

# Guardians of Race Equality

**Perspectives on Inspection and Regulation**

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# Guardians of Race Equality



RUNNYMEDE

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### **About Runnymede**

Our mandate is to promote a successful multi-ethnic Britain — a Britain where citizens and communities feel valued, enjoy equal opportunities to develop their talents, lead fulfilling lives and accept collective responsibility, all in the spirit of civic friendship, shared identity and a common sense of belonging. We act as a bridge-builder between various minority ethnic communities and policy-makers. We believe that the way ahead lies in building effective partnerships and we are continually developing these with the voluntary sector, the government, local authorities and companies in the UK and Europe. We stimulate debate and suggest forward-looking strategies in areas of public policy such as education, the criminal justice system, employment and citizenship.

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# Contents

## Foreword:

- V Strengthening Democracy: Race Equality, Inspection and Cultural Change
  - Audrey Osler

## Introduction:

- I Beginning a Discussion
  - Rob Berkeley

## Exploring the issues:

- 5 I. The Public Duty and a Duty to the Public
- 14 II. Trust, Accountability and Race Equality
- 23 III. Regulation, Review and Partnership
  - Rob Berkeley

## Viewpoints:

- 31 Contributor Biographies
- 33 I. Race Equality and Accountability
  - Fiona Mactaggart, Parliamentary Under Secretary for Race Equality
- 39 2. Why Inspection is Important, and What It Means for Ethnic Minorities
  - Floyd Millen, Chief Executive of ROTA
- 45 3. On the CPS's Experience of Investigation by the CRE
  - Sir David Calvert-Smith, Director of Public Prosecutions

- 51 4. Tackling Black and Minority Ethnic Underachievement: Teacher Professionalism and the RRAA 2000  
■ Carol Adams & Shiraz Chakera, GTCE
- 63 5. Light Touch Inspections? Racism Does Not Touch Lightly  
■ Dave Allport, PCT
- 69 6. Inspecting for Race Equality: the CRE's Approach  
■ Joe Charlesworth, Commission for Racial Equality

**Afterword:**

- 75 Becoming Guardians of Race Equality  
■ Rob Berkeley

**Appendices:**

- 79 Bibliography

# Strengthening Democracy

Race Equality, Inspection and Cultural Change

**Audrey Osler** Professor of Education and Director of the  
Centre for Citizenship Studies in Education, University of Leicester

*Antiracism is not about helping black and Asian people; it is about our future – white and black. We all live in a multicultural society and we all have a choice: either we make a success of multicultural Britain or we do not. If we fail to address those issues, our children – white and black – will pay the price of that failure. That is why all of us, white and black, have a vested interest in the [Race Relations Amendment] Bill and in antiracism. We must make Britain a success as a multicultural society.*

(Mike O'Brien, Hansard, March 2000, column 1281)

## **Racism: a Barrier to Full Citizenship**

In Britain, as in other multicultural societies across Europe, racism remains a powerful force which not only undermines the human rights of individuals but also serves to undermine democracy itself. In 1999, in response to the report of the Stephen Lawrence Inquiry, the government acknowledged the existence of institutional racism in Britain,<sup>1</sup> which the Stephen Lawrence Inquiry report defined as:

*The process by which people from ethnic minorities are systematically discriminated against by a range of public and private bodies. If the result or outcome of established*

<sup>1</sup> Home Office (1999) *Stephen Lawrence Inquiry: Home Secretary's Action Plan*. London: Home Office.

*laws, customs or practices is racially discriminatory, then institutional racism can be said to have occurred.*<sup>2</sup>

Racism is based on principles that are antithetical to internationally agreed values of human rights, dignity and equality. It serves to disadvantage particular groups and restrict the rights of individual citizens. Citizenship can be understood as *status, action and feeling*.<sup>3</sup> In the first sense, that of status, it is exclusive: individuals either hold or do not hold the status of British citizen. Citizenship can also refer to the actions or participation of individuals in their communities. It also implies a feeling or sense of belonging. These three elements are closely inter-linked. Whether an individual has the formal status of British citizen or not, in order to participate and contribute in the community, s/he needs to feel a sense of belonging. The formal legal status of citizen may contribute to a feeling of citizenship or sense of belonging, but on its own it is unlikely to be sufficient. The importance of a shared sense of belonging, and of all members of the community experiencing the educational, political, economic and other institutions as fair and just, is a key message of the Runnymede Trust's report *The Future of Multi-Ethnic Britain*.<sup>4</sup> If an individual feels excluded this will hinder their active participation. Racism, in its various forms, can serve to alienate and exclude, denying any sense of belonging and preventing full participation.

In discussing issues of participation and a sense of belonging, it is important not to draw too neat a distinction between migrants and citizens. Migrants, including refugees, have been characterized as citizens-in-waiting,<sup>5</sup> who are not casual visitors, but who have come to settle. Although they do not (yet) have the formal legal status of citizen, they are able to claim human rights and are

protected by the European Convention on Human Rights. It is important that they too are able to feel a sense of belonging, to feel included and able to participate and contribute to the community. The wider community needs to take steps

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<sup>2</sup> Sir William Macpherson (1999) *The Stephen Lawrence Inquiry*. London: The Stationery Office.

<sup>3</sup> Audrey Osler and Hugh Starkey (forthcoming) *Changing Citizenship: Democracy and inclusion in education*. Buckingham: Open University Press.

<sup>4</sup> Commission on the Future of Multi-Ethnic Britain (2000) *The Future of Multi-Ethnic Britain: the Parekh Report*. London: Profile Books, for the Runnymede Trust.

<sup>5</sup> Bhikhu Parekh (2000) *Rethinking Multiculturalism: Cultural diversity and political theory*. Basingstoke: Macmillan, p. 103.

to ensure that refugees, asylum-seekers and other newly arrived migrants are protected against discrimination.

It is also important that migrants are quickly enabled to feel part of their new communities. Public bodies responsible for services such as education and health

care need to take positive actions to ensure that these citizens-in-waiting can access services on the basis of equality. The inclusion of these groups is critical for their sense of belonging and for the future social cohesion of society. Racism, which acts as a barrier to inclusion and participation, is therefore not only undemocratic, but also the enemy of democracy, threatening the stability and social cohesion of our society.

## Challenging Racism: Legislation and Cultural Change

Antiracism can be characterized as a set of policies and practices which help to strengthen democracy, rather than simply actions to oppose racism. That is why all of us have a vested interest in antiracism in order to ensure the sustainability of our multicultural society. Legal mechanisms play a direct role in ensuring racial equality and justice but they also have the potential to effect a wider cultural change.

Despite its limitations, the effect of the Race Relations Act 1976 has been considerable, creating a climate in which minority ethnic citizens could feel ‘confident and welcome’.<sup>6</sup> Effectively the law has acted as a catalyst for promoting cultural change, whereby individuals and organizations recognize that discrimination on the grounds of race, whether direct or indirect, is unacceptable.

In extending the powers of the Race Relations Act 1976 to cover *all* public authority functions, bringing the police force but also a full range of government activities under its jurisdiction, the Race Relations (Amendment) Act 2000 (RRAA) sets the framework for further cultural change. Home Office Minister Fiona Mactaggart places the recent race equality legislation within the context of the government’s efforts to implement public service reform, arguing that ‘*Improvements in race equality across the public sector support the wider government aim of public service reform*’.

‘Public services are the embodiment of the state; *they are windows, it could be said, through which the state is seen*’.<sup>7</sup> It is for this reason that the new statutory general duty placed on public bodies to promote race equality, alongside other duties to prevent discrimination, are so significant. The RRAA is an innovative and powerful piece of legislation, which has the potential to rid state institutions of practices and procedures that currently serve to discriminate against minorities. Under the RRAA, public bodies must take account of race equality in their day-to-day work of policy-making, service delivery, employment practices and other functions, including

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<sup>6</sup> Bhikhu Parekh (1991) ‘Law torn’, *New Statesman and Society*, 14 June.

<sup>7</sup> CFMEB (2000) *op cit*, p. 49.

procurement. Inspectorates, as public bodies, are themselves required to promote race equality but they also have a key role in monitoring how the public bodies they inspect fulfil their new statutory duty. The Commission for Racial Equality's (CRE) *Framework for Inspectorates*<sup>8</sup> aims to support inspectorates in fulfilling their new role.

Yet legislation alone will not be enough. As former Home Office Minister Mike O'Brien made clear during the passage of the Race Relations Amendment Bill through parliament, antiracism is the responsibility of all, including government, legislators, public bodies, non-governmental organizations and individual citizens. Genuine change demands commitment and leadership from within organizations, particularly by the inspection bodies charged under the RRAA to report on the ways in which public bodies discharge their new duties.

## Inspection as a Tool for Race Equality

In weighing up the strengths and limitations of inspection processes, particularly for members of minority ethnic communities, Floyd Millen concludes that they '*can be used positively to allay the fears of all who have experienced multiple discrimination, and thereby demonstrate that effective processes are being/can now be used to effect change*'. He points out that sufficient resources will need to accompany inspection processes in order that changes identified can be institutionalized.

The research evidence suggests that the processes of cultural change will not be swift or easy. In 1999, we were commissioned by the CRE to examine the Ofsted school inspection framework and to establish how Ofsted had responded to its government-assigned role, introduced in response to the recommendations of the Stephen Lawrence Inquiry, to monitor how schools were addressing and preventing racism.<sup>9</sup> Ofsted had in place a sound inspection framework, which addressed a range of race equality issues. Yet the inspection reports we studied revealed that race equality issues were often ignored, particularly in schools where there were few minority ethnic students. According to the then Chief Inspector of Schools, only 34 per cent of inspection reports in the year following the publication of the Stephen Lawrence Inquiry report included consideration of the schools' effectiveness in preventing and addressing racism. Thus the recommendation of the

Lawrence Inquiry, approved by government, that Ofsted should monitor race equality initiatives, had not been implemented in 66 per cent of school inspections.<sup>10</sup>

<sup>8</sup> CRE (2002) *A Framework for Inspectorates: The duty to promote race equality*. London: CRE.

<sup>9</sup> Audrey Osler and Marlene Morrison (2000) *Inspecting Schools for Race Equality: OFSTED's strengths and weaknesses*. Stoke-on-Trent: Trentham Books, for the CRE.

<sup>10</sup> Audrey Osler and Marlene Morrison (2002) 'Can race equality be inspected? Challenges for policy and practice raised by the OFSTED school inspection framework', *British Educational Research Journal* 28(3): 327–38.

In July 2003, three years after our study on behalf of the CRE and over a year since the RRAA came into force, the House of Commons Education and Skills Select Committee published a report on the work of Ofsted. It quoted evidence from the CRE:

*It is essential that Ofsted monitor how effectively inspectors inspect and report on race equality, including implementation of the positive duty. Ofsted has made a commitment to examine and report on school race equality policies, and schools' arrangements for meeting their other duties. We are, however, concerned that this message, and what it means in practice, is not getting through to all inspectors. For example, a head teacher of a predominantly white school contacted us to express concerns about Ofsted inspectors who recently inspected her school. The Head stated that the inspectors dismissed the work that she and her school had put into a race equality policy and meeting the positive duty as not particularly relevant because the school had a very small ethnic minority population. ... [The head teacher] saw race equality as an important issue, because the school had a very small ethnic minority population. ... [We] emphasise that the positive duty applies to all maintained schools, irrespective of their ethnic make-up.*

The House of Commons Education and Skills Committee stated:

*We encourage Ofsted to continue its work to incorporate the positive duty to promote race equality into the full range of its activities and to ensure that this intention extends to the practice of each and every inspector.<sup>11</sup>*

This example is important for a number of reasons and is of wider significance than the inspection of schools, having implications for other inspection

bodies. First, it suggests that the RRAA has not yet had the impact on all inspection bodies that might have been hoped for.<sup>12</sup> It tempers the optimistic note of the research carried out for the CRE on public bodies (quoted by both Rob Berkeley and Fiona Mactaggart in this volume) which reported: *'Just under 70% of respondents felt that their work to date on the positive duty had produced positive benefits'*.<sup>13</sup> This, of course, reflects the perspectives of the public bodies themselves and not necessarily those of service users. Our research, carried out in three local

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<sup>11</sup> House of Commons Education and Skills Committee (2003) *The Work of Ofsted. Sixth report of session 2002–03, HC 531, 23 July*. London: The Stationery Office, p.16.

<sup>12</sup> In the case of Ofsted, the inspectorate had a head start over some others, having been given a government-assigned role to report on race equality in 1999 and being the subject of a CRE research project the following year.

<sup>13</sup> CRE and Schneider-Ross (2003) *Towards Racial Equality – An evaluation of the public duty to promote race equality and good race relations in England and Wales. Executive Summary*. London: CRE.

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education authorities (LEAs) in 2003 and examining the racial harassment of teachers, found that the LEAs in question had developed policies and practices to support their role and that of schools in addressing race equality in service provision (particularly student attainment). They had not, however, considered the implications of the positive duty with regard to their role as employers.<sup>14</sup>

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<sup>14</sup> Audrey Osler, Chris Wilkins and Raul Pardinaz-Solis (forthcoming) *Racial Harassment of Teachers*. Rednall, Birmingham: NASUWT. None of the three authorities had a comprehensive scheme for monitoring staff by ethnicity. None had in place a means of monitoring or even recording incidents of racial harassment experienced by teachers.

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## Leadership

The Ofsted example reinforces the need for effective leadership in implementing the RRAA. It is a point

recognized by both Fiona Mactaggart and Carol Adams and Shiraz Chakera of the General Teaching Council for England (GTC) in their contributions to this volume. It is powerfully underlined by Sir David Calvert-Smith's account of the Crown Prosecution Service (CPS), following a formal investigation into its practices by the CRE. The Director of Public Prosecutions provides us with a case study of the CPS which might serve as a model for development. In outlining steps to ensure compliance with the duty to promote race equality, he reflects on the experiences of managers and staff in response to the formal investigation and as new procedures and practices are introduced. Acknowledging that the investigation was a catalyst for change he notes:

*For the lawyers in particular, it was very hard to swallow. CPS lawyers rightly regard themselves as committed to fairness in decision-making. ... Many white staff felt quite angry. ... It was very difficult getting the message across that 'institutionalized racism' (that the organization had failed) did not mean that all white staff were racist. ... Many black staff too felt 'silenced', as speaking out might mean that they were 'trouble makers' or 'activists'.*

He goes on to reflect on his own leadership:

*I feel that since the start of the investigation process I have travelled a long and difficult journey. This has not been an easy task for me. I had always thought, like the lawyers to whom I referred earlier, that as a lawyer I was trained to be fair. How could I be challenged on this very important issue?*

It is a similarly long and difficult journey that the leaders of inspection and regulation bodies may now all have to undertake.

## Education and Training

The evidence on Ofsted, recorded by the House of Commons Select Committee, also highlights the need for education and training of staff engaged in inspection processes. It reinforces the arguments made by Dave Allport in his contribution. He makes an additional, and significant, point that ‘light touch’ inspections are unlikely to be effective. He confirms our findings that it is very difficult in an inspection to uncover some of the complexities of processes relating to human relationships. This is illustrated by an HMI with particular expertise in race equality issues. In interviewing children and young people about their experiences in school, in order to establish whether they are working in an atmosphere free from oppressive behaviour such as bullying, sexism and racism, she observed:

*I actually find all of these things are quite difficult to get at in inspection ... it actually takes a lot of time to get underneath what might appear on the surface to be good relationships.<sup>15</sup>*

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<sup>15</sup> Osler and Morrison (2002) op cit, p. 334.

For this reason, as much as for any other, it is advisable that self-evaluation processes should take place alongside external inspection.

Inspectorates now have a new role. This role has implications, not just for the training of existing staff but for staff recruitment too. Joe Charlesworth notes how, over the last decade or so, most inspecting bodies have taken steps to introduce race equality measures into their inspection and audit activity, either through including race equality criteria in their inspection frameworks or by conducting specialized or thematic inspections of race equality. However, progress has not been as rapid as the CRE and others would have wished. One critical factor in ensuring that inspectorates are able to effectively carry out their new role will be the appointment of staff with appropriate expertise.

## Strengthening Democracy

The RRAA is a potentially powerful tool in strengthening democracy and mainstreaming antiracist initiatives. It provides a means by which exclusive, discriminatory and anti-democratic values can be brought out into the open and challenged. To bring about the necessary cultural change will require emphatic leadership and an investment in education and training, so that institutional racism can be effectively tackled and all those who have undergone multiple discrimination and exclusion are able to experience a new more inclusive form of citizenship.



# Beginning a Discussion

Rob Berkeley Runnymede

**T**he report of the Commission on the Future of Multi-Ethnic Britain is a unique document in straddling the divide between moral and political consensus building and practical solutions for policy development. Too often the gap is never bridged and the links, difficulties and challenges in turning theory into practice are left to those at the coalface – only for theoreticians to lambast the practitioner at a later date for failing to live up to the diktats of grand theory.

The Commission made a number of recommendations which argued for better regulation of race equality issues. These recommendations were scattered liberally throughout the report, recognizing that different areas of the public services were starting from different places and that regulation needed to be proportionate to the impact that could be made by different services on race equality in Britain.

Three years on from the publication of the commission's report, we focus here on the recommendations which were concerned with regulation in order to respond to some of the challenges felt by practitioners and regulators. This is especially germane in the light of the passing and implementation of the Race Relations (Amendment) Act 2000. The Act (RRAA) has meant that the lion's

share of the regulation recommendations made in the report have been responded to positively. The RRAA has meant a significant shift from the regulatory regime for race equality that was in existence whilst the Commission was in deliberation.

In the report of the Commission on the Future of Multi-Ethnic Britain, we argued that Britain should develop as a community of communities in which there are shared values but also recognition of differences, with vigorous action taken against both overt and institutional racism. We stressed that shared values are maintained through dialogue and negotiation, that they are relevant to both public and private life, and that equal citizenship means an equal sense of belonging as well as equal rights. How can this vision be realized through better regulation of organizations? How can legislation be used as a tool to develop a community of communities?

In this collection, the vision set out in the Commission's report is revisited in order to highlight its relevance for public authorities and other organizations in terms of regulation, to examine in this context a discussion of trust in and within public authorities, and to note some of the challenges posed by the regulation of race equality. A range of contributors then offer their reflections on the theme.

The aim remains to offer support to those who are engaged in creating a more successful multi-ethnic Britain. Runnymede is committed to engaging the widest number of people with public policy debates on race equality and cultural diversity. We hope to do this through offering space for serious debate and for the sharing of experiences and opinions.

Contributors were asked to reflect on the theme of regulation from their perspectives as government ministers, practitioners, inspectors and inspected, from the statutory and voluntary sectors. As well as those who have committed their ideas to paper, we would also like to thank those who contributed through joining in honest and frank discussions about the challenges and opportunities that regulation of race equality offers. These included representatives from:

- Audit Commission
- Commission for Health Improvement
- Her Majesty's Chief Inspector of Prisons
- Housing Corporation
- Northern Ireland Council of Ethnic Minorities
- Social Services Inspectorate
- Trades Union Congress

There is no claim here that we represent their views. Instead, this report should be seen as an attempt to stimulate further discussion of what our regulatory structures should be, to share understandings and practice, and to get closer to developing a vision for what success might mean in the building of a multi-ethnic society. It is hoped that this collection is a useful contribution to a debate that is often abstracted and distant from the public but which is key to political engagement, equality of opportunity and social cohesion in a community of citizens and a community of communities.

**Rob Berkeley is Senior Research and Policy Analyst at Runnymede**



## Exploring the Issues I

Rob Berkeley Runnymede

# The Public Duty and a Duty to the Public

*O Duty*

*Why hast thou not the visage*

*of a sweetie or a cutie?*

(Ogden Nash)

**T**he passing of the Race Relations (Amendment) Act 2000 has meant a sea change in the context in which we discuss race relations in Britain today. For public authorities it has been a significant move to shift from avoiding unfair discrimination on racial grounds to the promotion of race equality. What appears as quite anodyne language in legislation, has spawned a great amount of activity and spurred significant organizational change:

*Every . . . [public authority] shall, in carrying out its functions, have due regard to the need –*

*(a) to eliminate unlawful racial discrimination; and*

*(b) to promote equality of opportunity and good relations between persons of different racial groups.<sup>1</sup>*

Research carried out for the CRE (and published in June 2003) was able to report some significant progress since the implementation of the legislation: *Just under*

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<sup>1</sup> Race Relations (Amendment) Act 2000 Chapter 34 Section 2.

70% of respondents felt that their work to date on the public duty had produced positive benefits'. The authors of this research were able to point to the breadth of the impact of the legislation:

*The public duty is, in effect, legislation which is deliberately designed to bring about 'mainstreaming' of racial equality. This is about ensuring that racial equality is not a separate 'add on', but an integral part of how an organisation goes about all its activities – certainly in relation to employment, but also in relation to policy making and service delivery, access to information and services, public image and confidence, as well as procurement decisions and partnership arrangements, and community relations. In other words, it is about **institutional change** – getting the concept of **inclusion** into the bloodstream of an organisation so that it reaches every part of the body – and therefore everything it does.<sup>2</sup>*

Given that the legislation had only been operating effectively for 6 months at the time of the research, this is progress indeed. It is unlikely that the response was as quick so soon after the passing of the Race Relations Act in 1976. That said, the implementation of the duty is not without its challenges and some organizations have been far quicker on the uptake than others.

The Codes of Practice and guides developed by the CRE lay down the kinds of actions that public authorities are expected to adopt in order to eliminate unlawful discrimination and to promote equality of opportunity and good relations. There is a general duty applied to all public authorities:

*. . . this means that listed public authorities must take account of racial equality in the day to day work of policy-making, service delivery, employment practice and other functions. To do this, public authorities should take two factors into account. The weight which they attach to racial equality should be in proportion to its relevance to a particular function. . . Since public authorities must meet all three parts of the duty — eliminating unlawful discrimination, and promoting equal opportunities and good race relations — they must make sure they know how all their policies and services affect race equality.<sup>3</sup>*

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<sup>2</sup> CRE and Schneider-Ross (2003) *Towards Racial Equality – An evaluation of the public duty to promote race equality and good race relations in England and Wales (2002)*. Executive Summary. London: Commission for Racial Equality, p. 13.

<sup>3</sup> CRE website 2003 [<http://www.cre.gov.uk/duty/index.html>]

Most main public authorities have specific duties in relation to policymaking and service delivery, and employment:

*Under these duties, certain public authorities will have to prepare and publish a Race Equality Scheme. The scheme should explain how they will meet both their general and specific duties. Under the Race Equality Scheme, public authorities will have to:*

- *assess whether their functions and policies are relevant to race equality*
- *monitor their policies to see how they affect race equality*
- *assess and consult on policies they are proposing to introduce*
- *publish the results of their consultations, monitoring and assessments*
- *make sure that the public have access to the information and services they provide*
- *train their staff on the new duties*

*The Race Equality Scheme – itself one of the specific duties – essentially packages the other duties into a coherent strategy and action plan.<sup>4</sup>*

Educational establishments have been issued with separate guidance in order to fulfil their specific duties (see the bibliography for a list of CRE publications on public duty).

The Act was drawn up largely in response to the report of the Stephen Lawrence Inquiry. It was designed to respond to the need to tackle institutional racism. The inquiry report quoted at length Dr Benjamin Bowling's definition of institutional racism:

*Institutional racism is the **process** by which people from ethnic minorities are systematically discriminated against by a range of public and private bodies. If the result or **outcome** of established laws, customs or practices is racially discriminatory, then institutional racism can be said to have occurred. Although racism is rooted in widely shared attitudes, values and beliefs, discrimination can occur irrespective of the intent of the individuals who carry out the activities of the institution. Thus policing can be discriminatory without this being acknowledged or recognised, and in the face of official policies geared to removal of discrimination. However, some discrimination practices are the product of **uncritical** rather than unconscious racism. That is, practices with a racist outcome are not engaged in without the actor's knowledge; rather, the actor has failed to consider the consequences of his or her actions for people from ethnic minorities. Institutional racism affects the routine ways in which ethnic minorities are treated in their capacity as employees, witnesses, victims, suspects and members of the general public.<sup>5</sup>*

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<sup>4</sup> *Ibid.*

<sup>5</sup> Benjamin Bowling (1998) *Violent Racism:Victimization, Policing and Social Context*. Clarendon Series in Criminology. Oxford: Oxford University Press, pp. 3–4, paras 21–2 (emphasis added).

## Ten sets of Questions for self-review

**1 Leadership:** Do the leaders of our organisation show by their words and actions that they understand and are committed to race equality and cultural diversity issues?

**2 Documentation:** Does our organisation have intelligible, reader-friendly documentation about race equality and cultural diversity? Is the documentation well known to all staff? Was it produced through processes of consultation? Is it kept under review? Does it include an action plan with short- and medium-term goals, and with deadlines and performance indicators?

**3 Quantitative and qualitative checks:** Does our organisation check its own progress in relation to race equality and cultural diversity? Do we have the basic quantitative information we need? Do we collect perceptions and impressions in a systematic way?

**4 Mainstreaming:** Do we systematically check on the impact of all our policies, including unintended impacts, in relation to equality and diversity issues?

**5 Consultation and partnership:** Do we consult local communities adequately about issues that concern them? Do we show that we have attended to their views and concerns? Do we work in active partnership with them? Do we accept that we have a responsibility to assist in enhancing capabilities?

**6 Rewards and sanctions:** Do equality and diversity issues appear in our staff appraisal schemes? Are there rewards and incentives for staff who perform well? Are there sanctions for those whose performance is not satisfactory?

**7 Occupational and professional culture:** Is our occupational and professional culture positive about equality and diversity issues, or is there sneering about so-called political correctness, or indifference? Do some staff feel that their cultural identity is marginalized or ignored, and/or that their experiences and perceptions of racism are not recognized? Are our perceptions and expectations of the public racist, or likely to have racist effects?

**8 Recruitment, promotion and retention:** Are staff recruited and promoted according to equal opportunities principles and practices? Are positive action measures used? Is our staffing structure becoming yearly more inclusive, at all levels of seniority?

**9 Training and staff development:** Is there a satisfactory system of developing staff skills in relation to equality and diversity issues? Has a satisfactory proportion of staff received high-quality training within the last three years?

**10 Making a difference:** Is our organisation making a discernible and positive difference, in relation to equality and diversity, in the outside world? Do we have reliable evidence of this?

(CFMEB 2000: 282, Box 20.1)<sup>7</sup>

## Principles for a new legislative approach

**Twinned goals and a holistic view:** The goals should be a) the elimination of unfair discrimination and b) the promotion of equality with respect to sex, race, colour, ethnic or national origin, religion or belief, disability, age, sexual orientation, or other status

**Clear standards:** The standards in legislation and codes of practice should be clear, consistent and easily intelligible

**Regulatory framework:** The regulatory framework should be effective in achieving measurable targets, efficient in terms of cost and equitable in its effects. It should encourage personal responsibility and self-generated organisational change.

**Participation:** Everyone should be able to participate in processes of organisational change, including employees and their representatives, clients and customers, and campaigning groups.

**Redress:** Individuals should be free to seek redress for harm they have suffered as a result of unfair discrimination. The procedures should be fair, inexpensive and fast and the remedies should be effective. They should act as a spur to organisational change.

## The levels of an enforcement pyramid

**1 Auditing and disclosure:** Every organisation should audit its workforce by ethnicity and publish the results. Minimum standards for such auditing and disclosure are laid down.

**2 Action plans and performance targets:** Minimum standards are laid down on what these should contain. However, organisations are encouraged to go beyond them. Interest groups must be involved in their formulation and review.

**3 Investigation:** There is a formal investigation or inquiry by the external enforcement agency if there are grounds for believing that measures at levels 1 and 2 are insufficient. In the light of the investigation or inquiry, the organisation commits itself to certain undertakings.

**4 Compliance notice:** The enforcement agency issues a compliance notice if the undertakings required at level 3 are either not given or not carried out

**5 Judicial enforcement:** A court or tribunal requires the organisation to take action within a specified period

**6 Sanctions:** Monetary penalties are imposed for contempt of court

**7 Withdrawal of contracts:** Government contracts, grants, subsidies and licences are withdrawn or not renewed

*(adapted from Hepple et al. 2000: paras 3.6–3.7, as reproduced in CFMEB 2000: 271)*

The concept and identification of institutional racism required a response that would lead to organizational change. The legislation would have to work to remove the spaces in which actors could claim to have merely ‘failed to consider the consequences’, to remove the opportunity to indulge in ‘unwitting prejudice, ignorance, thoughtlessness and racist stereotyping’ (Macpherson 6.34).<sup>6</sup> It attempts to do this through the introduction of improved ethnic monitoring, involvement and consultation of people from minority ethnic

communities, and the development of race equality impact assessments.

This emphasis on organizational change is welcomed for it is in local settings and at the level of the

organization that society as a community of overlapping and interdependent communities is most obviously seen, experienced and built upon. It is here that significant decisions about policing, education, health and employment are made; here that institutional racism most urgently needs to be addressed and dismantled; and here that significant interactions take place among people who have diverse backgrounds, cultures and identities, and diverse perceptions and experiences of racism.

In reflecting on organizational change, the report of the Commission on the Future of Multi-Ethnic Britain developed a set of questions that organizations could use to assist them in self-review. They are reproduced [on p.8] in order to highlight some of the questions that organizations have had to confront in order to develop their responses to the RRAA.

The legislative context which was argued for in the Commission on the Future of Multi-Ethnic Britain Report was based on that developed in *Equality: A New Framework* by Bob Hepple, Mary Coussey and Tufyal Choudhury (p. 9).<sup>8</sup> It stated the principles and enforcement structure of the legislation, which was largely the approach adopted.

The legislation also provides an opportunity for public authorities to engage with the principles of community cohesion. The wording of the RRAA includes not just an exhortation to promote racial equality, but also a duty to promote ‘good relations between people of different ethnic groups’.

The Commission’s report focused on a vision for relations between ethnic groups, arguing for an understanding of Britain as a community of citizens and a community of communities. The inclusion of the duty to promote good

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<sup>6</sup> William Macpherson (1999) *The Stephen Lawrence Inquiry: Report of an Inquiry by Sir William Macpherson of Cluny*. London: Stationery Office, ch. 6 para. 34.

<sup>7</sup> CFMEB (2000) *The Future of Multi-Ethnic Britain: The Parekh Report*. London: Profile Books for the Runnymede Trust.

<sup>8</sup> Bob Hepple, Mary Coussey, and Tufyal Choudhury (2000) *Equality: A New Framework*. London: Hart.

relations in legislation, which also focuses on the promotion of racial equality, highlights the crucial linkage between cohesion, equality and diversity.

*Cohesion . . . derives from widespread commitment to certain core values, both between communities and within them: equality and fairness; dialogue and consultation; toleration, compromise and accommodation; recognition of and respect for diversity; and – by no means least – determination to confront and eliminate racism and xenophobia.<sup>9</sup>*

This is a very demanding concept and, to a large extent because of its highly contested nature, has developed over the past 3 years in a different way. The 2001 riots in the northern mill towns have sparked the development of a separate tranche of work in local and central government. Local authorities have been required to draw up community cohesion plans, separate from their race equality schemes. These will be assessed and audited separately from activities focused on the promotion of race equality. It is rather unsurprising, given this context, that research into the impact of the public duty found that:

*Authorities and institutions often gave less attention to addressing good relations between different groups in their assessments of functions and policies and in their race equality schemes and policies.<sup>10</sup>*

We have argued elsewhere that

*. . . within the common-sense definition of the term [cohesion] there also needs to be focus on creating a sense of belonging, combating racisms, enabling cultural exchange and discourse, and a denial of essentialist approaches to ‘race’ and community. For cohesion to work as a policy framework it has to appeal to the hearts and minds. In emotional terms a sense of belonging cannot be guaranteed by mere delivery of services (although it can be destroyed by failure to deliver those services). Cohesion cannot be guaranteed simply by the sharing of public spaces if such sharing is marked by hostility rather than an openness and willingness to engage and to change as a result of interaction. Cohesion cannot be guaranteed by imposing identities and presupposing responses, it must be responsive to the multiple identities and hybridity that are characteristic of complex late-*

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<sup>9</sup> CFMEB (2000), op cit, p. 56, 4.36.

<sup>10</sup> CRE and Schneider-Ross (2003) Towards Racial Equality – An evaluation of the public duty to promote race equality and good race relations in England and Wales (2002). Executive Summary. London: Commission for Racial Equality, p.6.

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*modern societies. In political terms, the links have to be made between the relationships of people with the state as well as each other. Dissatisfaction (the riots of Bradford, Burnley, and Oldham in its most extreme manifestation) is not merely a result of 'not getting along' or 'parallel lives', but also of the pervasive nature of institutional racism and political disenfranchisement.<sup>11</sup>*

Whilst intrinsically linked with the promotion of racial equality, promoting cohesion is more difficult since it is such a slippery political construct. Nonetheless, the legislation requires public authorities to give it due regard. How such activity is to be regulated is difficult to imagine. The Local Government Association and Home Office Community Cohesion Unit are working together to develop approaches for auditing activities aimed at improving community

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<sup>11</sup> Rob Berkeley, *Runnymede Bulletin* December 2002: 1.

cohesion. These will apply to many public authorities.

Over 40,000 public authorities in England alone come under the auspices of the RRAA. The Potato Marketing Board, the NHS and your local school, all have at least a general duty to promote race equality and good relations. This is a powerful force for change in society when over 3 million citizens work in health and education alone. There is scope for a huge amount of activity.

It was always clear that the Commission for Racial Equality could not oversee all of this activity unaided. Unlike the Northern Irish equality legislation, which required all public authorities to submit an equality scheme to the Equality Commission, the CRE is now only one regulatory body among many in terms of race equality. Regulatory, audit and inspection bodies are public authorities too, and as such have a duty to promote racial equality. They have had to adapt their actions to include in their considerations the impact of bodies that they regulate and inspect on the promotion of racial equality. For some regulatory/inspection bodies this has meant little change as they had been developing the expertise to tackle these issues over many years; for others there is a steeper learning curve.

Public authorities cover a vast terrain and have developed regulation and inspection systems in very idiosyncratic ways. While ostensibly fulfilling similar functions, Ofsted, the Benefit Fraud Inspectorate, the Commission for Health Improvement, Her Majesty's Inspectorate of Constabulary, the General Medical Council, and the Audit Commission are all very different organizations, with different levels of powers, inspection frameworks and approaches. Their

interpretations of their duty with regard to race equality will necessarily need to be diverse.

The CRE has produced some guidance for inspectorates which aims to support them in developing their approach. It notes:

*Public authorities that meet the duties consistently, as a regular part of their functions, should expect to be achieving the following outcomes, in the medium to long term. You may find it useful to see these outcomes as the broad context of your inspections*

- *A workforce that represents at all levels the different communities it serves*
- *No significant differences between ethnic groups in staff perceptions of equal treatment*
- *No significant differences between ethnic groups in the profile of service users*
- *No significant differences between ethnic groups in satisfaction rates among service users*
- *No significant differences between ethnic groups in levels of public confidence*
- *Services meet the needs of the communities the authority serves*
- *No significant differences between ethnic groups in complaints from service users*
- *No significant differences between ethnic groups in service outcomes*
- *No complaints of unlawful discrimination or harassment<sup>12</sup>*

How each organization goes about discovering whether the authorities they work with are on the way to achieving these outcomes will have a great impact on the speed and style in which each sector progresses. This means that the inspectorates are a key group in delivering the public services which will be required to enable further development of a successful multi-ethnic Britain. The public duty to promote race equality is coupled in this way to the duty which inspectorates have towards the public – a duty to ensure that authorities behave in such a way as to advance the public interest.

Given this context, the challenges are manifold. In the next section the public service context in which the

duty to promote race equality will have to operate is considered through an examination of public interest, trust and authority. The discussion then focuses on a few of the key challenges for inspectorates, public authorities and public service users in developing effective regulation structures for race equality.

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<sup>12</sup> CRE (2002b) *A Framework for Inspectorates*, London: Commission for Racial Equality, pp. 4–5.

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Rob Berkeley Runnymede

# Trust, Accountability and Race Equality

*So meck we free up de system*

*Fi meck we dance*

*To a new rhythm*

*An just mash dem ism*

(Michael Smith)

**T**he debate about trust in public institutions continues apace. High-profile scandals in what seems to be almost every public service in recent years have been the cause of much alarm and have been a major driver in calls for ever greater public service reform. Managers of the rail network are facing court action as a result of the terrifying rail crash at Hatfield, which has ultimately led to the creation of a ‘public interest company’. The Victoria Climbié inquiry reported a number of failings in social services, which have contributed to the creation of Children’s Trusts and a Minister for Children. AlderHey, BSE, Harold Shipman, Laura Spence, Zahid Mubarak, and Westminster Council, they have all become bywords in discussing public policy failures and specific occasions that have highlighted public service shortcomings and led to policy change.

Reform in response to scandal rather than considered evolution must have an impact on the way in which such reform is viewed by the public and on the trust that they have in the public servants who have presided over such ‘scandal prone’

systems. Perhaps it was ever thus; Macmillan's 'events' drive politics as much as ideology. Political commentators reflect that there needs to be greater accountability in order to redevelop trust in our public institutions.

*Today, this blind trust in authority has given way to wary suspicion. Whether it be the doctor, the teacher, the priest, we question those who claim control over any aspect of our life.<sup>1</sup>*

The suggestion that there were halcyon days in which the public servant was trusted almost unequivocally underlies the debate about diminution of trust. Yet in terms of race equality, as reports from Scarman (1981), to Swann (1985), to Macpherson (1999), to Cattle (2001) show, that trust in public authorities appears to have characterized little more than a fleeting moment in the histories of many of Britain's minority ethnic communities.

The project must therefore be for public authorities to build trust with all communities, recognizing their different histories and past successes and failures. This building of trust must also take account of a context of declining trust and increasing suspicion. It may be that through focusing on the needs of minority ethnic communities, public authorities will be able to get a better sense of the actions they need to undertake to rebuild trust with all of British society.

This paper will consider some of the major factors for public authorities in building trust on matters of race equality. This focus, it is hoped, will provide a backdrop to further discussion on the shape of the regulatory system that it will be necessary to develop in order to respond to the need to eliminate unlawful discrimination, to promote equality of opportunity, and good relations between people of different ethnic groups.

### **I wouldn't start from here . . .**

Histories of race and racism in the UK have been played out to a large extent through relationships between minority ethnic communities and public authorities. Schools, universities, the criminal justice and health services have been arenas of contention, confrontation, and community building for many minority ethnic communities. In some senses the racism of public authorities have been contributory to the formation of communities, helping to build Black Britishness from a Caribbean diaspora, becoming rallying points for professionals within those services to

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<sup>1</sup> Cristina Odone, 'Trust me, I'm a patient', *The Observer*, Sunday, 22 December 2002.

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struggle against institutional racism, framing the 'enemy' in struggles for justice. As Winston James<sup>2</sup> notes:

*Through the experience of working in a hostile environment they have forged bonds of solidarity against racism and for black liberation. . . these bonds, precisely because of the anti-black racism which they oppose, have helped to create this new black identity.* (p. 255)

Public authorities have been understood as a route to social justice and organisations to which the voluntary sector concerned with racial justice have given the majority of their attention (Runnymede is no exception). It is against this backdrop that the development of trust with black and minority ethnic communities must be seen. A backdrop that demonstrates persistent inequalities of opportunity and outcome for members of certain minority ethnic communities:

- Ethnic minority workers are more likely to be among the unemployed and long-term unemployed, especially young workers.
- Schools are up to four times more likely to permanently exclude African Caribbean pupils, increasing the chances that they will be disengaged from education in the longer term, and black pupils and those from Pakistani and Bangladeshi backgrounds achieve poorer GCSE results than other groups.
- Gypsy and traveller children have the lowest academic results of any ethnic minority group and are the group most at risk in the education system.
- People from Pakistani and Bangladeshi communities are one-and-a-half times more likely to suffer ill health, and African Caribbeans a third more likely than white people.
- Irish-born men are the only migrant group in Britain whose mortality is higher here than in their country of origin.
- African Caribbeans are six times more likely to be stopped and searched than white people

(CRE/Schneider-Ross 2003)<sup>3</sup>

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<sup>2</sup> Winston James (1993) 'Migration, racism and identity' in Winston James and Clive Harris (eds) *Inside Babylon: The Caribbean Diaspora in Britain*. London: Verso, p. 255.

<sup>3</sup> CRE and Schneider-Ross (2003) *Towards Racial Equality – An evaluation of the public duty to promote race equality and good race relations in England and Wales (2002)*. Executive Summary. London: Commission for Racial Equality.

The challenge is therefore a daunting one. How can trust be developed in those groups which are defined in

some ways by their suspicion of public authorities, and whose experience is one of unequal treatment?

## Developing Trust

The Audit Commission worked with MORI to discover what factors influence trust in public authorities. They reported that:

*Asking the public directly what they think influences their levels of trust in public sector organisations confirms that a wide range of factors are important, supporting findings from the qualitative research.*

*Satisfaction with service outcomes and with the service delivery process are central; indeed, over half identify whether services meet their needs (55%) and whether services keep their promises (51%). The way in which the service is delivered is also significant; staff treating people well is one of the main factors (53%). These reflect the qualitative research, which found that positive outcomes and contact with front line staff are key to high levels of trust in services.*

*The significance of handling mistakes also appears fundamental; 53% identify admitting responsibility when they make mistakes and 44% learning from mistakes as important in determining trust in public services. As was found in the qualitative research, information is also a key driver of trust, with 48% saying providing information that they need was an important factor.*

*Interestingly, relatively few people identify what their friends and families tell them about services as a key influence (28%). This is in contrast to the qualitative research, which found this factor to be very strong. However . . . regression analysis does demonstrate that informal networks are significant sources of information from which people form judgements.*

(MORI/AC p. 13)<sup>4</sup>

The researchers did not include ethnicity in their quantitative survey but reported in the qualitative section of the report that:

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<sup>4</sup> MORI/Audit Commission (2003) *Trust in Public Institutions. New Findings*. London: MORI.

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*Loss of trust appears more pronounced among black and minority ethnic communities, who feel they are not treated equally or sufficiently represented in public services. This remains a particularly important issue for the relationship between the police and Black communities.*

(MORI/AC p. 5)<sup>5</sup>

This 'loss of trust' has been recognized by central government, and early in 2003 the Home Office offered grants to voluntary organizations which could work to build trust between minority ethnic communities and public authorities

*2.3.2 . . . it is recognised that minority ethnic communities are still not making the same level of use of services as their white counterparts, nor are they seeking to join central or local government or their agencies or services in proportionally the same numbers as the white community. This may be due to lack of knowledge about their existence on the part of minority ethnic communities. But there is strong evidence to suggest that people from minority ethnic communities are still reluctant to use some public services. This may be due to negative perceptions, unsatisfactory previous experiences or because of cultural reasons.<sup>6</sup>*

So how can public authorities go about (re)building trust with minority ethnic communities? Is it through increasing levels of accountability?

In terms of policy-making in response to failure and scandal, race equality is not an exception to the rule. The Stephen Lawrence Inquiry and the Cante

Report are both major contributors to our current regulatory framework, as noted above. The changes in race

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<sup>5</sup> MORI/Audit Commission (2003) *Trust in Public Institutions*. London: MORI.

<sup>6</sup> Home Office (2003) *Connecting Communities: Race Equality Grants Prospectus*, ch. 2.

equality legislation and the new regulatory frameworks are not based solely on imperatives for better policy, but also on frustration, dissatisfaction, and tragedy. The latest form of the regulatory framework also arrives in a period when there is no political or professional consensus about what the nature of inspection and regulation should be.

## **Challenges to Regulation**

The Conservative Party has been arguing for a reduction in what they term 'bureaucracy and red tape'. In a speech to the Local Government Association Conference in 2003, their leader, Iain Duncan Smith, said:

*In recent years we've seen an explosion of compliance regulation, with prescriptive new standards administered by agencies ranging from the Office for Standards in Education to the National Care Standards Commission. Councils are required to write more and more plans setting out how they will achieve a range of Government targets while the Government's 'Best Value' scheme judges how well they've done in meeting them . . . My Taskforce on Community Government is looking at alternatives . . . but at its simplest I think an annual financial audit, written in plain English and put into the public domain, would ensure that people are still able to check up on the performance and delivery of their local council, while doing away with the excessive burdens councils currently face.<sup>7</sup>*

Where does race equality fit into a vision like this? Is a race equality scheme an unnecessary administrative burden? Would a financial audit be enough for local government to begin to win the trust of minority ethnic communities?

In her influential BBC Reith Lectures of 2002,<sup>8</sup> Onora O'Neill examined the style of accountability currently in operation, and asked whether it could ever build trust:

*Most people working in the public service have a reasonable sense not only of the specific clinical, educational, policing or other goals for which they work, but also of central ethical standards that they must meet. They know that these complex sets of goals may have to be relegated if they are required to run in a race to improve performance indicators. Even those who devise the indicators know that they are at very best surrogates for the real objectives. Nobody after all seriously thinks that numbers of exam pass levels are the only evidence of good teaching, or that crime clear up rates are the only evidence of good policing. Some exams are easier, others are harder, some crimes are easier to clear up, others are harder. However the performance indicators have a deep effect on professional and institutional behaviour.*

Does race equality regulation fall foul of the same objections? What difference would it make if 'a workforce represents at all levels the different communities that it serves', if the outcomes remain discriminatory? What of race equality schemes if they remain paper exercises to fulfil paper inspections? What will be the unintended outcomes of a focus on certain areas of performance on race equality? Can they have a detrimental effect on race equality?

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<sup>7</sup> LGA website; or Conservative Party HQ  
[[http://www.conservatives.com/news/article.cfm?obj\\_id=65897&speeches=1](http://www.conservatives.com/news/article.cfm?obj_id=65897&speeches=1)]

<sup>8</sup> Onora O'Neill, BBC Reith Lectures of 2002  
[<http://www.bbc.co.uk/radio4/reith2002/>]

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For example, if stop and search powers could be shown to be an effective policing tool in curbing street robbery (the evidence is far from concrete in this case), but police were focused on a performance target which was about reducing the disproportionality of African Caribbean men that are stopped, they could fail to address a crime of which a disproportionate number of African Caribbean people fall victim. Who should be the arbiter in these cases?

The benefit of race equality regulation is that, in contrast to some other inspection regimes, it is based on organizational self-review. Intervention is not reliant on failure to meet performance targets apart from those agreed with the particular organization. Any regulatory or inspecting body will have to respond to this model of organizational self-review (see above).

O'Neill expresses another criticism to which regulators and inspectors will need to respond imaginatively in order to build trust in public authorities in this arena:

*In theory the new culture of accountability and audit makes professionals and institutions more accountable to the public. This is supposedly done by publishing targets and levels of attainment in league tables, and by establishing complaint procedures by which members of the public can seek redress for any professional or institutional failures. But underlying this ostensible aim of accountability to the public the real requirements are for accountability to regulators, to departments of government, to funders, to legal standards. The new forms of accountability impose forms of central control – quite often indeed a range of different and mutually inconsistent forms of central control.*

How can inspection and regulation of race equality be made more relevant to the people on whom it has the greatest effect – minority ethnic communities? Too often regulation appears to be for regulation's sake and not for public accountability.

Inspectorates are aware that they need to improve their relationships with the public and with minority ethnic communities in particular. The development of race equality schemes has highlighted the lack of contact with minority ethnic communities characteristic of inspectorates and other regulatory bodies, and has helped these bodies to develop networks which speak more directly to the communities. This is especially difficult when inspectorates are small organizations with most of their interfaces and networks concentrated on the professions and services that they inspect. One of the findings of the evaluation

of the first six months of the public duty has been that authorities are developing new networks of service users from their contacts with minority ethnic communities. This is as crucial for inspectorates as it is for service deliverers.

The factors that the MORI research identified as important in developing trust are:

- More information and more openness
- Independence
- Personable communication
- Honest, visible leadership

The regulation of race equality will certainly mean better data-gathering and improved public information. O’Neill argues that this is not necessarily the route to increasing trust unless it is very carefully managed:

*Increasing transparency can produce a flood of unsorted information and misinformation that provides little but confusion unless it can be sorted and assessed. It may add to uncertainty rather than to trust. And unless the individuals and institutions who sort, process and assess information are themselves already trusted, there is little reason to think that transparency and openness are going to increase trust.*

The now annual debates over crime figures and the meaning of exam results are good examples of failures in trust making information less credible. Increasing and systematizing ethnic monitoring could also fall prey to this mistrust, unless it is sensitive in reporting and collection, and has clarity of purpose.<sup>9</sup> The temptation will be for inspectorates to use the media to spread their messages about race equality. It has been noticed that the media are a source for engendering mistrust in public authorities, and inspectorates will pursue their own agenda around the public services:

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<sup>9</sup> See the Report of the Commission on the Future of Multi-Ethnic Britain, p. 292 Box 20.4, for a further discussion of monitoring by ethnicity.

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*A quarter of the population says it is ‘very frightened’ of violence. Beyond that, it damages the national psyche, souring general happiness and wellbeing in a western world grown ever safer and, for most, richer than ever before. But watch the Tory press (and some not Tory who should know better) do all they can to make their readers think things always get worse, on a slippery slope to perdition surrounded by perverts and muggers in a state of gross moral decline.*

(Polly Toynbee, *The Guardian* 16 July 2003)

Unless and until the media are themselves in turn brought under greater regulatory scrutiny, they may not be seen as the best vehicle for building trust with communities:

*Our present culture of suspicion cannot be dispelled by making everyone except the media trustworthy. To restore trust we need not only trustworthy persons and institutions, but also assessable reasons for trusting and mistrusting. These cannot be found by rehearsing suspicions, or by recirculating them again and again, without providing evidence.<sup>10</sup>*

## **In What Do We Trust?**

The need to extend the debate on trust in public authorities to include minority ethnic communities is important for two reasons. First, it is through understanding how to build trust in our public authorities that we will be better able to design accountability frameworks that respond to the realities of a multi-ethnic society. Second, by responding to the needs of particular communities we can better understand the larger task of rebuilding trust in public services right across our communities.

If trust can be built with communities to some extent through a definition of their resistance and struggle, it will be a major success of public service reform and of the services' capacity to respond more effectively to users. It is also through our public services that we express something of our nation. The building of a common sense of belonging hangs in part on the collective experiences which a citizen has. As Bhikhu Parekh notes:

*It is therefore essential that the experience that the members of a community have of its major institutions should be one of respect and fairness. The educational, economic, political and other institutions of a society, which profoundly shape the perceptions and emotional responses of citizens, should be inclusive, hospitable to differences, reflect a wide range of sensibility such that they are not identified with a particular class, gender or race, and should empower their members so that they do not feel like helpless objects of another's will.<sup>11</sup>*

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<sup>10</sup> Onora O'Neill 2002, *op cit*.

<sup>11</sup> Bhikhu Parekh (2003) 'Common Belonging', in *Cohesion, Community and Citizenship*. London: Runnymede, p. 8.

## Exploring the Issues III

Rob Berkeley Runnymede

# Regulation, Review and Partnership

*'Forty-two' yelled Loonquawl. 'Is that all you've got to show for seven and a half million years' work?'*

*'I checked it very thoroughly,' said the computer, 'and that is quite definitely the answer. I think the problem, to be quite honest with you, is that you've never actually known what the question is.'*

(Douglas Adams, *Hitchhikers' Guide to the Galaxy*)

*The meaning and purpose of inspection have changed over time. It continues to provide vital assurances to the public, to departments and to the service providers, and to scrutinize accountabilities, but it is also increasingly making a contribution to service improvement. Some inspectorates are achieving this shift more quickly than others.*

(OPSR, *Inspecting for Improvement*)

**T**he quest for a successful multi-ethnic society is defined by our ability to understand what changes we need to make in order to create a society in which all citizens can share a sense of belonging, in which an effective balance between cohesion, equality and difference can be struck.

Above it has been argued that our public authorities are key actors in supporting the creation of a sense of belonging. Building trust in these authorities therefore becomes a significant act in developing the kind of society for which we strive, a society 'at ease with itself'. A key means of building trust

in public authorities with minority ethnic communities is to respond to institutional racism by working to eliminate it, and also to work to actively promote equality of opportunity and good relations between different ethnic groups. The public also needs to know that this work is happening and that organizations are employing their best efforts to ensure that they play their full role in this field.

For this reason, the Race Relations (Amendment) Act 2000 is powerful, innovative, and crucial legislation. The successful implementation of the legislation is now the key challenge. With the imperative of building trust in public authorities for citizens from minority ethnic communities, regulators and inspectorates need to consider their activities in the light of how to best respond to their enhanced responsibilities. Below some of the major challenges and opportunities that face inspectors and regulators are discussed

## **Self Regulation**

‘Race’ and racism are very powerful social constructs, the result of complex histories, constantly reproduced and redefined and vital to our understandings of late modern societies. Any response to building trust in public institutions around race equality needs to recognize the embeddedness of ‘race’ and its complexity. To this end, an approach to race equality that does not lead to fundamental change and shifting of world-views will not be strong enough. Change cannot be merely cosmetic. To reduce the opportunity that the RRAA presents to that of a ‘tick-box’ exercise would be a terrible waste. Regulation and inspection need to be developed in such a manner as to offer support to public authorities to engage with the elimination of institutional racism in more than a cursory fashion.

The report of the Commission on the Future of Multi-Ethnic Britain presented a model which started with organizational self-review at its base and built a regulatory framework which supported and developed this approach (see above). This is important for more than just administrative convenience. Successful models of review can engage professionals and practitioners as the experts, involve the whole organization, build internal capacity and understandings, and encourage individuals to take responsibility at all levels in an organization. Successfully implemented reviews of this type are far from form-filling and lip-service – and form-filling and lip-service are simply unacceptable in meeting the challenging agenda for race equality that is necessary for the long-term health of a successful multi-ethnic society.

## Intelligent Accountability

Onora O’Neill argues in a different context for ‘intelligent accountability’ rather than an accountability that deprofessionalizes, and destroys the confidence of, and in, practitioners.

*If we want greater accountability without damaging professional performance we need intelligent accountability. . . Intelligent accountability, I suspect, requires more attention to good governance and fewer fantasies about total control. Good governance is possible only if institutions are allowed some margin for self-governance of a form appropriate to their particular tasks, within a framework of financial and other reporting. Such reporting, I believe, is not improved by being wholly standardised or relentlessly detailed, and since much that has to be accounted for is not easily measured it cannot be boiled down to a set of stock performance indicators. Those who are called to account should give an account of what they have done and of their successes or failures to others who have sufficient time and experience to assess the evidence and report on it. Real accountability provides substantive and knowledgeable independent judgement of an institution’s or professional’s work.<sup>1</sup>*

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<sup>1</sup> Onora O’Neill, BBC Reith Lectures, 2002 [http://www.bbc.co.uk/radio4/reith2002/]

<sup>2</sup> MORI/Audit Commission (2003) *Trust in Public Institutions. New Findings*. London: MORI, p. 13.

This may appear to be a reductive vision of accountability. The temptation for inspectorates and regulators may be to respond to such a vision by arguing that their concern for the public interest makes standardization, detail, and ease of measurement essential. Yet in terms of race equality at least, a drive for standardization may serve to disengage practitioners, leading to race equality becoming another concept imposed from the ‘over-controlling centre’, rather than about the professionalism of their practice. A model of self-review, internally developed targets, regular reporting and honest dialogue with regulatory and inspecting bodies, with an underpinning of minimum standards, is likely to yield more enduring change.

As ever, there is a balance to be struck. Trust is not better developed through claiming to know all of the answers, but rather through an honesty and transparency in coming to terms with the challenges. As the MORI/Audit Commission research noted:

*53% identify admitting responsibility when they make mistakes and 44% learning from mistakes as important in determining trust in public services.*

(MORI/AC 2003)<sup>2</sup>

Inspection regimes need to respect organizations' professionalism and internal strengths in coming to terms with such an important set of issues. At the same time they need to behave as a sensitive guarantor to the public of the efforts of public authorities. Supporting organizational self-review is an effective means of attempting to square this particular circle.

The Office of Public Service Reform published a review of inspection in 2003 that defined three types of inspection.

*Best practice in inspection today aims to deliver, to the extent appropriate, all three types, according to the assurances needed, the direction being received by the inspectorate, and the inspectorate's own capacity for change.*

- *Type 1 inspections give assurance on whether the processes being followed by the service provider are reliable and meet basic standards. Inspectors may also provide complex information as part of their assessment work.*
- *In type 2 inspections, further development of performance indicators has been used to identify the relative achievement of individual providers, and a greater specificity of information. Type 2 inspection is more concerned with accountability and presents a challenge to the providers to improve.*
- *In type 3 inspections, inspectors are playing a more active part in securing improvement, while retaining their independence. Less emphasis is placed on checking compliance, and more on the user perspective.*

(OPSR p.14)<sup>3</sup>

Of these three types of inspection, type 3 inspections lend themselves more readily to building trust on race equality. The emphasis in type 3 inspections on

the outcomes of the service and the perceptions of users rather than on checking compliance, would appear to be

an approach which allows for the inspected organization to take ownership of the changes, while the inspectorate is a contributor to improvement on behalf of the public.

## **Public Involvement**

As noted above, building trust is dependent on honesty, information-sharing, responding to needs, and keeping promises. All of these activities require creating

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<sup>3</sup> OPSR (2003) *Inspecting for Improvement: Developing a Customer Focused Approach*. London: HMSO.

a dialogue with people and especially (though not exclusively), in the case of race equality, minority ethnic communities. The OPSR report noted that:

*Independent inspection plays an important role in providing assurance to the public, but we found that most members of the public do not know about the contribution inspectors make to high standards of service. Inspection in the public sector is good at providing assurance but it can do more, and it can communicate its findings more effectively.*

(OPSR p. 2)

In considering how to communicate more effectively with the public, inspectorates and regulatory bodies should give attention to how they can learn to better communicate with people from minority ethnic communities. There are a number of ways in which this can be achieved, through media targeted specifically at minority ethnic communities, through existing networks such as the voluntary sector, through statutory networks such as Race Equality Councils, or through developing networks of practitioners and professionals in specific public policy arenas.

Involvement, however, needs to yield benefits for those being engaged as well as for the inspectorate. Consultation must be meaningful and needs to be a dialogue rather than a PR exercise. If consultation is undertaken, then organizations must explain the decisions they have taken and why they have not adopted the suggestions given to them.

Further, when approaching voluntary sector organizations, inspectorates will need to understand their capacity to respond. For example, since the requirement to produce race equality schemes came into force, many organizations have found themselves inundated with requests to respond to schemes. This is frustrating for organizations that want to be supportive but who could not possibly have the capacity to respond to the hundreds of requests for significant analysis of documentation. Involvement must be meaningful, timely, communicated to all relevant parts of our communities, and seen as a crucial part of any inspectorate's work in building trust on race equality in public authorities.

## **Inspectorates as Public Authorities**

Inspectorates and regulatory bodies are often also public authorities and as such are bound under the duties of the Race Relations Amendment Act. They generally do not have the benefit of external inspection in order to support the

development of their organizational self-review, although many inspectorates use the feedback they receive from those they inspect to judge the effectiveness of their own efforts. In line with their status as public authorities they have a duty to promote race equality. In order to do this effectively, they will need to further open up communication with the general public and specific groups to ensure that they are seen as exemplars of effective race equality practice.

This extends not only to their pronouncements, but their capacity to deal with issues around race equality, the kinds of priorities they adopt in their roles as regulators or inspectors, and the profile that they have beyond those that they inspect. One of the recommendations of the OPSR report for inspectorates is that they should be:

*Developing their organisational and leadership capacity to facilitate innovation, including personnel policies, to draw in and refresh the skills and competencies needed for the range of their inspection work.*

(OPSR p. 39)

The RRAA has meant that the range of inspection work has changed. Inspectorates will need to consider this as an opportunity to look afresh at their personnel policies to ensure that the relevant expertise is brought into the organization, or that other ways are found through which to access it. Some inspectorates have been resourceful in using external expertise to develop their approach to race equality, others have brought senior members into their teams with expertise in the field; a further approach has been to use the expertise of lay inspectors to respond to skills gaps.

Inspectorates are bound by the public duty to consider the impact that their work could potentially have on race equality and good relations between ethnic communities, and to prioritize changes in their practices that could work to promote them. It has been argued here that the impact could be great and that therefore changes will need to be commensurate. The lack of an inspectorate for inspectorates means that they will have to work doubly hard to engage the public in order to build trust in themselves.

## **Managing Expectations**

Effective communication will also enable inspectorates and regulatory bodies to be clear about what their role is and what they can deliver. Trustworthiness is

dependent on honesty. In becoming champions of race equality, inspectorates and regulators will have to be mindful of what they can achieve and what impact they can have in the short and medium terms. Understandably there is impatience for change – especially in terms of the raw outcomes of public service activity that show a disproportionate level of negative effects across so many indicators for people from certain minority ethnic communities. Inspectorates will be promoting race equality alongside a wide range of other organizations and as such will be committed partners in the elimination of discriminations and the promotion of a successful multi-ethnic society.

It needs to be better communicated that many inspectorates are small organizations with legal limitations to their ambit. This is not iterated here as an excuse but as a means of assuring that those who suffer the vicissitudes of racism do not have expectations of inspection that cannot be fulfilled. It will also enable inspectorates to enter into partnership with other organizations to challenge racism and promote race equality, rather than being seen as the sole answer to the problem.

These challenges are not easy to respond to and will involve significant change for many inspecting bodies. For some, there will be opportunities afforded by the changes and mergers that are already in train. For others, responding to race equality may mean reassessing the approach that they have adopted to date. The onus is on inspection and regulation bodies to be torchbearers for the promotion of race equality. The importance of public authorities in creating a common sense of belonging in a successful multi-ethnic society is clear. A common sense of belonging is therefore dependent on our ability to build trust in our public authorities on race equality. Inspection and regulation are key drivers in the task of developing trust in public authorities. Inspection and regulatory activity then is about more than guardianship, it is also about the success of a multi-ethnic society viewed as a community of citizens and a community of communities.



## Viewpoints

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**T**his section includes contributions reflecting on the experience and importance of inspection and regulation for race equality. Contributors were asked to share either personal or organizational perspectives on inspecting for race equality. The range of contributors on the issue suggests that the debate about the best means of ensuring that race equality is central to the mission of our public services is one which many people are grappling with – some with the dual responsibility of establishing as well as applying the style of regulation which they will employ. The range of views also shows quite how wide the impact of regulation in this area can be.

The contributors all share the conviction that effective regulation and inspection for race equality is crucial, and these papers reflect both the limits of inspection and the opportunities that successful regulation offers. Their viewpoints are welcomed as significantly enhancing our understanding of and engagement with inspection and regulation as tools for delivery of a successful multi-ethnic society.

### Contributors:

**Fiona Mactaggart MP** is Parliamentary Under Secretary of State for Race Equality, Community Policy, and Civil Renewal. With professional knowledge of both education and the voluntary sector; she became MP for Slough in May 1997. Ms Mactaggart was an inner-London primary school teacher in 1987–92, and from 1992 to 1997 she lectured in primary education at the London Institute of Education. She has held the positions of: General Secretary of the Joint Council for the Welfare of Immigrants (1982–6); press and public relations officer for the National Council for Voluntary Organisations (1981); and Liberty executive member from 1992 to 1996, during 2 years of which she was chair (1994–6).

**Carol Adams** is Chief Executive and **Shiraz Chakera** is Assistant Policy Adviser at The General Teaching Council for England (GTC). As the professional body for teaching, the GTC provides an opportunity for teachers to shape the development of professional practice and policy, and to maintain and set professional standards. A key part of the GTC's role is to advise government on issues affecting the profession, based on teachers' views and expertise. Teaching is characterized by high professional standards, and the GTC's regulatory work upholds the very high standards that the profession expects of itself.

**Floyd Millen** is Chief Executive of Race On The Agenda (ROTA). ROTA is a well-established social policy and research organization based in London. Formerly known as GLARE (Greater London Action for Race Equality) it enjoys a well-founded and strong reputation as an innovative social policy think-tank. Its policy priorities for the next three years are Education, Regeneration, Policing/Crime and Disorder; Health and Community Care and the impact and growth of Social Enterprise.

**Sir David Calvert-Smith** is the Director of Public Prosecutions and Head of the Crown Prosecution Service. The aim of the CPS is to contribute to the reduction both of crime and the fear of crime, and to increase public confidence in the criminal justice system by even-handed and independent review of cases, and by firm, fair and effective presentation at court.

**Dave Allport** is a qualified Youth and Community Worker (at Masters level) and has had over 17 years experience of working in 'diverse' communities, particularly with young people. Dave's background has focused on issues of 'race' and developing innovative ways of challenging negative attitudes and behaviour. Dave currently works for Oldbury and Smethwick Primary Care Trust in Sandwell West Midlands and manages the nationally and internationally recognized 'Rewind' Anti-Racism Project. In addition to this, he also works as an independent consultant/trainer on these issues and has to date worked in 21 areas of the UK. He also sits on an All Party Parliamentary Committee on Conflict Resolution

**Joe Charlesworth** is Senior Policy Officer (Local Government and Housing) at the Commission for Racial Equality (CRE). The CRE is a publicly funded, non-governmental body set up under the Race Relations Act 1976 to tackle racial discrimination and promote racial equality. It works in the public and private sectors to encourage fair treatment and to promote equal opportunities for everyone, regardless of their race, colour, nationality, or national or ethnic origin.

# Race Equality and Accountability

**Fiona Mactaggart** Parliamentary Under Secretary for Race Equality

It is over a year since the Race Relations (Amendment) Act came into force. At the time, many people were concerned that to change over 40,000 public agencies and services was an impossible task. But some encouraging progress has already been made, not simply in getting people to go through the motions, or to do the paperwork, but by taking seriously within public service what can and should be done to deliver race equality and community cohesion. We are already putting theory into practice and now need to be able to enforce the principles that underpin our race relations strategy.

The 2000 Act came into force in April 2001 and was a response to the recommendation of the Stephen Lawrence Inquiry Report<sup>1</sup> that the full force of race relations legislation should apply to the police. But the Act went much further by extending the anti-discrimination provisions of the original Race Relations Act 1976 to *all* public authority functions.

The challenge now is to turn this, the most comprehensive legislation in Europe, into measurable improvements in the delivery of public services, access to employment and good community relations.

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<sup>1</sup> William Macpherson (1999) *The Stephen Lawrence Inquiry: Report of an Inquiry by Sir William Macpherson of Cluny*. Inquiry advised by Tom Cook, The Right Reverend Dr John Sentamu, Dr Richard Stone. London: Stationery Office

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The most significant change in the law was to place a general duty on specified public authorities to have due regard to the need to eliminate unlawful discrimination and to promote equality of opportunity and good relations between persons of different racial groups in carrying out their functions. This moved the battle against racism in a completely new direction.

The general duty is a positive one, requiring public authorities and private bodies carrying out public functions to seek to avoid unlawful discrimination before it occurs and to promote equality of opportunity. This positive duty will pose new challenges when it comes to measuring success.

A large number of bodies subject to the general duty have also been made subject to specific duties to help them perform better their general duty. This takes the promotion of race equality on to another level. The fact that the duties are so specific will help to guide the process of ensuring successful delivery of this legislation. These specific duties include:

- preparing and publishing a race equality scheme;
- assessing which of their functions are relevant to the duty (with a review of that assessment at least every 3 years);
- setting out their arrangements for assessing and consulting on the likely impact on the promotion of race equality of proposed new policies;
- monitoring of policies for adverse impact on the promotion of race equality;
- publishing the results of assessments, consultation and monitoring;
- ensuring access to information and services;
- training staff on issues relevant to the duty.

The Commission for Racial Equality (CRE) has the formal role within the legislation to ensure compliance with the duties under the Act and to provide guidance for implementation.<sup>2</sup> The Home Office is working in partnership with

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<sup>2</sup> CRE (2002) *Statutory Code of Practice on the Duty to Promote Race Equality*. London: Commission for Racial Equality

the CRE to support implementation of the Act – a partnership for delivery of the improvements we need.

The Act has teeth. Inspectorates will inspect and report on response and compliance. The CRE has powers to issue a compliance notice against a public body which has failed to comply with a specific duty, and to seek a court order to require compliance if appropriate action is not taken.

The CRE has conducted research, via the Schneider-Ross report, into the public duty to promote equality,<sup>3</sup> which demonstrates that 70% of the public bodies surveyed felt that their work on the public duty has produced positive benefits. The report shows how different sectors have responded to the challenge posed by the new law and provides a useful framework against which the CRE as the inspection authority can measure how these new requirements have changed what institutions actually do.

And at this stage heavy-handed inspection has been eschewed in favour of research, monitoring and promotion of good practice. High levels of participation

in seminars and conferences which focus on how to implement the new act, and what impact it should have on public organizations, gives grounds for optimism that it will produce the cultural change which we sought when we introduced the bill.

Key stakeholders in monitoring standards of performance across services at national and local level include the various inspectorate bodies. The inspection bodies are themselves subject to the duties under the Race Relations (Amendment) Act 2000, and must ensure that their bodies promote race equality. By having effective race equality schemes in place, these bodies put themselves in a position to lead by example, and the CRE are working to support inspectorates in this role. They must also inspect to ensure that public bodies have effective race equality schemes and strategies in place. Embedding race equality into existing inspection and audit frameworks is a key element designed to drive up standards and ensure delivery of the government's race equality strategy as an entrenched part of how these bodies go about their business.

Public bodies have a special responsibility to deliver race equality as employers, policy-makers, service providers and as contractors of services – they must set the pace on race equality and lead by example. That is why we have taken the legislative steps that we have and why we are committed to seeing them properly implemented and monitored.

On employment progress is being made, and the Cabinet Office publishes regular statistics of recruitment and promotion within the Civil Service. Progress on race equality in public-sector employment helps not only to tackle discrimination in employment opportunities for people from black and ethnic minority communities, it also helps to deliver better services.

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<sup>3</sup> CRE and Schneider-Ross (2003) *Towards Racial Equality – An evaluation of the public duty to promote race equality and good race relations in England and Wales* (2002). Executive Summary London: Commission for Racial Equality

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Now 3.5% of the police service are from ethnic minorities – half way to meeting the 2009 target; and in the probation service the target of 8.3% has already been exceeded. Recruitment, retention and career progression of ethnic minority staff is absolutely crucial because communities affected by crime will take what we are doing more seriously, and will themselves engage in the criminal justice agenda if the people providing these services themselves come from the communities which they secure and protect.

The Act requires us to ensure that internal procedures and employment practices are fair so that the public sector can better reflect, and be seen to reflect, the society that it serves.

Improvements in race equality across the public sector support the wider government aim of public service reform. After the last election, the Government made investment and reform of public services the key priority for its second term. The Government believes that the overriding objective of reform of public services must be to deliver good-quality public services for all, built around individuals' needs and aspirations.

Services which enable everyone to realize their full potential benefit the whole of society. Not only can they have a real impact on individual lives but they also increase the social capital available to our communities

The Public Service Agreement (PSA) framework is a further lever for embedding delivery of race equality into the core business of government. Under the Spending Review process the Government is tying resources to reform and results – we operate in a culture of targets, independent audit and inspection to monitor progress, reward success and define future activity. While there are legitimate criticisms of the burdens of this approach can place on service providers, it can help us move from a debate which has tended to focus on abstract ambition for justice to a delivery framework in which it is necessary to measure what works.

The Amendment Act is key to delivery of the new cross-government PSA target on race equality, on which the Home Office leads. The PSA target for the next three years is 'to bring about measurable improvement in race equality and community cohesion across a range of performance indicators, as part of the government's objectives on equality and social inclusion'.

In addition, we need to ensure sustained equality improvements by ensuring that government policy-making responds to the challenges of a diverse community by improved government policy impact assessment. And, by so

doing, to support the Government’s wider aims of improving public services, promoting social inclusion, reducing crime and building economic capacity.

This will require leadership, support to departments, analysis, evaluation and monitoring arrangements necessary to make a government strategy on Race Equality happen. Continuing discrimination and disadvantage has costs – both direct and opportunity costs – for government, business and society as a whole. No one gains if human potential remains unfulfilled, if segments of society are ghettoized and alienated. The cost both to individuals and society is wholly unacceptable and unnecessary.

The Strategy Unit Report, ‘Ethnic Minorities in the Labour Market’,<sup>4</sup> is an example of where a robust piece of analysis of racial inequality in the labour market has produced a clear strategy, with defined targets. A working party has been brought together involving different government departments to ensure effective delivery of these targets.

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<sup>4</sup> PM’s Strategy Unit (2003) *Ethnic Minorities And The Labour Market: Final Report*. London: PM Strategy Unit

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This is an example of effective collaboration between departments leading to improved monitoring of outcomes, and is a model which may hold promise for other policy areas. How to do this will be addressed in our emerging race equality strategy.

There are real gains to be made in terms of delivery of the key Government objectives of improved public services, crime reduction, social inclusion and a buoyant economy if collectively across government we tackle discrimination and disadvantage effectively. The Home Office will be focusing support from Whitehall to push this work forward, and will be working with the CRE and other stakeholders to bring about long-lasting change.

Research has shown that organizations which are most successful in delivering diversity are those with strong leadership, driving the agenda through all levels of the organization and delivering real outcomes. Aspiration alone is not enough. We need to be able to demonstrate that our policies are being implemented, are working and, when they are not, that those responsible can be held to account. Public expectations have been raised but for trust and legitimacy to be maintained services have to be accountable, accessible and transparent. It is the people within institutions that actually make a difference by shouldering their responsibilities and by reaching out to the communities they serve. By saying to them: ‘This is your business. This isn’t the business of those who are experiencing prejudice and it isn’t the business of those who are committed to

tackling racism. This is about the whole of our society' – that is how we can make a difference. The challenge is to move quickly beyond compliance to delivery of measurable outcomes.

# Why Inspection is Important and What It Means for Ethnic Minorities

**Floyd Millen** Chief Executive of Race on the Agenda

Unless you measure how will you know?  
If you measure what will you know?

**A**s institutions begin to measure and implement corrective actions they are invariably exposed to accusations of inappropriate political correctness and of over-zealousness in their attempts to redress imbalances left unchecked for many years.

My thoughts are quite simple; there is never a convenient time or fully agreed upon method of righting wrongs endemic in our institutions and way of life. Any attempt to create fairness stands likely to be criticized by those who have, who will, and who wish to continue to benefit from an uneven distribution of resources.

For example, in February 2003 this issue is very much alive and reflected in accusations levelled at Bristol University – of being overly biased and discriminatory in accepting increased numbers of applicants from ‘deprived’

backgrounds. On the one hand the call is made for less discrimination and for fairer access to particular universities (and other institutions); however, where strides are being made to provide a more representative process, there are criticisms and accusations of reverse discrimination against those from more privileged backgrounds.

Let's be honest, the small changes in admission numbers to universities (Bristol has come in for particular criticism on this issue) will have made very little 'real' difference to the overall mix of those gaining entry into the top British universities, and universities in general. In fact one could argue that people are inhibited not at the door of entry but much further down the line, particularly when account is taken of factors such as cost, perceived benefit, discrimination based on class, geography, race etc.

This paper looks at the importance of regulation and inspections, their role and significance for enhancing cohesion and inclusion. Whilst they can be counterproductive, inspections and regulation can be used positively to allay the fears of all who have experienced multiple discrimination, and thereby demonstrate that effective processes are being/can now be used to effect change.

Of primary importance is the level of engagement and involvement of people from minority ethnic communities through voluntary sector organizations, community groups, faith groups or as individuals. Inextricably linked to this is the role that government and other public bodies play in accepting and acknowledging that there is indeed a problem and that proactive (as opposed to passive or reactive) steps are advised and supported, through legislation and its implementation, in order to counter disadvantage.

## **An Evidence-based Approach**

What needs to be done, when and by whom to bring about change? How necessary is an evidence-based approach for understanding the nature of the change required, and assessing the 'distance travelled'?

My starting position is that all people have equal value irrespective of colour, gender, ethnicity and all other distinguishing characteristics. With equal value comes the right to be treated equitably, those varied characteristics notwithstanding. I would say that all participants in this debate – left, right, centrist or those occupying extreme positions on the political barometer – would tend to agree with the above baseline position. Positions, however, become increasingly polarized when one goes beyond this point to discuss

methods of managing and preventing the continuation of discrimination.<sup>1</sup> The solid baseline position from which to approach this subject is, therefore, the acceptance of an equal right and freedom for all citizens to access society's opportunities and services, and to share its scarce resources.

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<sup>1</sup> Discrimination is more acute and difficult to manage where the product is social and is difficult to quantify, i.e. sense of ownership, preferential access and opportunity, influence, information, feeling engaged, etc.

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As members of various groupings, social, political, economic, religious, ethnic, faith, regional, etc., we assume multiple relationships based on the particular values and rules of engagement within our affiliate groups. Individuals within their numerous groupings have varied needs, which converge and diverge at will. It is therefore an appropriate alignment – within the context of inspections – to see equality of treatment as embodying equality of access to and through society and its myriad institutions.

Within this, consideration ought to be given to the varying levels of inequality, both overt and covert, and the degree of ease afforded to particular communities in terms of access, influence and participation. At this juncture in the debate we have to question whether we can be treated equally whilst appreciating difference, resulting in simultaneously being treated equally and differently. My response is that this is possible but requires a careful analysis of many variables, including an acknowledgement that measures to redress inequalities recognize that the level of discrimination and inequality experienced varies towards and within different ethnic groups.

### Assessing and demonstrating

Racism is deeply divisive and corrosive for many reasons, not the least of which is that it asserts, affirms and reaffirms – through the operation of institutions and processes – that one group is superior to others. It perpetuates its existence by building and reinforcing primarily economic and political barriers, which leave many unable to play effective and significant roles in society. This has usually led to alienation, low adherence to or understanding of collective responsibility, crises of identity, little clarity concerning the value and role communities play and, as cogently expressed in *The Future of Multi-Ethnic Britain* (CFMEB 2000), significantly undermines any real sense of belonging and acceptance.

It has been argued for many years that there has been a lack of political will from the legislative and administrative structures to facilitate meaningful change. With the amendment to the Race Relations Act of 1976, and the explicit duty

this amendment places on public bodies, there now appears to be a serious approach to addressing many of the shortfalls. The recent discussions and debates around inspections are directly attributable to this legislative change. The perimeter of this debate spreads wide, with proponents calling for empirical quantitative data collection ('tick box' approach), a qualitative approach, a 'cushioned stick', a light touch, a 'wooden stick' or a complaint-led sanctions-imposing inspection approach resulting in naming and shaming.

Some have argued against inspection of any kind, citing the need for an acknowledgement that change is desirable and that adherence to an ethical approach is all that is needed to change the hearts and minds.<sup>2</sup>

I dare say the more workable approach, as always, lies somewhere between these positions. What is, however, true is that inspections are designed to measure outcomes, and cannot easily tease out internal and 'soft' issues; or the 'real deal'.

There are numerous reasons for introducing inspections and systematic regulation. Whilst neither activity per se leads to greater equality or increased take-up of services, they number among the tools that can be employed to assess the degree to which equality of opportunity and access are being realized, and demonstrate the extent to which our institutions (particularly public bodies) are working to address the concerns of excluded groups.

## **What do Communities Think about Inspection?**

Those who have been at the sharp end of discrimination over many years have been told, as they are being pushed to the margins, that the situation is not as stark as they protest. Maybe there is some element of paranoia, it is suggested. After all, the systems and procedures used are colour and culture blind and operate irrespective of personal characteristics. All decisions are therefore based on merit. How could it be otherwise?

Interestingly, now, there is an acceptance that the situation is as stark as

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<sup>2</sup> As the Late Dr Martin Luther King said... 'You need legislation not to change the hearts and minds but to change the heartless...'

previously advised, and a frenzy of activity ensues to solicit views and opinions from previously ostracized communities on

what is the best approach to tackling the inequities. Do we go softly and get accused of cronyism, or do we go in harder and be accused of being over-zealousness? How do we begin to allay your fears?

Here it is important to develop clarity about what regulation and inspections can in and of themselves achieve.

- What if we were to analyse employees by department, at various grades and over specified time-frames? This would provide the baseline information on whether possible differences are remaining the same, increasing or decreasing.
- Looking at users of services presents us with a further area of assessment where we are able to look at ‘equality of access to and through’ an organization’s systems and procedures with a view to arriving at equitable outcomes.

Gathering this information is a laudable exercise that takes us no further forward. Groups who have been discriminated against already know the reality; the statistics merely offer up the evidence for it.

The question is not therefore about the relevance of information gathering, or whether to adopt a hard or soft approach, but of what real change will result from it. Every day, in the absence or presence of incontrovertible empirical evidence, businesses decide to make changes and implement new, and/or continue with existing, strategies. The mere gathering of evidence is not a catalyst for change. Decisions are made on the basis of (political) expediency.

### **What Are Minority Ethnic Communities Asking for?**

The request is that the process should not become a smokescreen and an excuse for inertia; that inspections and the decision to act should not be inextricably linked, with the one having to act as the trigger for the other.

Those who have experienced discrimination would welcome being consulted on the likely impact of findings with a view to seeing, and being part of, the real step-change in action. There is – in the first instance at least – little desire to name and shame; however, where institutional resistance to change is entrenched, this may be the only means by which change can be encouraged.

The public interest criterion is important. Without doubt it is in the public interest to enable all citizens to actively engage in society. Where participation is hampered on spurious grounds, grounds which are discriminatory, it is in the public interest for action to be taken.

#### **Business case**

I personally dislike the term ‘Business case’. However, many companies and organizations see the issues experienced by BME communities as marginal and

not relevant to their business strategy. The prevailing view is that as long as ‘we’ make a profit then there is no issue. The responsibilities of hiring, firing, moving on, progression and promotion are seen as management issues to be dealt with by individual line managers and personnel departments. This needs to change.

Inspection is important in that it provides clarification of the real issues, the potential for resolution and the possible consequences of ignoring the problem. It further provides a practical baseline from which policy-makers can begin to *deconstruct* in order to *reconstruct* their understanding of what engagement and participation for all really means. For practitioners and deliverers of services, it can provide the basis for developing their implementation strategies.

Regardless of sector or area the inspection process can effectively raise the level of confidence in those wishing to see a change and for those who have consistently been discriminated against. Used in tandem with other measures – for example, access to information, adequate staff training, progress reviews, effective systems, procedures for change – inspections can have a positive effect. One additional, important factor is that sufficient resources need to be allocated to underpin and institutionalize change.

Minority ethnic communities welcome any movement towards change, but only so long as it is part of a concerted effort that builds on some of the considerations outlined above.

# The Crown Prosecution Service's Experience of Investigation by the Commission for Racial Equality

Sir David Calvert-Smith QC Director of Public Prosecutions

The Crown Prosecution Service (CPS) was created in 1985 and is the principal prosecution authority for England and Wales. It employs approximately 7000 staff, some 2500 of whom are lawyers. The CPS is organized into 42 Areas aligned to police force boundaries, each headed by a Chief Crown Prosecutor (CCP). CCPs are supported by Area Business Managers (ABMs), who are responsible for the general administration of the Area.

In recent years, various regulatory bodies (including the Commission for Racial Equality [CRE] and Her Majesty's Crown Prosecution Inspectorate [HMCPSI]) have raised concerns about perceived race discrimination within the CPS. Some concerns have related to the CPS's employment practices; others relate to CPS practices in relation to the prosecution of defendants. Whether in employment or in relation to prosecutions, the inspection process carried out by regulatory bodies has assisted the CPS in making changes. This essay charts some

of those significant changes and their impact on CPS practice.

## Background

Between 1998 and 2000, the CPS lost some high-profile Employment Tribunal decisions.<sup>1</sup> This resulted in adverse publicity in the press. In addition, Ministerial pressure was applied to the CPS to address race issues and achieve change.

As a result of the decisions made in the Employment Tribunals focusing on race discrimination, the CRE had started to ask questions of the CPS. In 1999 the CRE, believing that the CPS was not taking the issue of race discrimination in employment sufficiently seriously, launched a formal investigation (FI). After further discussion, the CRE suspended the FI pending an Immediate Action Plan. This included a series of actions by the CPS to address race discrimination in employment. Part of the action plan included an investigation into race discrimination in the CPS. Sylvia Denman was commissioned to undertake this work in January 2000.<sup>2</sup>

In April 2000, the preliminary findings of Denman hinted at segregation in a London branch of the CPS.<sup>3</sup> As a result of these findings, the CRE launched an FI into the London branch in question. As part of the action plan, a Head of Equality and Diversity (a new post) was appointed in July 2000. Dr Rohan Collier started in post a few days before the CRE announced the FI into Croydon. The Final Denman Report came out in July 2001 with 10 recommendations. At the same time, the CRE report into Croydon was published with a series of recommendations.<sup>4</sup>

The CRE did not find the CPS in breach of the 1976 Race Relations Act, although staff were largely segregated along racial lines in the branch. This was a result of a

preference exercise. However, the CRE pointed out that had the Race Relations (Amendment) Act 2000 [RR(A)A 2000] been in force during the time covered by the investigation (1991–2001), with the duty to promote racial equality, the CPS would have been in breach of the law given that managers were not proactive in changing the situation. In September 2002, the CRE lifted the suspended FI in recognition of the work undertaken by CPS as well as the progress made.

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<sup>1</sup> *Final Denman Report* (pages 77–79)

<sup>2</sup> *Ibid* (page 2)

<sup>3</sup> *Preliminary Denman Report* (page 57)

<sup>4</sup> *The Crown Prosecution Service, Report of a Formal Investigation, CRE, July 2001*

## Tackling Race Discrimination in the CPS

Some of the measures that have been undertaken since 2000 to achieve change include (but are not limited to):<sup>5</sup>

- a) *Clarifying the CPS Commitment.* This included publicizing an Equality Statement committing the CPS to ensuring that \_\_\_\_\_ there is no discrimination in employment or \_\_\_\_\_ service delivery. <sup>5</sup> Rohan Collier, *Making Equality Work*, June 2002
- b) *Establishing an Equality and Diversity Unit.* This is a small efficient central unit with 7 members of staff. Its role is to enable the CPS to mainstream equality effectively, link together employment and service delivery and have CPS work informed by the views of those who experience discrimination. Its Head is a member of the CPS Board.
- c) *Creating Appropriate Structures* which can drive forward change and hold the CPS to account for delivering equality and diversity. These structures include (but are not limited to) the Senior Managers' Advisory Group on Diversity (SMAGD: a policy subgroup of the CPS Board that determines the direction of equality work) and the Diversity Accountability Committee (DAC). This is a small group whose remit is to ensure accountability on equality from the 42 Areas and Headquarters to the CPS Board by means of a proforma. The proforma asks for evidence of progress on equality in employment, community engagement and prosecutions. With both these structures, SMAGD and DAC, not only is employment linked explicitly with service delivery, but progress on both is able to be measured and benchmarked.
- d) *Developing Effective Systems.* Monitoring systems now exist for all aspects of employment, including performance management. A new complaints procedure is in place for investigating complaints of discrimination for staff, as well as a new complaints procedure for victims, witnesses and defendants.
- e) *Addressing Organizational Culture.* Changing the culture of the CPS was crucial so that equality would become integral to day-to-day business. This includes training, setting clear standards of behaviour, and running national and regional events on disability, race and gender. Over 7000 members of staff have been trained in diversity (with an emphasis on racial equality). One of the ways that cultural change has been tackled is through 'Dignity At Work'. This consisted of two workplace campaigns

that communicated clear and acceptable standards of behaviour. Campaigns included booklets, posters, coasters, postcards and team discussions on the issues.

- f) *Strategy*. This includes developing a Race Equality Scheme, setting local employment targets for ethnicity, gender and disability and celebrating success through hosting the first CPS Diversity Awards, rewarding innovation in equality and diversity in both employment and casework.

However, one of the major drivers for change has been *community engagement*. All CPS Areas have entered into a dialogue with members of its diverse communities in order to learn and to inform prosecution practices as well as raise public confidence in the Criminal Justice System. Some of this work has included:

- a) *Developing policy*. Over the past 3 years, the CPS has developed Public Policy Statements (PPS) on how it will prosecute cases of domestic

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<sup>6</sup> Policy for Prosecuting Cases of Domestic Violence and Guidance on Prosecuting Cases of Domestic Violence

<sup>7</sup> Policy for Prosecuting Cases with a Homophobic Element and Guidance on Prosecuting Cases with a Homophobic Element

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violence<sup>6</sup> (November 2001) and homophobic crimes<sup>7</sup> (November 2002). At time of writing, a Public Policy Statement on how the CPS

prosecutes racist and religious crimes is being developed, due for publication in Summer 2003. In all 3 PPSs, the CPS has sat down with members of diverse communities to inform them of its work, and has together with these communities, developed and rewritten its policies.

- b) *The appointment of 11 regional Equality and Diversity Officers*. These are locally appointed staff taking forward equality and diversity in their specific CPS Areas. They also specifically support the Areas in their community engagement work.
- c) *The Diversity Awards*. October 2002 saw the first CPS Diversity Awards. Teams and Areas could apply under three different categories: Casework, Employment and Policy. Any of the work done under these three categories received extra marks for innovative community engagement work.

## Experience of Being Investigated by the CRE

There is no doubt that the CRE's action to formally investigate the CPS was a catalyst for change. The CPS would not have undertaken this journey without this pressure. The continued threat of the suspended FI meant that work

continued beyond mere commitment or acknowledgement of the existence of institutional racism. Officers from the CPS met on a regular basis with the legal team from the CRE. Meetings were frequently chaotic and not always productive as the CRE was going through its own internal negotiation and turmoil.

The suspended FI acted as both a spur for change, but also as a threat. It was a push/pull situation. For the lawyers in particular, it was very hard to swallow. CPS lawyers rightly regard themselves as committed to fairness in decision-making. It was hard for some of them to accept that unconscious prejudices and assumptions may mean that, measured as a whole, we may not have been, after all.

Many white staff felt quite angry. They had, they felt, been labelled as racists. It was very difficult getting the message across that ‘institutional racism’ (that the organization had failed) did not mean that all white staff were racist. Some staff had a knee-jerk reaction (or backlash), which meant that they blocked all learning by refusing to enter into a response on race.<sup>8</sup>

Hostility to the new Equality & Diversity Unit was palpable: ‘Were they the thought police?’ ‘Was this political correctness gone mad?’ Others, however, were stung by the accusation – ‘CPS: Racist’ – and wanted to help with the change.

Many black staff too, felt ‘silenced’, as speaking out might mean that they were ‘trouble makers’ or ‘activists’. Others joined the debate on race with their white colleagues. One problem emerged: those members of staff who had successfully brought the race agenda forward at the CPS, through their own personal action, felt superseded by a new group of ‘race equality professionals’. At first, they had their expectations raised by the arrival of the new unit; but, the pace of change appeared slow compared with their urgent desire for overnight change. Inevitably there were tensions and this spilt over into the CRE negotiations. This made the task more difficult but was probably inevitable.

It became obvious to me that I needed to take a lead role in championing race equality both within the organization and outside. As part of this role I acknowledged publicly that the CPS was institutionally racist. This I did on several occasions. The first was at a meeting chaired by the then Home Secretary, Jack Straw. The next was in 2001, at the launch of the Final Denman Report as

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<sup>8</sup> “The emergence and growth of a ‘backlash’ is perhaps an understandable reaction of white staff, alienated by the high profile given to race equality within the CPS... Many fear their own positions with respect to development and progression” *Final Denman Report* (page 96)

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well as the CRE report. This was reported in the press amidst articles attacking the CPS for its racism. Later still, in an interview on Radio 4 for a programme called 'On the Ropes', I once again acknowledged the existence of institutional racism within the CPS, whilst setting it in the context of British society as a whole, in which Black and minority ethnic people continually appear to suffer by comparison to their white counterparts.

## **Current Position**

In addition to the CRE investigation into employment practices, HMCPSI, who inspect the CPS, undertook an inspection of casework 'having a minority ethnic dimension', for which the final report came out in April 2002. The purpose of the thematic review was to analyse and assess the quality of casework where the defendant was from a minority ethnic group and also where cases concerned racist crime.

The analysis of case files has continued with the Diversity Monitoring Project (DMP). At the time of writing, the CPS is in the final stages of completing a study of 13,500 files across 10 CPS Areas to examine whether 'there is any bias in decision-making in respect of race and gender at each stage of the prosecution process'. This Project is unique inasmuch as an external consultant is investigating these files.

All of the findings from the CRE, the Denman reports and the Inspectorate were incorporated into the CPS Race Equality Scheme, launched in May 2002. The findings of the DMP will also be fed into the Race Equality Scheme.

I feel that since the start of the investigation process I have travelled a long and difficult journey. This has not been an easy task for me. I had always thought, like the lawyers to whom I referred earlier, that as a lawyer I was trained to be fair. How could I be challenged on this very important issue? My own feelings echoed those of many within the organization.

I do firmly believe, however, that we are now a stronger organization for having made this journey, painful though this transformation has been. I know that I personally am a stronger individual now for having led the organization of the CPS through this dramatic change.

# Tackling Black and Minority Ethnic Underachievement

Teacher Professionalism and the Race Relations  
(Amendment) Act 2000

**Carol Adams & Shiraz Chakera** General Teaching Council for England

**T**he Race Relations (Amendment) Act 2000 (RRAA) came into force in May 2002. It places quite specific duties on schools to monitor, evaluate and act on data covering most areas of school policies and practices and represents the will of the Government to tackle prolonged racial inequality in British society. In the education sector there is evidence that particular groups of black and minority ethnic (BME) pupils are achieving significantly lower academic results than their white peers. Although the statistics mask some patterns of success, as Heidi Safia Mirza noted:

*it's important not to fall into the trap of despair over these figures. We have found evidence that every minority group can achieve high results. Unfortunately, this potential is not always being tapped.*<sup>1</sup>

This paper argues that the RRAA offers teachers the opportunity to maximize all pupils' potential. It locates the RRAA in the context of teacher professionalism

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<sup>1</sup> D. Gillborn, and H. S. Mirza (2000) *Educational Inequality: Mapping race, class and gender. A synthesis of research evidence.* London: Ofsted.

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and suggests some of the key changes to the education environment that are necessary to ensure that the potential of all young people is fulfilled.

## **The Role of the GTC in Promoting Race Equality**

The General Teaching Council for England (GTC) was established by the 1998 Teaching and Higher Education Act as the professional and regulatory body for the teaching profession. It started its work in Autumn 2000 giving teachers a structure within which to instigate professionally led change in education. A key initiative in delivering this change has been the development of the GTC's Code of Professional Values and Practices (the Code). It was published in 2002, after consultation with more than 20,000 teachers, as the first formal expression by the teaching profession of its identity and values.

At the core of the GTC Code is recognition of the unique place of the teacher in society. Teachers are recognized as agents for change working towards greater social equity. They are able to make a difference to children's futures, which will mean in many cases challenging racism and promoting equality.

Two paragraphs from the GTC Code are crucial here. They clarify the values and practices of the professional teacher in relation to the promotion of equal opportunities:

### ***On challenging discrimination***

*To ensure the positive development of individual pupils, teachers work within a framework of equal opportunities and other relevant legislation, statutory guidance and school policies. Within this framework, teachers challenge stereotypes and oppose prejudice to safeguard equality of opportunity, respecting individuals regardless of gender, marital status, religion, colour, race, ethnicity, class, sexual orientation, disability and age.*

### ***On enabling all pupils to reach their potential***

*Teachers have high expectations for all pupils, helping them progress regardless of their personal circumstances and different needs and backgrounds. They work to make sure that pupils develop intellectually and personally, and to safeguard pupils' general health, safety and well-being. Teachers demonstrate the characteristics they are trying to inspire in pupils, including a spirit of intellectual enquiry, tolerance, honesty, fairness, patience, a genuine concern for other people and an appreciation of different backgrounds.<sup>2</sup>*

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<sup>2</sup> GTC (2002) *The Code of Professional Values and Practices* [[www.gtce.org.uk/code](http://www.gtce.org.uk/code)].

The Code asserts teachers' own ethical values and aspirations. These values include a commitment to challenging racial discrimination in educational settings. Teachers work to ensure that pupils from all racial groups reach their potential and contribute to building a society of greater mutual respect and concern between people.

Onora O'Neill in the BBC's 2002 Reith Lectures<sup>3</sup> critiqued the accountability culture that currently characterizes the relationship between the state and the public services. She argued that this culture tends to limit the role of the professionals and places only limited trust in qualified professionals to perform their job. O'Neill argued that professionals working in the public service have '*a reasonable sense not only of the specific clinical, educational, policing or other goals for which they work, but also of central ethical standards that they must meet*'. O'Neill asserts the need for a balance between accountability and trust to ensure that public service professionals are able to perform to the best of their ability.

The Code recognizes that 'teachers work within a framework of legislation with many lines of accountability', but also that 'teachers entering the teaching profession in England have been trained to a professional standard that has prepared them for the rigours and realities of the classroom'. O'Neill dubbed the balance '*intelligent accountability*'. The Chair of the GTC, John Beattie, in his inaugural speech in September 2002, argued that the balance between accountability and trust for teachers needs to:

1. *better support our aspirations for innovative practice and improvement;*
2. *ensure evidence is used to inform and develop practice, building capacity through peer review and collaborative learning and enabling teachers to invest time in meaningful scrutiny and analysis of practice;*
3. *ensure clear public understanding of and engagement with the processes and outcomes of education;*
4. *grow collective knowledge about the reasons for and ways of addressing achievement gaps and educational inequalities;*
5. *and finally, take better account of local contextual factors while achieving national consistency.*<sup>4</sup>

Point 4 above is crucial. The profession needs to develop a range of individual and collective strategies to tackle BME underachievement. The GTC has been

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<sup>3</sup> Onora O'Neill (2002) BBC Reith Lectures 2002 [www.bbc.co.uk/radio4].

<sup>4</sup> GTC (2002), Inaugural Speech by John Beattie, Chair of GTC, October 2002, General Teaching Council for England.

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closely involved in the development of the current and new initial teacher training and induction standards. These standards will ensure that newly qualified teachers are better prepared to work in schools with pupils from a diverse range of backgrounds and support the achievement of BME pupils.<sup>5</sup> The groundwork is being set for the future, but a sector-wide approach needs to be developed to tackle BME underachievement.

The RRAA was one of the consequences of the Stephen Lawrence Inquiry and Sir William Macpherson's report. At the core of the RRAA is the aim of removing institutional racism from the public sector, as defined by the inquiry report:

*The collective failure of an organisation 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 which disadvantages minority ethnic people.<sup>6</sup>*

The evidence suggests that there is a failure of the education system to provide an appropriate level of service for all ethnic groups (see Fig. 1).

The RRAA requires schools to challenge the institutional processes that lead to worse outcomes for pupils from certain ethnic groups. Teachers support the RRAA through the values expressed in the GTC Code. The challenge is now

to find ways of moving from the current situation to one where BME

pupil underachievement is being tackled in an approach that is both informed and sustainable.

## **Ethnic Monitoring, Data and Professionalism in Practice**

Evidence points to a widespread failure to ensure that pupils from all ethnic groups reach their full potential. The RRAA is a welcome spur to support the development of new practices, strategies, interventions and support mechanisms for teachers to work towards greater equality of education outcomes.

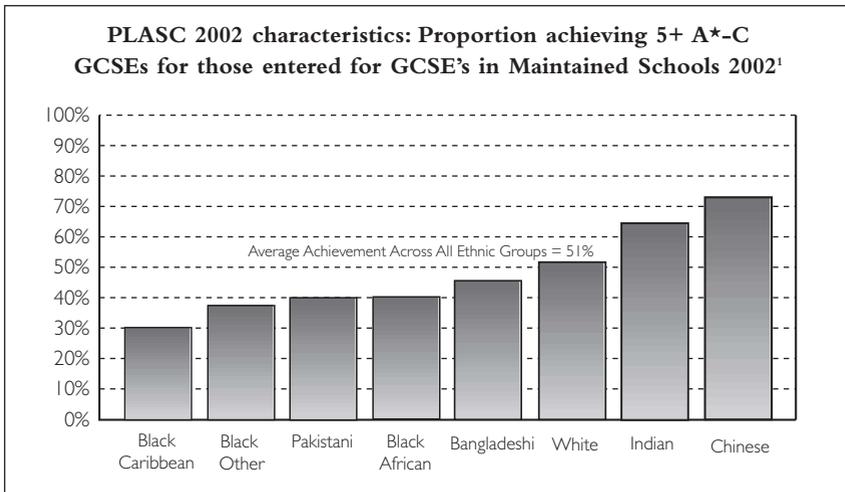
Teachers, schools and local education authorities (LEAs) across England have

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<sup>5</sup> TTA (2002) *Initial Teacher Training Standards* [<http://www.tta.gov.uk/teaching/standards/index.htm>.] Relevant paragraphs include 2.2, 2.4, 3.1, 3.2.5, 3.3.6, 3.3.13, 3.3.14.

<sup>6</sup> William Macpherson (1999) *The Stephen Lawrence Inquiry: Report of an Inquiry by Sir William Macpherson of Cluny*. Inquiry advised by Tom Cook, The Right Reverend Dr John Sentamu, Dr Richard Stone. London: HMSO.

**Fig. 1. Pupil Achievement and Ethnicity**



The evidence suggests that Black, Pakistani and Bangladeshi pupils underachieve, and that Indian and Chinese pupils do better than their white peers. Evidence also shows that during schooling there is a progressive differentiation from entering school to year eleven between people of different ethnic groups. Gillborn and Mirza (2000)<sup>2</sup> found that African Caribbean pupils, who were exiting the compulsory schooling period as the most unqualified, had entered the schooling system equal to and sometimes better than all the other ethnic groups. The same research disaggregated class and gender and found that inequalities between people from different ethnic groups cannot be attributable to inequalities in class and gender. Dr Gillborn notes:

*If you are from a working class home and African Caribbean, Pakistani or Bangladeshi, the chances are that you will not do as well as a white pupil in the same position regardless of whether you're a boy or a girl.<sup>3</sup>*

However, it is important to recognize that these statistics hide the diversity of achievement by ethnic groups at the LEA, school and classroom level. Gillborn and Mirza found that:

*...for each of the main ethnic groups we studied there is at least one LEA where that group is the highest attaining. It suggests that even for the groups with the most serious inequalities of attainment nationally, there are places where that trend is being bucked.<sup>4</sup>*

<sup>1</sup> DfES (2003) *Aiming High: Raising the achievement of minority ethnic pupils*. London: Department for Education and Skills

<sup>2</sup> D. Gillborn & H. S. Mirza (2000) *Educational Inequality: Mapping race, class and gender. A synthesis of research evidence*. London: Ofsted

<sup>3</sup> Institute of Education (2000) Press release from the Institute of Education - 27 October 2000: 'Ethnic Minorities Left Out of Drive to Raise Educational Standards'. [<http://www.ioe.ac.uk/media/r001027.htm>]

<sup>4</sup> D. Gillborn & H. S. Mirza (2000) *op.cit.*

a variety of mechanisms to support the values of anti-racism that are encapsulated within the GTC Code and the RRAA. Diverse cultures and ethnic communities have been in English schools in significant numbers for over 50 years. Teachers have developed strategies and interventions to support pupils from diverse backgrounds with diverse needs, especially since the early 1980s, in areas such as the Inner London Education Authority and Birmingham. Since 1966 the government has targeted funding to support the attainment of BME pupils; however, in 2001, two years after the Home Office, Section 11 funding was transformed into the ethnic minority achievement grant (EMAG), Ofsted found that:

*LEA support for the attainment of pupils from minority ethnic groups is still too variable, but it is improving.*

*The EMAG has brought about positive and significant change in some schools, but there is still some way to go before all schools make full use of the grant's potential.<sup>7</sup>*

Placing this testimony alongside the attainment evidence it becomes apparent that not enough is being done to address the underachievement of BME pupils. The RRAA has been statutory since May 2002 and this has the potential to have a major impact on practice. There is a long list of practices and policies that schools have begun to monitor. LEAs and other education public bodies, including the GTC, also have a duty to monitor practices and policies. Schools will be collecting and evaluating pupil performance data, pupil perception data, testimony from the parents and the community the school serves, as well as evidence from other schools. These data inputs should trigger a variety of positive strategic responses.

Ofsted recently published a review of the implementation of the National Numeracy and Literacy Strategies. With

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<sup>7</sup> Ofsted (2001) *Managing Support for Attainment of Pupils from Minority Ethnic Groups*, October 2001. London: Ofsted.

reference to schools working towards a sustained track of improvement it found

that successful schools had the most confidence in collecting and using performance data.

*All the effective schools were very aware of the importance of detailed and accurate information about what individual and groups of pupils knew and could do. (Ofsted 2003, para. 41)*

Schools that are going to be successful in embedding a sustainable programme of narrowing the achievement gaps between ethnic groups, will be able ‘not only to diagnose what individual pupils need to do to improve, but also to translate this information into action at classroom and whole-school level’.<sup>8</sup>

Teachers, schools and LEAs will need to be able to use data about their system to transform their practices and target their resources. An article by Aspinall and Anionwu (2002)<sup>9</sup> comments on using data within the NHS to transform services. In recognizing that ‘it is vitally important that *proper monitoring by ethnicity* should take place throughout the health and welfare system’ (CFMEB 2000),<sup>10</sup> the article comments on how there has not been proper monitoring by ethnicity as there ‘has been a divorce between ethnic monitoring as a practice ... and the wider purpose of this activity in providing an essential tool for addressing matters of equity and fairness’. The article makes clear that ethnic monitoring in the public health service is not easy, but there has ‘never been a greater [need] for quality ethnic monitoring information for policy development and evaluation’. The article concludes that the monitoring must instead of being ‘driven by governmental statistical returns’ be characterized by ‘the collection of information that is meaningful and useful at local level’. They argue that not only will this ensure that ethnic monitoring has an impact on the quality of services, but will also create a snowball effect to drive change. If ethnic monitoring is kept relevant and used purposefully in the local situation, practitioners will learn the benefit it can bring to their practice. This in turn should lead to greater responsiveness to the data to impact policies and practices. The article recommends the following, as an important step towards the kind of informed practice envisaged post-RRAA:

*Education and training are needed that address the general principles and operational problems of ethnic monitoring, supported by analytical and statistical expertise to maximize the utility of the data.*<sup>11</sup>

The schooling system is becoming more confident in using quantitative data. Rudd and Davies (2002)<sup>12</sup> found that schools already use data widely. They found

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<sup>8</sup> Ofsted (2003) *Strategies in action – The National literacy and Numeracy Strategies in Action: Case studies of improving and declining schools*, HMI 1009, London: Ofsted.

<sup>9</sup> P. Aspinall and E. Anionwu (2002) The role of ethnic monitoring in mainstreaming race equality and the modernization of the NHS: a neglected agenda? *Critical Public Health* 12(1): 1–15.

<sup>10</sup> CFMEB (2000) *The Future of Multi-Ethnic Britain: The Parekh Report*. London: Profile Books, for the Runnymede Trust.

<sup>11</sup> P. Aspinall and E. Anionwu (2002) *op cit*.

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that of those schools surveyed: 97 per cent use school-generated data; 92 per cent use LEA-produced data; 70-90 per cent use KS2 results/PANDAs<sup>13</sup>/Autumn Package<sup>14</sup> and in over 70 per cent of schools one person had a specific responsibility for using data. The research also found that, similar to the needs of the health system, 'teachers wanted more training in the interpretation and analysis of data ... If data are to be used more widely then training across wider groups of school staff is required'.<sup>15</sup>

While schools are gaining confidence in using quantitative data, they also need to be confident in using pupil perception data and information from the community and other schools. Teachers need to be able to have their practices challenged by those that they affect most: their pupils and their families. Schools, by engaging pupils and their families in school development, will be better placed to implement the strategies and interventions that will raise the achievement of BME pupils.

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<sup>12</sup> P. Rudd and D. Davies, (2002) *A Revolution in the Use of Data: The LEA role in data collection, analysis and use and its impact on pupil performance* (LGA Research Report 29). Slough: NFER.

<sup>13</sup> Performance and Assessment Data: Rating schools of comparable circumstances carried out by Ofsted.

<sup>14</sup> For more information go to <http://www.standards.dfes.gov.uk/performance/>

<sup>15</sup> Rudd and Davies (2002) op cit.

<sup>16</sup> M. Blair and J. Bourne, with C. Coffin, A. Creese, and C. Kenner. (1998) *Making the Difference: Teaching and learning strategies in successful multi ethnic schools*. London: The Open University. [GTC. [www.gtce.org.uk/Researchofthemonth](http://www.gtce.org.uk/Researchofthemonth)]

Using qualitative data will ensure that schools can take a whole-school approach to improvement. Quantitative data can be useful in identifying where resources, interventions and strategies may be required, but a more sensitive process is

required to ensure that those strategies are relevant, sustainable and effective. Teachers will need to engage with pupils, parents, other stakeholders and the relevant evidence and research to develop strategies.

## Supporting and Developing Schools and Teachers

In a review for the GTC's Research of the Month programme<sup>16</sup> it was found that those schools that employed successful teaching and learning strategies for all pupils had four similar features:

*The effective multi-ethnic schools ... shared several characteristics ... including:*

- *appropriate whole-school approaches*
- *improved communication*
- *effective collection and use of data*
- *responsiveness to individual need*

The capacity of the education system to maximize all pupils' potential must be developed to ensure that schools are not only highly informed but capable of acting positively and creatively on the information they gather. In order to build this capacity, there need to be several mechanisms that support the teacher. These include:

- Professional development to build greater breadth and depth of teacher expertise in promoting race equality (this includes better coverage of the strategies to tackle BME underachievement at initial teacher training);
- Support in handling and using a wide range of data;
- Development of networks to share practice and further build the capacity of teachers to meet their pupils' needs;
- Further embedding of school self-evaluation and support from the school's inspection service.

Since its inception, the GTC has argued that teachers need 'an entitlement to professional development ... to enhance their professional knowledge and pedagogic practice in order to raise standards of achievement for all pupils'.<sup>17</sup> Professional development can build teachers' capacity to handle and use data. Equally, professional development, when embedded into intra- and inter-school practices, can enable the sharing of effective practice and the collective tackling of underachievement – vital to ensuring that successful strategies to raise BME achievement are widely shared and developed in response to particular local needs.<sup>18</sup>

Professional development systems and structures are a necessary but not sufficient condition for the sharing of practice between schools. Tensions within the school system can hinder the free sharing of practice. Schools work in a target-based culture that can encourage them to isolate themselves. Schools often feel under pressure to compete for status, pupils, and/or teachers, rather than learning from each other openly and co-operatively. Developments such as Beacon schools and advanced skilled teachers provide some space for inter-school collegiality, but the deeper structural changes that will, in the words of John Beattie (Chair of GTC), 'grow collective knowledge about the reasons for and ways of addressing achievement gaps and educational inequalities', need to be supported by local and national policies.

The role of the LEA in offering regional support to schools is supported by

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<sup>17</sup> GTC (2000) *Continuing Professional Development; Advice To Government - December 2000*, General Teaching Council for England.

<sup>18</sup> Go to [www.gtce.org.uk/tplf](http://www.gtce.org.uk/tplf) for GTC's tool for exploring development opportunities.

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the availability of the ethnic minority achievement grant (EMAG) to raise the achievement of BME pupils. EMAG has provided some room for manoeuvre to deliver services and develop strategies to support BME pupils. The main role of the LEA using the EMAG is to provide support to school staff. Ofsted has reviewed LEA provision in this area.

*The amount of training related to minority ethnic achievement changed little over the three-year period 1998–2001, but the range of training widened to embrace the broader remit of the EMAG...*

*There has been a sharp decline in the number of long-term accredited courses... The proportion of EMAG-funded staff with appropriate qualification is now as low as 30% in some LEAs.*

(Ofsted 2002)<sup>19</sup>

EMAG funding, some of which is delivered directly to schools, is not sufficient to support the wholesale transformation necessary to tackle BME underachievement. In its current consultation<sup>20</sup> on minority ethnic achievement, the government recognizes the limitations of the EMAG. The allocation of funding can be arbitrary as it is based on out-of-date bids from LEAs and has not changed relative to local need.

To surmount the shortcomings of EMAG funding, Ofsted recommends a whole-school process of professional development:

*...schools should encourage senior managers and mainstream teachers to see that training related to minority ethnic achievement is relevant for all staff, not just those with EMAG responsibilities...*

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<sup>19</sup> Ofsted (2002) *Support for Minority Ethnic Achievement: Continuing Professional Development*, London: Ofsted.

<sup>20</sup> DfES (2003) *Aiming High: Raising the achievement of minority ethnic pupils*, London: Department for Education and Skills

<sup>21</sup> Ofsted (2002) *op cit*.

The sentence ends: ‘...and support their attendance on appropriate courses’.<sup>21</sup> The GTC has argued that more sustainable school-based practices, such as developing a confident data-responsive professional community, are equally relevant to ensuring school improvement.

Part of the process of building sustainable school improvement is embedding school self-evaluation. The GTC believes that self-evaluation is the mechanism through which the needs of the local community can best be met.

*A rigorous internal self-evaluation system involving parents, governors and other stakeholders, together with robust external audit and assessment, would ensure that the accountability framework was systematic, scrupulous and thorough.*<sup>22</sup>

Self-evaluation can ensure that all stakeholders – pupils, teachers, parents and the wider community – are becoming engaged in tackling the underachievement of BME pupils and improving the achievement of all. The whole-school approach is more than a structural response to tackling inequalities. It can support a reflective process whereby more intractable issues, such as low expectation of certain pupils, can be challenged.

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<sup>22</sup> GTC (2002) *The Response of The General Teaching Council of England to the Ofsted consultation Improving Inspection, Improving Schools*, [<http://www.gtce.org.uk/gtceinfo/ofstedresponse.asp>].

<sup>23</sup> A. Osler and M. Morrison (2002) 'Can Race Equality be Inspected? Challenges for Policy and Practice Raised by the OFSTED School Inspection Framework', *British Educational Research Journal* 28(3): 327-38.

<sup>24</sup> *Ibid.*

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Ofsted has recognized the importance of self-evaluation, and its potential in developing an *intelligent* process of school improvement, but needs to show leadership in mainstreaming race equality issues. Recent work by Osler and Morrison (2002),<sup>23</sup> although supporting the GTC's belief that 'schools should not rely on Ofsted to monitor their efforts to promote race equality – external inspection needs to be balanced by schools' own processes of self evaluation', importantly concludes that:

*The Ofsted inspection framework is both robust and comprehensive in its coverage of race equality issues...*

*[But]*

*Only 1237 out of 3647 inspection reports (34%) for the period since the publication of the Macpherson report have included consideration of the schools' effectiveness in preventing and addressing racism.*

*Our research suggests that the Ofsted leadership urgently needs to develop a corporate culture and discourse of race equality within Ofsted.*<sup>24</sup>

The RRAA has specified that Ofsted inspect schools to examine their implementation of the Act. Ofsted should ensure that this role is exercised to lead and support the raising of awareness of race equality issues, the sharing of successful strategies, and the capacity-building process that is necessary to tackle BME underachievement.

Ofsted is not the only national body with a responsibility to support professionals in addressing the underachieving BME pupils. The Department for Education and Skills, the Qualifications and Curriculum Authority, the Teacher Training Agency and, of course, the General Teaching Councils (who are all subject to the RRAA) must respond to the challenge and support teachers in meeting their responsibility to all pupils and the wider society.

It is important to recognize that schools, although important, cannot take on the total responsibility for the transformation of society. The percentage of her or his waking life a child spends in school is around 15 per cent.<sup>25</sup> For inequality to be challenged there needs to be a mobilization of action beyond schools, the RRAA is an opportunity to ensure a national and cross-public-sector approach to tackling racial inequality and to improving the achievement of all pupils.

## Conclusion

Schools have been subject to a great deal of political and policy attention over recent years. The government is committed both to raising standards and to addressing endemic inequality in the system. The RRAA is a vehicle to challenge the entrenched inequalities between some ethnic groups. It is the responsibility of teachers to seize this opportunity as well as for local and national education bodies to support the professionals. Schools need to monitor, evaluate and respond to a wide range of data; they need to develop their knowledge and share successful strategies, and the wider community needs to be engaged through self-evaluation in whole-school improvement programmes.

The professional teacher, supported by local and national education bodies, is well placed to build a programme of sustainable improvement to tackle the underachievement of certain groups of BME pupils. Informed teachers can challenge underachievement in all its complexities. Teachers are able to address underachievement that stems from socio-economic disadvantage, or from prejudiced attitudes towards another's ethnicity, gender or disability (and

underachievement that arises from the interaction between these factors).

Strategies that successfully tackle

underachievement will, ultimately, have been driven by the creative relationships between teachers, pupils, parents and other professionals and stakeholders.

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<sup>25</sup> See for example A. Davey (2003) 'The Race to Judge', *The Guardian*. [<http://education.guardian.co.uk/schools/story/0,5500,921086,00.html>]

# Light Touch Inspections? Racism Does Not 'Touch Lightly'

**Dave Allport** 'Rewind' Project, Oldbury, and  
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**H**aving been involved in various 'strands' of community-based work with Local Authorities, Health Authorities and Primary Care Trusts in fields such as Youth Work, Community Work and Community Development, at various 'levels' from frontline/grassroots delivery to senior management, I have been witness on numerous occasions to what I describe as rhetoric versus reality.

The rhetoric is constantly present when relating to issues of 'race' and racism within organizations. This can include the implementation of Equal Opportunities policies, Anti-Oppressive Practice guidelines, CRE standards, anti-Harassment policies, 'race' equality schemes and the provision of black workers' support groups.

I am in no way suggesting that these measures should not and could not be effective in combating racism, merely that in my experience they can also be used as a defence mechanism when any inspection or audit is carried out on the organization. Too many times, organizations with all of the above in place find their staff and service users discriminated against, sometimes systematically, on the basis of their skin colour, ethnicity and/or culture.

## Inspection Alone

No inspection framework can rely upon the inspection process alone in terms of encouraging organizations to address 'race' equality. Having been witness to the grudging compliance and tokenistic response of some organizations, I would suggest that this issue needs to be addressed at a much deeper level than the planned (and therefore well prepared-for) inspection.

Consider the scenario of a Local Authority Youth Service where some of its Asian employees, along with a white worker attempting to deliver Anti-racism work in a certain area, are targeted by right-wing activity from *within* the very Service in which they work. No satisfactory response comes from management, and little or no help is offered wherever requested. The Service in question, however, can still work towards achieving CRE Standards, with its policies and procedures looking very positive *on paper*.

## Training

### Inductive

Training, though not an answer to all the 'evils' of racism, should be an *integral* part of the induction and ongoing programmes within organizations. This issue is very much one of winning 'hearts and minds', alongside the 'forced' compliance that appears to be the current thinking. Many organizations, again, will state that they train staff on these issues, but how many really do, to what level, and how often?

Two examples come to mind here. One of a full-time youth worker who is frightened to call her co-worker Black in case she upsets him; and one of a health professional who referred to a colleague of mine who visited him as a 'strong healthy nigger' and could not understand what he had said that was so upsetting. These are just two instances where training could only improve the situation and, once again, they are not isolated examples. Also, they occur among teachers, youth workers, health workers, police and elected members – the very people who are called upon by the 'Race' Relations Amendment Act to deliver on these issues.

### Equal Opportunities

Nationally, teachers and youth workers in particular are asking for training delivery that can assist them in their work. Often they are given [in their words] 'tokenistic, wishy washy' Equal Opportunities training that does not even 'scratch

the surface' of these issues.

I would suggest that training needs to stress the legal responsibilities of organizations, and also include awareness raising in terms of exposing 'race' as a social construct, types of racisms, effects on people, where they came from and why they are here today despite having been created centuries ago, along with knowledge of the 'new' racisms of Islamophobia and antipathy toward asylum-seekers and refugees.

## **Inspection of Training**

Training should be inspected in terms of its quality, regularity, content, feedback and outcomes.

In the Commission for Racial Equality's document *A Framework for Inspectorates* (2002) the evidence required of schools has a tick-box list that unfortunately does not include the issue of training for teachers, yet as I have mentioned, many teachers are crying out for this on their own admittance that they are often not equipped to deal with racist incidents in school.

Interestingly, in the same document, the list for Further and Higher Education Institutions does include a box for training. This could be argued to be excluding the very teaching staff who are at the 'sharp end' and are more likely to be confronted with these issues by younger people in schools.

I am arguing that we should, through this training, and along with other measures, be attempting to change the culture of organizations, and that inspectorates need to go beyond the statutory duties of those organizations, become more innovative in their approach, engage more with 'real' communities in terms of how they see the service being delivered, avoid using the 'tick-box approach' in isolation, address service delivery and be very wary of 'light touch' inspections – as racism does not *touch lightly*.

## **Rethinking the Training Approach and the Concept**

Regarding innovative ways of engaging with people on these issues, I have been delivering training to various staff groups and also working with young people on these self-same issues for some years, initially in the West Midlands and over the last 2 years on a national basis in areas such as Bradford, Manchester, Newcastle, Warrington and Liverpool, among others.

The content of my work is predominantly that of challenging the concept of 'race' and exposing it as a social construct, revealing the myths that were created

to justify this false concept, and making people aware of the contemporary implications of this construct. Many of the negative stereotypes that we refer to today as being racist derive from racist ideologies that were coined centuries ago yet are still adhered to today.

Despite this concept having been discredited for some years within 'academia' there is still a very widely held belief that there are separate, immutable 'races' of humankind. The new genetics revolution, the human genome programme, has now totally discredited any such notion. However, we continue to propagate this false concept through the language that we use. We talk of 'Race' equality schemes, the 'Race' Relations Act and even the CRE guidance for the General Duty talks of the need to 'promote good relations between persons of different racial groups'. Exactly what 'racial' groups would they mean by this?

There has been a wealth of literature aimed at undermining this very concept: Gilroy (2000), Fryer (1984), Lively (1999), Montague (1997), Jahoda (1999) and Malik (1996) among many others. Bernard Crick, in his 1996 article in the *New Statesman*, appealed to us to 'Throw the R word away', arguing that we should attack racism by ceasing to use the word 'race':

*Discrimination and hatred based on this false belief should be attacked, but so should the very concept.* (Crick 1996)

More recently, television documentaries such as 'The Difference' (Channel 4 November 2000) and radio programmes like 'Race Myths' (BBC Radio 4 2001), have shown that all humans alive today can trace their roots back to Africa, much more recently than was ever previously imagined; and [www.rootsforreal.com](http://www.rootsforreal.com) also charts the migration of modern humans from our African origins throughout the world over the last 40,000 years.

Without wishing to labour this point when debating issues of inspection for 'race' equality, should we not be putting effort into making this knowledge much more accessible, thereby improving the knowledge base of the people we are inspecting?

## **Resolution is Needed**

In summary, I would suggest that when we are debating issues of inspecting for 'race' equality that we look for innovation in this area, as we seem to have passed through various 'stages' of mono-culturalism, multi-culturalism, anti-racism and

have now moved on to debating Community Cohesion and its meaning, while the issues of racist thought and behaviour themselves, although being modified, remain firmly embedded in the reality of the lives of millions.

*The Problems we have created have been created at a certain level of thinking.*

*They cannot be solved at the same level of thinking that created them.*

(Albert Einstein)

## Note

1. It should be noted that despite the negativity detectable in this article (which is an accurate depiction of some real experiences), since joining what was Sandwell Health Authority and, more recently, working for Oldbury and Smethwick Primary Care Trust, I have had excellent support for this work. The 'Rewind' Project has developed, and continues to grow due to this support, which is regarded nationally as being most proactive in terms of NHS provision.

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# Inspecting for Race Equality

The CRE's approach

## Joe Charlesworth Commission for Racial Equality

**O**ne of the key changes to the Race Relations Act 1976 brought about by the Race Relations (Amendment) Act 2000 was a duty to make the public sector pro-actively responsible for promoting race equality.

### **Subject to the General Duty**

The general duty is that all listed public authorities – the vast majority – are to have due regard, in carrying out their functions, to eliminating race discrimination and promoting equality of opportunity and good relations between people of different racial groups. The Act provides for the Secretary of State, by order, to specify additional duties to help authorities meet their general duty. This power has been used to impose specific duties on particular public authorities and groups of authorities.

For a wide range of authorities, including main local authorities, NHS bodies, police authorities and forces, and other criminal justice agencies, the specific duties require publication of a race equality scheme with prescribed content, and a number of particular requirements in terms of ethnic monitoring in employment. For educational institutions there are specific duties to prepare a race equality policy and to review policies and carry out monitoring.

Some authorities subject to the general duty have no specific duties or, rather, specific duties only in respect of ethnic monitoring in employment. The specific duties came into effect on 31 May 2002 in England and Wales and 30 November 2002 in Scotland.

The amended Race Relations Act also provided for the Commission for Racial Equality to issue a code of practice to guide and assist authorities in meeting their general and, if appropriate, specific duties. The CRE published a code for public authorities in England and Wales and a broadly similar code for Scotland to come into effect on the dates on which the specific duties came into force.<sup>1</sup> The codes' recommendations do not have the force of law in themselves but the codes are statutory and are to be taken into consideration in any relevant legal proceedings.

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<sup>1</sup> Consultation drafts for England and Wales on the Statutory Code of Practice on the Duty to Promote Race Equality were piloted in December 2001, with responses required by end February 2002, in order to issue the final Code in May 2002, and in November 2002 for Scotland.

Authorities that do not follow the codes would have to demonstrate that they have equally effective ways of meeting their specific and general duties.

Under further provisions of the amended Act, the CRE is given powers to enforce compliance with the specific duties. This is by means of a 'compliance notice' procedure, requiring an authority the CRE believes to be in breach to bring itself into compliance within a specified period. Any person with standing (of which the CRE would be one) can use judicial review to question authorities' compliance with the general and specific duties. There is no requirement for public authorities actively to submit their race equality schemes or policies to the CRE for approval or for any other purpose.

As indicated, a very large number of authorities are subject to the general and somewhat fewer to the specific duties. The former group is estimated to contain around 40,000 authorities in England, Wales and Scotland; the latter around 4000 to 5000. In this context it was clear during the passage of the Amendment Act that some mechanism short of enforcement action was needed in order to ensure that public authorities were challenged to show whether and how they were complying with their general and any specific duties.

As the Government indicated in its consultation paper on the implementation of the Act, it was envisaged that the inspection and regulation bodies would provide the first, administrative stage of challenge, advising authorities how they could bring themselves into compliance with the law. Indeed, the inspection and regulation bodies would themselves normally be subject to the public duty either in their own right or as integral elements of their parent government departments.

They would therefore need to draw up and publish race equality schemes, assessing their functions and their policies' relevance to the public duty. Among those functions and policies would be those covering the core business of the inspectorate – inspection and regulation – which would need to be exercised so as to promote race equality.

## **The Inspectorates**

The main inspection bodies had in the decade or so preceding the Amendment Act introduced in incremental fashion steps to bring race equality within the ambit of inspection and audit activity. This was done in two main ways:

- by including race equality criteria in the framework used to judge the performance of inspected bodies;
- or by conducting 'specialized' or 'thematic' inspections of race equality or equal opportunities.

In a parallel and mutually reinforcing movement, bodies responsible for setting the framework of performance indicators were increasingly including indicators intended to measure race equality in various aspects and functions of public sector bodies. That this was so did not mean that progress was as rapid as was desired by the CRE and others.

In some inspectorates, although race equality/equal opportunities had been to an extent included in the frameworks or methodologies for inspection, research showed that the relevant criteria were not well understood or applied by inspectors or given audible support by the organization's leadership. Nevertheless, those initiatives did provide the inspectorates with a good basis on which to build their response to the new duty to promote race equality. However, the new duty to promote race equality clearly required a more consistent and a more focused response.

## **A Focus for Inspection**

In order to establish a way forward the CRE met with the heads of inspectorates. There emerged agreement on the value of the CRE developing guidance for inspectorates on building the public duty into the design and application of their methodologies. There was also recognition of the need for some kind of protocol to govern the sharing of information regarding public authorities' responses to the public duty, and the coordination of action where weaknesses or lack of compliance by public authorities were identified by either side.

In terms of the guidance, because of the very wide variation in the methodologies as well as the powers, procedures and circumstances of the various inspectorates, it was clear that it would not be possible to create a text that could be simply lifted out and bolted into place. In addition, as already mentioned, whether inspected bodies were subject to the general duty and, if so, to what set of specific duties, also varied. What was needed was a flexible tool that took account as far as possible of these variations and that inspectorates could take and use in the development of their methodologies. The result was a guide to inspecting for race equality which went through each of the elements of the

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<sup>2</sup> CRE (2002) *A Framework for Inspectorates*, London: Commission for Racial Equality, pp. 6–27.

general and specific duties. Against each it set out, first, the evidence inspectors might expect to find if the organization was

complying with the duty and good practice, and, second, how to identify and assess the evidence of the outcomes resulting from compliance.

The guide was published in July 2002.<sup>2</sup>

## **Protocols for Inspectorates**

In terms of a protocol between the inspectorates and the CRE, a template for a ‘memorandum of understanding’ document was developed by the CRE in consultation with the inspectorates.

The memorandum set out the parties’ mutual interest in improving the race equality performance of inspected bodies. It provided for the inspectorate, when it received information during the inspection process suggesting that a public authority was failing to meet its duty to promote race equality, to communicate this preliminary view to the authority advising it that action was needed and that it could seek assistance from the CRE. Where the authority failed to take advice or put things right, the inspectorate would include this result in its published report. For its part the CRE would inform the inspectorate of information reaching it, from whatever source, indicating a failure to meet the public duty in order that the inspectorate might take the information into account in, for example, planning and prioritizing inspections.

From the second half of 2002, the CRE has engaged in discussions with each of the main inspection and audit bodies with three main purposes:

1. to facilitate action by them in their use of the inspection framework (or other means) so as to introduce or consolidate their arrangements for inspection of the public duty;

2. to customize and agree a memorandum of understanding suitable to the circumstances of individual inspectorates; and
3. to advise inspectorate bodies, where necessary, on the development of their race equality schemes.

Those discussions have not only advanced further in one or more of the areas identified, but in many cases have already been successful in bringing about change.

Two inspectorates (the BFI and the Magistrates Courts Service)<sup>3</sup> undertook thematic inspections of the response to the public duty in the relevant sector. The BFI report was published in May 2003 and was used to inform the development of the performance standards applied in local authorities' self-assessment of their housing and council tax benefits services.

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<sup>3</sup> BFI (2003) *An inspection of compliance with the Race Relations Act of the Housing and Council Tax Benefit and counter-fraud services of 10 randomly selected local authorities*. London: Benefit Fraud Inspectorate (May 2003) from the DWP Information Centre [<http://www.bfi.gov.uk>]. MCSI (2003) *A Review of Race Issues in the Magistrates' Courts Service*. Bristol: MCSI Publications Section [<http://www.mcsi.gov.uk>].

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## Training for Capacity

Clearly the kind of measures described above will take time to have their full effect. And in order for them to bring about real change in the effectiveness with which public authorities deliver race equality outcomes, it is critically important that there should be a sufficient capacity available to both detect the key lines of effective and ineffective performance and to support public authorities in the change process.

The inspectorates therefore need to ensure that they provide training to develop the understanding and skills needed by frontline inspection staff to apply methodologies in relation to the public duty. This is something they are legally obligated to do as part of their own race equality schemes, which are required to set out arrangements for training staff in the implementation of the public duty.

As regards support for the change process, there is increasing recognition that public-sector organizations will not always be able, out of their own resources and efforts, to bring about the improvements identified as necessary through the inspection process. And external sources may not be in a position to provide the kind of specialist help required where deficiencies of race equality performance are identified.

The CRE will play a significant role in this as provided for in the memoranda of understanding, but a partnership approach is necessary involving in each sector those bodies – including Government departments – with the relevant role. It is only by active collaboration across the public sector that the culture change in public services envisaged by the duty to promote race equality can be successfully achieved.



## Afterword

### Rob Berkeley Runnymede

*It is essential, if people are to have a sense of belonging to society as a whole, that they should not feel alienated from or marginalized by public bodies. They must feel that their own flourishing as individuals and as communities is intimately linked with the flourishing of public institutions and public services such as the police, the courts, educational establishments and the health service. If they feel this identification and are at home with public institutions they have a commitment to sustaining them. Such commitment is an essential building block of One Nation . . . Public services are embodiments of the state – they are windows, it could be said, through which the state is seen. It is therefore essential that they are staffed by individuals of merit and integrity, that their exercise of authority is regulated by clearly defined procedures, that their actions are above suspicion, and that any acts of partiality are subjected to the severest punishment.*

Report of the Commission on the Future of Multi-Ethnic Britain (p.49)

**T**he Report of the Commission on the Future of Multi-Ethnic Britain is unequivocal about the importance of public services in supporting the creation of a successful multi-ethnic Britain. In this collection of papers it is hoped that these ideas have been further developed and some of the challenges and opportunities that this perspective provides illuminated.

Public authorities have been understood as a route to social justice and as organizations to which the voluntary sector bodies concerned with racial justice have given the majority of their attention. Many public authorities have responded positively to this role over the years, and credit must be given for pioneering work carried out (especially in some parts of the education and health sectors), which has sought to include and involve all communities.

Some public authorities have been slower than others in recognizing the impact that they can have on race equality in Britain. In a few cases the

recognition has only come about through scandal, which has left those authorities with a credibility gap that they have struggled to close. The Race Relations Amendment Act now offers all public authorities the chance to reassess their roles in terms of race equality and develop a response that results in positive outcomes for a multi-ethnic society.

Inspectorates and regulatory bodies, as guardians of the public interest, now have an explicit legal role as guardians of race equality. This collection aims to support the development of that role and contribute to the debates that need to happen as organizations, communities and individuals engage in the ongoing negotiations that underpin our understanding of a successful multi-ethnic society. Inspectorates and regulatory bodies are important players and will often be called upon to be arbiters in a deliberative democracy. The Commission's report suggests that consensus reached through intercultural deliberation is frequently the most effective solution:

*Its advantage is that it shows respect for minority viewpoints, involves people in decisions that affect them, deepens understanding between communities, and leads to realistic and widely acceptable decisions. (p.53)*

If our guardians of race equality can begin to engage with such an understanding of democracy their impact on the promotion of race equality in our public services may indeed be great.

The inspection and regulation of public authorities in the area of race equality needs to be considered as part of the larger ongoing debate that is being held about the future of our public services. It is a key part of the public understandings of government and the state and as such should be regarded as a key feature of 'delivery', at the heart of intelligent accountability, integral to the debate about the relationship between the public and private sectors, and an identifier of public trust and political engagement.

The viewpoints of the contributors to this collection highlighted a number of core issues to be faced by inspectors, regulators, practitioners, politicians and communities. The need for leadership at various levels is raised; leadership from the government, leadership from within organizations, consensual leadership between peers working collaboratively. The legal framework's importance is recognized as conferring legitimacy on inspecting and regulating bodies when they challenge existing behaviours and outcomes. There is also a recognition of

what changes need to be brought about to make regulation of race equality more effective – including better communication with and involvement of minority ethnic communities, and challenging practices which turn audit, inspection and regulation into a tick-box exercise rather than the route towards radical and deep-seated change that it can be.

Together, through having collected and shared these viewpoints, we hope we can stimulate further debate and discussion about the role that our guardians of race equality can play in delivering positive change.



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## Selected Runnymede Publications

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**Developing Community Cohesion: Understanding The Issues, Delivering Solutions** Proceedings of a Runnymede Conference of October 2002 (2003)

**Complementing Teachers: A Practical Guide to Promoting Race Equality in Schools** (2003, Runnymede/Granada Learning)

**Divided by the Same Language? Equal Opportunities and Diversity Translated** (Briefing Paper March 2003)

**Cohesion, Community and Citizenship:** Proceedings of a Runnymede Conference (2002)

**Perpetrators of Racist Violence and Harassment: A Runnymede Research Report,** Omar Khan (2002)

**Mentoring: Business and Schools Working Together,** Linda Appiah (2001)

**The Future of Multi-Ethnic Britain: The Parekh Report,** Commission on the Future of Multi-Ethnic Britain (2000, Profile Books)

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