A statutory nuisance occurs if one of a number of events exists which is a nuisance or which is prejudicial to health. Statutory nuisances can be constituted by the state of premises; smoke from premises; fumes or gases emitted from premises; accumulations or deposits of refuse; animals; as well as noise emitted from premises. This might cover the situation where the harassment takes the form of continuous loud noise or music issuing from a house or flat or the piling of debris causing a nuisance to the neighbour's property.

The Environmental Health Department of the local authority has a duty under the Environmental Protection Act 1990 to investigate such nuisances and if it is satisfied they exist, must take action to deal with it. The main form of action available to them is the issuing of an 'abatement notice' which gives the person notice that they must stop the nuisance. If it does not stop, court action can follow. In addition, any other person may take action themselves without involving the Environmental Health Department and can issue a warning notice giving 21 days notice and then court proceedings. Failure to obey an abatement notice is a criminal offence. If an individual takes action on their own behalf, the power of the courts is limited to issuing an order to deal with the nuisance if it has been found proved. Breach of that court order would be a contempt of court and could lead to fine or imprisonment.

### *Protection from Harassment Act 1997*

This Act came into force in June 1997. It was passed in response to the "stalking" cases, well reported in the press. However, it applies to any form of harassment. It provides that an individual can seek a non-harassment order from the civil court instead of an interdict. Breach of such an order would be a criminal offence. In addition, the criminal courts can attach a non-harassment order in addition to any other sentence that they may impose for any criminal offence involved in the harassment. Harassment is not fully defined in the Act but certainly includes the majority if not all of the types of behaviour usually associated with racial harassment.

### *Legal Aid*

Those accused of criminal offences are entitled to criminal advice and assistance from a solicitor if they are on a low income. They are also entitled to criminal legal aid to pay for a solicitor to defend them in court if there is a risk that they will be imprisoned if convicted. In civil cases, those on income support or family credit qualify for free legal advice and assistance from a solicitor. Those on a low income will also be entitled to free or low cost legal advice and assistance on civil matters. Legal aid to cover civil court action (to defend or prosecute a case) is also available to those on a low or moderate income. A contribution may be payable to the Scottish Legal Aid Board. Before civil legal aid is granted, the Legal Aid Board must be satisfied that there are at least some reasonable prospects of success and that it is reasonable to grant civil legal aid. Further details about the operation of the legal aid scheme can be obtained from any solicitor who operates the legal aid scheme or any law centre.

### *Conclusion*

The majority of legal remedies open to those suffering from racial harassment are those deriving from general legal remedies or legal principles. Very little of the law is orientated specifically towards harassment of a person on the grounds of their race, colour (ethnic origin) or nationality. This is, from a legal point of view, not a great difficulty in most cases, since most forms of racial harassment would be unlawful even if the racial element was missing. Accordingly, the law, both criminal and civil would apply. In addition, proving a racial motive could be difficult in certain cases. The most important actions that should be taken by the complainant of racial harassment is to:

- a) telephone the police,
- b) keep an accurate record of all incidents with the time, date and place of the incident carefully recorded and names and addresses of witnesses,
- c) take legal advice from a competent advisor,
- d) inform the landlord where the perpetrator is a tenant.

## 5 Appendices

### Appendix 1

### Initial Report of Incident RH1

*(To be filled in by whoever receives the complaint)*

- 1 Name of Complainant of Incident
- 2 Address
- 3 Ethnic Origin
- 4 Is the Complainant the Organisation's Tenant?  
*(If not, give details)*
- 5 Brief Description of Incident  
*(Include date, time and place(s) where possible)*
- 6 Are the Perpetrator(s) known?
- 7 If known, perceived ethnic origin?
- 8 Who else was present at this incident?  
*(Give names and addresses incl. children)*
- 9 Have there been any previous incidents? *(Give brief details)*
- 10 Have previous incidents been reported to the Organisation? *(If so, when?)*
- 11 Are any other agencies involved? *(Details including name and agency)*
- 12 Have the police been informed?
- 13 How can the tenant be contacted for further discussion?
- 14 Would an interpreter be helpful?
- 15 Would the tenant prefer the discussion to take place at any particular location?
- 16 Name of Officer taking this complaint
- 17 Date

### Action

- 1 A copy of this form should be placed on a register of racial harassment reports kept in each housing management office.
- 2 A copy should be put in the complainant's/tenant's file.
- 3 A copy should be forwarded to the investigating officer.
- 4 A visit to investigate the complaint further must be arranged to take place within 24 hours of the complaint having been received.

**Appendix 2****Report of Visit to Complainant - RH2**

*(This form may be used to record details of the first interview at home following an incident. It may also be used to record other incidents if they occur subsequently)*

**1 Personal Details**

- a) *Name of tenant or person affected*
- b) *Address*
- c) *Ethnic Origin*

**2 Household Details**

*(Number of adults and children - with ages of children)*

**3 Date when incident occurred**

<b>4 Type of Incident:</b>	<b>Detail</b>	<b>Yes/No</b>
		<i>(Please tick)</i>

- Racist Graffiti in common areas
- Racist Graffiti on property where household lives
- Written abuse/threats
- Abusive telephone calls
- Verbal Abuse
- Damage to property
- Excessive noise
- Physical Assault
- Other (Please state)

**5 Details of Incident and the effect on household**

*(e.g. health, education etc.)*

**6 Who else was present at the incident?**

*(Give names and addresses incl. Children)*

**7 Details of Perpetrator(s)**

*(Where known, give names and addresses if the complainant wishes to give this information)*

**8 Have the police been informed?**

*(If yes, give details including: police station and officer handling incident, and date reported)*

<b>9 Does the tenant want the police to be informed?</b>	<b>Yes/No</b>
--	---------------

**10 Support for the tenant**

- a) Does the tenant need any other help, such as telephones, personal alarms, transfer application form, temporary accommodation? Yes/No
- b) If yes, what help does the tenant need?
- c) What action would the tenant like to be taken?

**11 Details of other agencies involved:**

- |                             |                               |
|-----------------------------|-------------------------------|
| <b>Agency</b>               | <b>Contact person/Address</b> |
| Advice Centre               |                               |
| Law Centre                  |                               |
| Social Services             |                               |
| Schools                     |                               |
| Councillor/MP               |                               |
| Community Relations Council |                               |

- 11 a) Is a transfer requested?  
b) Is temporary rehousing requested?
- 12 Any other relevant information
- 13 Date of interview
- 14 Name of investigating officer

**Action**

- 1 This report will form the basis of subsequent interviews with the alleged perpetrator(s) and with witnesses. It is therefore important that as much detail as possible is recorded.
- 2 A copy of this report should be kept on the complainant/tenant's file.
- 3 The complainant should be told to report any further incidents promptly to the housing provider. Where further incidents occur, this detailed report can be used to record the details.
- 4 Form **RH4 (Schedule of Repairs)** should be prepared by the investigating officer (See Appendix 4).
- 5 The Complainant should be given a **diary sheet (RH3)** to record any further incidents which occur. This is particularly useful if the organisation decides to take action to obtain an interdict or seek eviction of tenants who perpetrate racial harassment. (See Appendix 3).

**Appendix 3****Personal Record of Incidents - RH3**

It is essential that you keep an accurate record of any further incidents of racial harassment. This is necessary as a basis for legal action.

NB This form could be translated into other languages for those who speak a language other than English.

DATE	TIME	WHAT HAPPENED?	POLICE CONTACTED	ANY WITNESSES (Give details)



## Appendix 5

## Witness Report Form - RH5

- 1 Name of Witness
- 2 Address
- 3 Ethnic Origin
- 4 Date of Incident Witnessed
- 5 Details of incident (Ensure that the report made here by the witness details the incident as they saw it. Include as much information as possible).
- 6 Would the witness be willing to go to court?
- 7 Date of Interview
- 8 Signed y Investigating Officer

)

### **Action**

If the witness is a tenant, a copy should be put on their file

A copy should be kept on the complainant's file

## Appendix 6

## Alleged Perpetrator Interview Form - RH6

- |               |  |
|---------------|--|
| 1             | Name   |
| 2             | Address  |
| 3             | Ethnic Origin  |
| 4             | Details of Incident Reported<br><i>(This can be prepared beforehand for reference during the interview)</i>                                      |
| 5             | The Organisation's Policy<br><i>(This should be explained at this point)</i>   |
| 6             | The response<br><i>(Record the response to the particular action(s) which the person is alleged to have taken - try and record the verbatim)</i> |
| 7             | Date of Interview  |
| 8             | Interviewing Officer   |
| <b>Action</b> |  |
| 1             | A copy of this report should be put in the tenant's file (If the alleged perpetrator is a tenant)  |

## Appendix 7

## Follow-up Report form - RH7

This form can be used to check on progress of action decided for the victim or perpetrator.

1	Victim/Perpetrator		
2	Address		
3	Ethnic Origin		
4	Actions Agreed	Who is handling action	Timetable
	i)		
	ii)		
	iii)		
	iv)		
	v)		
5	Progress Report		
	Date	Report	Officer

---

### Action

- 1 Action agreed should be followed through and this report ensures that each element of the programme of action can be checked and monitored
- 2 A copy of this form should be on the tenant's or perpetrator's file.
- 3 If action has not been completed by the housing organisation it will become evident at this stage and remedial action can be taken.

## 6 Useful References

- Action on Racial Harassment Duncan Forbes *Legal Action Group (1991)*
- Code of Practice for Rented Housing *Commission for Racial Equality (1997)*
- Eliminating Racial Harassment *Lemos Associates (1989)*
- Interviewing Perpetrators of Racial Harassment:  
A Guide for Housing Managers  
*Lemos Associates (1993)*
- Anti-Social Behaviour in Housing: The Law Collins and O'Carroll  
*Chartered Institute of Housing in Scotland Legal Services Agency (1997)*
- Living in Terror *Commission for Racial Equality (1989)*
- Making the Law Work Against Racial Harassment  
*Legal Action Group (1993)*
- Performance Standards For Housing Associations  
*Scottish Homes (1995)*
- Racial Attacks and Harassment: the Response of Social Landlords  
*HMSO (1996)*
- Racial Harassment Policies and Procedures for Housing Associations  
*National Federation of housing Associations (1989)*