# Annexe A: Methodology

UUK has used mixed methods to inform the development of this guidance, which has been st - alongside suggesting practical solutions.

A desk-based review of existing literature and government policies across the UK.

Establishment of an advisory group, staff and student panels, and student focus groups in Scotland to support the development of the guidance and ensure it is informed by voices with lived experience of racial harassment. Recruitment of independent experts to provide extra challenge and scrutiny.

Call for case studies

Annexe B: Terminology

Although there is no single, widely-continued acts of being an ally. An ally is a person who is not directly affected by a particular kind of discrimination (e.g. a white person fighting racism, a straight person fighting homophobia) but is invested in proactively supporting anti-discrimination efforts. A white ally may, for example, use their position as a white person to challenge racist behaviours, microaggressions, or banter, raise objections about policies that may exacerbate racial inequalities, and help to amplify the voices of those experiencing racism. An ally works alongside those experiencing racism and takes guidance from them, rather than centering themselves.

#### Anti-racism

The active process of identifying and eliminating racism by changing systems, organizational structures, policies and practices and attitudes, so that power is redistributed and shared equitably<sup>ii</sup>.

Anti-

identities with which the groups themselves have chosen to identify.

# Black (as a political definition)

r to people in

Britain who have shared histories of oppression and continue to experience necessarily solely from Black ethnic groups.

## **Ethnicity**

A 1983 House of Lords decision in the case of Mandla-vs Dowell Leev defined an

a long shared history of which the group is conscious as distinguishing it from other groups and the memory of which it keeps alive a cultural tradition of its own including family and social manners, often but not necessarily associated with religious observance a common, however distant, geographical origin a common language and literature

Everyone belongs to an ethnic group and has an ethnicity. Categorisations used refer to ethnic groups.

### Ethnic minority and minority ethnic

Both these terms refer to an ethnic group that is in the minority in a society.

'Ethnic minority' places the emphasis on ethnicity as the main issue. There can be a tendency in the UK to see 'ethnic' as synonymous with not-white'

not being white. As a consequence, the term tends to be reversed to refer to 'minority ethnic groups', to highlight the fact that everyone has an ethnicity and the issues being referred to relate to groups that are in the minority in the context of UK society'ii.

#### Harassment

As defined by the Equality Act 2010, harassment is unwanted conduct related to a relevant protected characteristic (including race) of either violating dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment<sup>viii</sup>. Therefore, behaviour may constitute harassment even if this is unintended by the perpetrator, provided it has the

### Institutional racism

As defined by the Macpherson report, institutional racism is the collective failure of an organization to provide an appropriate and professional service to people because of their colour, culture or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping with disadvantage minority ethnic people<sup>ix</sup>.

highlighted in the UK by the 1999 Macpherson report, prompted by the racially motivated murder of Black teenager Stephen Lawrence in 1993 and the subsequent police and legal investigation. The then Home Secretary Jack Straw announced an independent inquiry into his death, conducted by the judge Sir William Macpherson. The Macpherson report made seventy recommendations to

enhance accountability for addressing racism, including in public sector spheres such as education.

The Macpherson report has prompted greater recognition of institutional racism in

Intersectional discrimination arises from the synergy of categories of difference such as race, gender, religion or belief, caste, sexuality, disability or socioeconomic background, rather than being additive or cumulative<sup>xiii</sup> (as in cases of multiple discrimination). It goes beyond identity to highlight the social,

Racial microaggressions may not be witnessed by others and, if they are, may not be recognized as such by bystanders.

While individual microaggressive acts may not always meet the Equality Act 2010 definition of harassment, they could lead to behaviour which does meet the definition through repetition or escalation of the behaviour. Microaggressive acts may of teasy hafter leading of the behaviour which the second of the second

Further discussion of racial microaggressions can be found at Annexe C.

# Reporting party

A student or member of staff who has made a disclosure or report.

## White fragility

The state in which even a minimum amount of racial stress becomes intolerable to a White person, triggering a range of defensive moves. These moves include the outward display of emotions such as anger, fear, and guilt, and behaviors such as argumentation, silence, and leaving the stress-inducing situation. These behaviors, in turn, function to reinstate white racial equilibrium<sup>xxx</sup>.

## White complicity

The way in which White people may contribute to systems that maintain and perpetuate racism, even when they may consider themselves to be non-racist.

# Annexe C: Racial harassment and racial microaggressions

As defined by the Equality Act 2010xxi, harassment is unwanted conduct related

humiliating or offensive environment.

Harassment connected to a protected characteristic, including race, is unlawful in civil law.

Overt forms of racial harassment can include physical, verbal and, non-verbal harassment. The EHRC report sadly found many examples of staff and students at UK universities experiencing these forms of harassment<sup>xxxii</sup>.

Theme xxiii	
Physical	Intimidating gestures, acts that fit into racist tropes, physical violence or assault, unprovoked assaults
Non-verbal	Racist graffiti, defacing notices or posters, negative stereotyping of ethnic groups, written threats of a racial nature

insidious, often leaving the victim confused, distressed and frustrated and the

Racial microaggressions may constitute harassment under the terms of the Equality Act 2010. Even those microaggressive acts that do not constitute harassment, could lead to behaviour which does meet the definition through repetition or escalation of the behaviour.

A key recommendation by the EHRC in its 2019 investigation is to prevent misunderstanding by students and staff, particularly in relation to understanding racial microaggressions. An understanding of both overt and subtle forms of racism is key to developing robust and effective practice in addressing harassment. It will enable universities to move beyond a narrow and unsophisticated version of racism in overt forms, and help to shift thinking to understand that everyday racial harassment is a lived reality for many staff and students, carrying equal implications on mental health and wellbeing as much as

Sue et al suggest that racial microaggressions appear in three forms\*\*\*:

(1) Microassaults

Pathologizing	Dismissing an individual who brings	The way you do things is
cultural values/	up race/ culture in work/ teaching	wrong
communication styles: Notion that the values and communication styles of people of colour are abnormal.	setting	Leave your cultural baggage out of this

Second-class citizen: BAME person mistaken for a service worker

person or group

y driven/social; have you

## Annexe D: Policy and legislative context

This section outlines legal and public policy frameworks relevant to racial harassment as they apply across England, Scotland, Wales and Northern Ireland to provide an understanding of these contexts for universities in each nation.

### Legislative frameworks

The Equality Act 2010<sup>xl</sup> applies in England, Scotland and Wales. It was introduced in 2010 to legally protect people from discrimination in the workplace and wider society, consolidating several previous Acts (including the Race Relations Act 1976). A key provision of the Equality Act 2010 is the Public Sector Equality Duty (PSED). This requires all public bodies, including publicly-funded universities, to have due regard to the need to eliminate discrimination, advance equality of opportunity, and foster good relations between different people when carrying out their activities.

In addition to this general duty, the Act allows for additional specific PSED duties to be set in both Scotland and Wales.

In Wales, a number of additional provisions apply to higher education institutions, including the following on equality objectives<sup>xli</sup>:

The need to prepare and publish its equality objectives at least every four years from the first date of publication;

The need to publish objectives to meet the general duty. If an authority does not have an objective for each protected characteristic – in addition to any objective to address pay differences – it must publish reasons why not;

The need to publish a statement setting out the steps it has taken (or intends to take to meet the objectives) and how long it expects to take to meet each objective;

The need to make appropriate arrangements to monitor progress towards meeting its objectives and to monitor the effectiveness of its approach; and

The need to give appropriate consideration to relevant equality information it holds when considering what its equality objectives should be.

Universities must also have due regard to the need to have objectives to address the causes of any pay differences that seem reasonably likely to be related to any of the protected characteristics, and publish an equality objective to address any gender pay gap identified (or else publish reasons why it has not done so).

### <u>Wales</u>

In Wales, listed public authorities are required to produce a Strategic Equality Plan. The Welsh Government has published its Strategic Equality Action Plan for 2020 to 2024<sup>||||</sup>, including its long-term aim to eliminate harassment, hate crime and discrimination on the ground of protected characteristics including race.

The Higher Education Funding Council for Wales (HEFCW) has published a draft Strategic Equality Action Plan for the same period<sup>iii</sup>, drawing on the Welsh Government plan to outline its own plans to advance equality in higher education in Wales, including eliminating harassment.

Welsh universities publish their own Strategic Equality Plans (SEP) as per their listed status. Institutions must prepare and publish SEPs at least every four years, publish objectives to meet the general duty, make appropriate arrangements to monitor progress and give consideration to relevant equality information it holds.

Universities in Wales will have published their 2020-21 9t8-

### Northern Ireland

The Criminal Justice (No. 2) (Northern Ireland) Order 2004 enables a sentence to be increased where it is proven that the offence for which a person is convicted was motivated against a protected characteristic. However, no specific offence of of hate crime

legislation in Northern Ireland, commissioned by the Department of Justice, is currently underway<sup>lvii</sup>.

In 2018/19, 37% of hate crime cases submitted to the Public Prosecution Service by the Police Service of Northern Ireland were racist hate incidents<sup>|viii</sup>. Although this proportion is lower than in the other nations of the UK, this should be taken in the context that the proportion of those from minority ethnic backgrounds in Northern Ireland is significantly lower than other nations of the UK<sup>lix</sup>. Racially motivated hate crimes are also lower as a proportion of total hate crimes due to the additional category of sectarian hate crime in Northern Ireland.

# Annexe E: Complaints handling and redress for staff and students

The table below sets out concerns relating to managing complaints, raised by staff and students in the EHRC inquiry.

### Models and frameworks for handling student complaints

Frameworks for handling student complaints are set out below:

Office of the Independent Adjudicator (OIA) in England and Wales, the Scottish Public Services Ombudsman (SPSO) the Northern Ireland Public Services Ombudsman (NIPSO)

Where a complaint refers to misconduct which could also constitute a criminal offence, universities should refer to the 2016 <u>UUK/ Pinsent-Masons guidancelx</u>. This guidance refers to all forms of misconduct. The guidance is currently under review by Universities Scotland. This includes recognising the potential for trauma in a student who has experienced racism/ microaggressions; developing a trauma-informed approach and exploring how to dismantle some of the structural whiteness embedded in higher education systems and processes<sup>|x|</sup>.

### Guidance on handling complaints relating to racial harassment

As employers, universities in Great Britain should follow the Advisory, Conciliation and Arbitration Service (ACAS) Codes of Practice on good employment relations practice in terms of complaints relating to racial harassment. This includes the code of practice on disciplinary and grievance procedures and the non-statutory guidance which accompanies the code. The code sets out the minimum procedures an employer should follow in handling these issues. While it is not a freestanding legal obligation to follow the code, if a case reaches the employment tribunal, it will take into account the procedure that has been followed and may apply an uplift to any compensation awarded if the employer has not complied with the ACAS Code.

Universities should also refer to the EHRC <u>Sexual harassment and harassment at work; technical guidance</u> which sets out information on preventing and responding to harassment with reference to informal and formal resolution, conducting investigations and reporting outcomes and data protection.

In Northern Ireland, the Labour Relations Agency (LRA) has published <u>codes of practice on disciplinary and grievance procedures</u>.

These frameworks are clear on the importance of understanding what outcome or redress is being sought by an individual raising a complaint and this is an important consideration for ensuring that those who do raise a complaint, feel a sense of justice. Notwithstanding this, universities will also be aware that not everyone will be able to articulate the redress they would like; rather the emphasis may be on ensuring that the university is aware of the issue/ behaviour; and acknowledging it and, where appropriate, acts upon it.

Annexe G: Membership of Student and Staff Panels

Victim Support Scotland <a href="https://victimsupport.scot/">https://victimsupport.scot/</a>

Resources to support universities in addressing racism and racial harassment

https://www.youtube.com/results?search\_query=witness+ucu University of Edinburgh: https://www.ed.ac.uk/equality-

Advance HE (2020)

available at

Equality and Human Rights Commission (2018)

available at

https://www.equalityhumanrights.com/sites/default/files/research-report-113-unconcious-bais-training-an-assessment-of-the-evidence-for-effectiveness-pdf.pdf

Equality and Human Rights Commission (2019)

available at <a href="https://www.equalityhumanrights.com/sites/default/files/freedom-of-expression-guide-for-higher-education-providers-and-students-unions-england-and-wales.pdf">https://www.equalityhumanrights.com/sites/default/files/freedom-of-expression-guide-for-higher-education-providers-and-students-unions-england-and-wales.pdf</a>

Equality and Human Rights Commission (2019)

available at:

https://www.equalityhumanrights.com/en/publication-download/tackling-racial-harassment-universities-challenged

Equality and Human Rights Commission (2020)

available at

https://www.equalityhumanrights.com/sites/default/files/sexual\_harassment\_and\_harassment\_at\_work.pdf

Equality Challenge Unit (2010) available at <a href="https://www.ecu.ac.uk/wp-content/uploads/external/anti-discrimination-law-in-ni.pdf">https://www.ecu.ac.uk/wp-content/uploads/external/anti-discrimination-law-in-ni.pdf</a>

Equality Challenge Unit (2017)

available at https://s3.eu-west-

<u>2.amazonaws.com/ assets.creode.advancehe-document-manager/ documents/ ecu/ ECU\_Public-sector-equality\_Scotland-</u> \_2017\_1579099261.pdf

### available at

https://www.theguardian.com/education/2020/jul/07/its-not-banter-its-racism-uk-students-accuse-univer5.320.0s6 re841.92 reWhBT/F1 12 Tf1 0 0 1 386.23 221.21 Tm0 0 1 F

https://assets.publishing.service.gov.uk/government/uploads/system

ix Sir William Macpherson of Cluny (1999) (page 49) available at:: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\_data/file/277111/4262.pdf

- \* Such as in the case of Dafro Jeffries, information on which is available at: https://law.justia.com/cases/federal/district-courts/FSupp/425/1208/1513479/
- xii Section 14 of the Equality Act 2010 would make it unlawful in a work context or in the provision of education, for one person to treat another person less favourably because of a combination of two relevant protected characteristics. However, Section 14 has never been brought into force.
- xiv Further explanation of Islamophobia and its manifestations can be found at <a href="https://www.opensocietyfoundations.org/">https://www.opensocietyfoundations.org/</a> explainers/islamophobia-europe
- xv Cambridge Dictionary
- xvi Bhavnani R, Mirza HS, Meetoo V (2005)
- xvii Lewontin
- xviii Equality Act 2010 S9
- xix The Equality Act definition of race does not explicitly cover caste, and the UK government has not exercised a power under the Act which would allow it to make regulations including caste within the definition. However, it has been held by the Employment Appeal Tribunal, that caste in many of its forms may come within the 'ethnic origins' aspect of the definition, depending on the circumstances. (Chandhok & Anor v Tirkey UKEAT/0190/14/KN). In any case, caste discrimination is wrong and should not be tolerated.
- xx See https://www.cps.gov.uk/crime-info/hate-crime
- xxi See https://www.citizensadvice.org.uk/scotland/law-and-courts/discrimination/hate-crime-s/what-are-hate-incidents-and-hate-crime-s/
- xxii The Crown Office and Procurator Fiscal Service (COPFS) specifically define hate crime as any charge of racially aggravated harassment and behaviour in terms of Section 50A of the Criminal Law (Consolidation) (Scotland) Act 1995 or Section 18, 19 or 23(1)a of the Public Order Act 1986,