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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)

The 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.¹

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*

¹ 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.²*

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.³

⁴ 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.

³ 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.⁴

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.⁵*

⁴ Ibid.

⁵ 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)⁷

Principles for a new legislative approach

Twin 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).⁶ 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).⁸ 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

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

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

⁸ 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.⁹

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.¹⁰

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-

⁹ CFMEB (2000), op cit, p. 56, 4.36.

¹⁰ 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.

*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.*¹¹

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

cohesion. These will apply to many public authorities.

¹¹ Rob Berkeley, Runnymede Bulletin December 2002: 1.

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 harassment¹²*

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.

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