



Home Office

Prototype Anti-Discrimination Code

Prevention of illegal migrants securing private rented accommodation - Civil Penalties for landlords and agents

This is a prototype Code of Practice whose purpose is to inform Parliament during its debate on the passage of the Immigration Bill of how a future Code of Practice might be constructed and the approach taken to operating its provisions. The Code of Practice will be developed further in consultation with the Equality and Human Rights Commission, the Equality Commission for Northern Ireland and residential landlords' representative bodies.

31 October 2013

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1. Introduction

1. It is already unlawful for landlords and agents to discriminate on the grounds of race and this scheme does not change that. This Code has been issued by the Home Office and aims to provide landlords and agents with guidance on how to avoid a civil penalty for renting premises for the use as their only or main home by an illegal migrant, in a way that does not result in unlawful race discrimination.

2. The population of the UK is ethnically very diverse. A large proportion of people from ethnic minorities in this country are British citizens born in the UK or long settled here. In addition, many non-British citizens from ethnic communities are fully entitled to live and work here and are readily able to prove that this is the case. The UK welcomes people who come to the UK to study or work or those many others who have other valid reasons for being here. It is wrong and unfair to assume that someone from an ethnic minority is an immigrant, or that someone who says that they were born abroad is not entitled to live and work in the UK.

3. This civil penalty scheme is intended to restrict access to the residential accommodation that allows the small minority of migrants who come to the UK and abuse our hospitality to live a settled life. Most landlords will not encounter such people but it is unfortunately necessary for the scheme to be effective that all landlords undertake the basic checks described in the regulations on all new tenants.

4. It is important, not only in fairness to tenants, but also in order to protect yourself from accusations of discrimination, that you carry out checks in a uniform and consistent way. Those landlords who only carry out checks on tenants who they believe are not British citizens, for example on the basis of ethnicity or colour, could find that this is used against them as evidence in any proceedings brought under the Equality Act 2010. This is why we recommend that you obtain a statutory excuse for all potential occupants. This not only protects you from liability for a civil penalty, but

also demonstrates that you have in place consistent, transparent and non-discriminatory checking procedures.

2. Purpose and Status of this Code

5. The purpose of this code is to give you practical guidance on how to avoid unlawful racial discrimination whilst also complying with the law to prevent use of premises as an only or main home by illegal migrants.

6. This is a statutory Code. This means that it has been approved by the Secretary of State and laid before Parliament. The Code does not impose any legal obligations on landlords, nor is it an authoritative statement of the law; only the courts can provide that. However, the Code can be used as evidence in legal proceedings. Courts must take account of any part of the Code that might be relevant on matters of racial discrimination.

7. This Code is issued under section 28 of the [Immigration Act 2014] (the '2014 Act'). It is intended to strengthen the safeguards against unlawful discrimination by re-emphasising your statutory duty to avoid discrimination in the services you provide.

8. The Code outlines your legal obligations under the Equality Act 2010, the Race Relations (Northern Ireland) Order 1997 and the 2014 Immigration Act and provides advice on how to operate the scheme in a fair and consistent way. The Code is not intended to be a comprehensive statement of the law and should be read in conjunction with the Code of Practice governing the operation of the Landlords Civil Penalty Scheme (LCPS), which can be found at:

[Link](#)

9. This Code should help individual landlords, to:
- understand and comply with the law while avoiding race discrimination under the Equality Act 2010 and the Race Relations (Northern Ireland) Order 1997;
 - adopt and put into practice effective processes, designed to prevent unlawful racial discrimination or harassment;

- make sure users of housing services are treated equally, and that their needs are taken into account wherever possible;
- reduce the risk of legal liability, costly and time-consuming disputes, and potential damage to the reputation of a landlord or agent; and
- be seen to provide a fair and useful service for everyone in the area they serve.

10. As well as outlining the law as it applies to landlords' responsibilities, the Code makes recommendations on good practice and on the outcomes that landlords should aim for. These should form the basis of any assessment of compliance with this code. The Code is not restricted to legal requirements, but also includes guidance on good practice. Occasionally the guidance may need to be adapted, to suit individual circumstances; for example, smaller organisations, including many small private landlords, may not need the detailed procedures recommended in the code. However, they must make sure their policies and practices are consistent with the legal requirements, and follow the general spirit and intentions of this Code.

11. This Code is primarily concerned with housing matters as they affect people from different racial groups. However, its recommendations may also be useful, and be seen to complement initiatives taken, in relation to other protected characteristics (as defined in the Equality Act), including disability, sex, religion or belief, age and sexual orientation. Housing providers should be aware that these categories may intersect and reinforce each other, resulting in more acute needs.

12. Consultation on this Code will take place with The Equality and Human Rights Commission (EHRC), also known as the Commission for Equality and Human Rights, the Equality Commission for Northern Ireland and with groups representing the interests of landlords.

3. Who does the code apply to?

13. This Code applies to all landlords in England, Scotland, Wales and Northern Ireland. It also applies to certain organisations, such as housing associations and letting agencies, (including on-line agencies). A letting agency or business practising unlawful discrimination will be liable, even if it is acting on the instructions of a landlord.

4. Your responsibility as a landlord under the law: The Equality Act 2010 and the Race Relations (Northern Ireland) Order 1997

14. Under section 33 of the Equality Act 2010 and article 22 of the 1997 Order, it is unlawful to discriminate in the letting of premises on racial grounds. That means that a landlord cannot discriminate against a potential or existing tenant on the following grounds:

- colour;
- nationality (including citizenship);
- ethnic origin;
- national origin.

15. Race discrimination may be either direct or indirect. Direct discrimination means treating a person less favourably on racial grounds, for example by rejecting occupants who do not have British nationality, or by refusing to consider any non-European tenants. Treatment based on racial or national stereotypes can also constitute direct discrimination. Examples include where applications for tenancies are only invited from one nationality or ethnic group.

16. Indirect discrimination occurs when an apparently non-discriminatory requirement or condition applies equally to everyone, but is harder for people from particular racial groups to satisfy and which cannot be justified. For example, it would be discriminatory to reject an applicant who has an unfamiliar accent. You can avoid indirectly discriminating against people who taking appropriate steps to prevent such discrimination arising, for example, by applying consistent checks to all persons who will occupy premises under a tenancy.

17. Although this Code only addresses racial discrimination, you should be mindful of other forms of discrimination, particularly religious discrimination, when applying the provisions of the 2014 Act. If people affected by religious discrimination are from a particular racial group the discrimination might also amount to indirect racial discrimination.

18. A person who has been the victim of unlawful discrimination could bring proceedings against a landlord or agent. The EHRC and the Northern Ireland Equality Commission can also bring proceedings against a landlord who publishes a discriminatory advertisement, or who instructs or induces another person to discriminate.

5. Your Responsibility as a Landlord or Agent under the Immigration Act 2014

19. The 2014 Act has imposed a new restriction on the renting of private premises for the use by illegal migrants as an only or main home. There is a system of civil penalties for those landlords or their agents who allow such persons to occupy premises without having obtained a statutory excuse. Under sections 18 and 20, a landlord or agent may be liable for a civil penalty in respect of each illegal migrant whose occupation of premises is authorised.

20. In order to establish a statutory excuse against a penalty, all people who will be authorised to occupy premises under the tenancy should be asked to provide evidence of their immigration status before the tenancy is granted. This includes British citizens and other residents from within the European Economic Area (EEA). Those persons who have a time restriction on their stay in the UK may be subject to repeat checks. Landlords are not expected to be expert in recognising fraudulent documents. You are expected only to recognise fraudulent documentation that is reasonably apparent, ie: a person untrained in the identification of false documents, examining it carefully, but briefly and without the use of technical aids, could not reasonably be expected to realise that the document in question was not genuine. If you have taken reasonable steps to satisfy yourself as to the authenticity of the document presented, you will not be held liable for being deceived or misled.

21. One of the ways you can establish a statutory excuse is by checking documents and by undertaking this in a uniform manner, you can protect yourself from charges of discrimination. You are entitled to record the above data and copy documents in order to provide a statutory excuse against any potential penalty but this does not entitle you to seek further information concerning the person's immigration status, the reason for their stay or their circumstances in relation to any consideration of their case by the Home Office.

22. Immigration status checks should be carried out at the same point as the landlord or agent would carry out other routine checks for instance, credit checks or referencing. Considerations around what a prospective tenant's immigration status may or may not be should not affect how the landlord or agent deals with people in the earlier stages of the letting process. You should make it clear to all prospective tenants that final arrangements will be subject to successful checks being carried out, as they already do with credit etc checks.

23. In the vast majority of cases, the person's status and any time limit on their stay will be established simply by examining their documents. Assuming a person's status on the basis of anything other than the documentary evidence they present is not only potentially unlawful it is also poor practice that is more likely to leave you liable for a penalty should a person be found to be an illegal migrant occupant. Where a person's status is not immediately apparent from the documents that they provide there are these options:

- a) Ask the prospective occupant to produce further evidence from the approved list of documents;
- b) If they say that they are someone who has a time limit on their stay then suggest that they contact the Home Office to seek clarification of their status or additional documentation;
- c) Seek advice from the Home Office Landlords helpline concerning complex or confusing documents, stamps or visas;
- d) Where the person says that they have an application outstanding with the Home Office - seek clearance from the Home Office email advice service before you proceed with the let – who should respond within 48 hours. If this time scale is not met, you will be deemed to have been given 12 months clearance before further checks are required.

24. It is therefore important, to ensure that you comply with the law, that you act fairly towards all potential occupants. You should carry out checks in a uniform and consistent way. Those landlords who only carry out checks on tenants who they believe are not British citizens, for example on the basis of ethnicity or colour, could find that this is used against them as evidence in any proceedings brought under the

relevant equality legislation. This is why we recommend that you obtain a statutory excuse for all potential occupants. This not only protects you from liability for a civil penalty, but also demonstrates that you have in place consistent, transparent and non-discriminatory checking procedures.

25. For example: You are a landlord with a one bedroom flat to let. You advertise in the local newspaper. It would be advisable to:

- a. ensure that your advert makes clear that the successful applicants will need to evidence their immigration status before a tenancy agreement will be granted;
- b. when applicants contact you, make sure you tell them all that they will need to be able to produce evidence regarding the eligibility to rent the premises of all the persons who will live in the flat as their only or main home;
- c. proceed as you would ordinarily with the letting process
- d. when you have selected a potential tenant from the applicants, ask for confirmation of their entitlement to rent the premises before granting a residential tenancy agreement, regardless of their race, ethnic origin or nationality.

Instructions to agents

26. It is unlawful to instruct or induce or attempt to induce a person to discriminate against, or harass, a person, on racial grounds. In the context of these requirements it would be unlawful for a landlord to instruct, or put pressure, on someone acting as your agent to act in a way that is discriminatory. The pressure does not have to be applied directly; it is unlawful if it is applied in such a way that the other person is likely to hear of it.

Advertising

27. It is unlawful to publish, or to be responsible for publishing, an advertisement that indicates, or may reasonably be understood to indicate, an intention to discriminate. The test for deciding whether an advertisement indicates an intention to discriminate is whether a reasonable person would consider it to be discriminatory.

The definition of an advertisement is very wide and includes any form of advertisement or notice, whether public or not; for example, internal circulars or newsletters, emails, displays on notice boards or shop windows, and pop-up windows and banners on websites.

28. However, there are a small number of limited exceptions, where an advertisement may refer to a situation where discrimination is not unlawful. For instance, a charity whose purpose is to help people from a particular group may allocate accommodation or provide housing services to households of a particular ethnic or national origin or nationality.

29. It is reasonable, in order to meet your obligations, to expect a person who needs to provide evidence of their legal status in the UK to provide the necessary documents. These may be prepared in advance and it is good practice to include in your advertising the fact that you will expect to see proof of current immigration status so as to allow prospective all occupants to ensure that they have the evidence that will be required prepared, regardless of their status. You may also suggest to those enquiring after accommodation that they refer to Home Office guidance which will provide advice on how to provide the necessary documentation for tenants and occupants.

30. You may refer the person to the Home Office through the Immigration Enquiry Bureau on 0870 606 7766, or a Citizens Advice Bureau for advice. You may also draw their attention to the advice to tenants contained on the Home Office website:

[Link](#)

You should try to keep the letting open for as long as possible, but you are not obliged to do so if you need to let the property urgently.

Further information and guidance

[Details under consideration]