

# Consultation Response

## September 2009



## Response to the Government Equalities Office Specific Duties Consultation on behalf of the ROTA-led Winning the Race Coalition

### About ROTA

Race on the Agenda (ROTA) is one of Britain's leading social policy think-tanks focusing on issues that affect Black, Asian and minority ethnic (BAME) communities. Originally set up in 1984, ROTA aims to increase the capacity of BAME organisations and strengthen the voice of BAME communities through increased civic engagement and participation in society.

**ROTA's Articles of Association state that the charity is set up "to work towards the elimination of racial discrimination and to promote equality of opportunity, human rights and good relations between persons of different groups".**

For historical and demographic reasons, our work prioritises London, but our activities and a number of our projects have national and international significance. To this end we work in close partnership with our membership and others interested in race equality, human rights and the promotion of good relations.

Our presence in London is enhanced by the regional network, MiNet. **MiNet** is the London focused BAME network of networks, which joined ROTA in 2002 to strengthen the voice for London's BAME third sector in the development of regional policy.

### ROTA definition of BAME and Approach to Race Equality

ROTA works on social policy issues that have an impact on race equality and BAME communities. ROTA's definition of 'race' encompasses all the protected characteristics under equality legislation including colour, nationality, ethnic or national origin. We use the term BAME to refer to all groups who are discriminated against on the grounds of their race, culture, nationality or religion which includes but is not exclusive to people of African, Asian, Caribbean, East European, Irish, Jewish, Roma and South East Asian decent. ROTA adopts a holistic approach to race equality and works in partnership with other Third Sector organisations that complement its expertise and have a similar vision

### About the Winning the Race Coalition

Race on the Agenda (ROTA) formed a national coalition of third sector bodies to highlight some areas of concern in relation to the Single Equality Bill and to develop a unified and stronger voice to our concerns. Our focus is primarily on race equality and the discrimination faced by Black, Asian and minority ethnic (BAME) groups. However, the coalition's creation aims to make the argument for cross-equality and human rights issues where appropriate.

ROTA and the coalition members have been working and will continue to work over the duration of all the stages of the Bill and its roll out to engage with key stakeholders involved in ensuring that the needs of BAME communities and the BAME third sector are met. ROTA has been representing the Winning the Race Coalition at meetings with Government Equalities Office Ministers, the EHRC, and has given evidence to the House of Commons Committee scrutinising the Bill. ROTA keeps coalition members updated with all developments. The Winning the Race Coalition is working to ensure that effective civic participation is achieved in all processes of engagement with those who will be affected by the legislation. For a list of Coalition members and full details of the activities of the coalition visit <http://www.rota.org.uk/pages/WTRC.aspx>

## Methodology for this response

ROTA's policy work is evidence based in the sense that everything we do is informed by the views and real life experiences of BAME communities and the organisations that are set up to serve them. For this response we collected evidence through:

- Attendance to consultations with the Government Equalities Office, JUST West Yorkshire and the National Equality Partnership event and other related events.
- Past evidence submissions by ROTA on the Single Equality Bill
- Informed by the Winning the Race Coalition Action Group members views and opinions. Full list of coalition members can be viewed here <http://www.rota.org.uk/pages/WTRC.aspx>
- Telephone interviews with chair of MiNet and a Race Equality Council for supplementary experiences of BAME third sector
- Correspondence received from and meetings with Michael Foster MP, Parliamentary Secretary for Equalities at the Government Equalities Office. The minister answered questions on the proposals which informed the Coalition response.

## About the Consultation

Race on the Agenda (ROTA) warmly welcomes the Single Equality Bill, and hopes that it can provide the legislative tools to tackle persistent inequalities such as those faced by Britain's Black, Asian and minority ethnic (BAME) communities. ROTA also hopes that through the Bill a culture of respect for equality and dignity is created and mainstreamed in providers of public services (whether public, private or voluntary) and in society. The specific duties are the obligations that will be placed on public authorities as a means to fulfil the Single Equality Duty under the Single Equalities Bill, which is presently before parliament. It will require secondary legislation so this consultation will inform what that secondary legislation looks like.

The new proposals are light touch requirements that focus on **outcomes**. They **do not specify** what activities are to be impact-assessed, monitored, and responded to, any training requirements or when and how communities should be consulted.

Instead the new proposals require public authorities to select equality objectives and ask that principles of reporting on progress and involving communities are maintained by public authorities. The key themes within the consultation are:

- Setting equality objectives
- Reporting on progress in achieving equality objectives
- Reporting important equality data in the workforce
- Demonstrating the impact on equality of policies and services

- Involvement and consultation
- Procurement
- Reporting duty on central government.

## Consultation Questions

**Q1: Do you think the criteria set out below are the right ones [for identifying organisations to which the specific duties should apply]**

- Is the organisation a significant employer, in terms of either size or impact?
- Could the organisation, for example in the decisions it takes or the services it delivers, have a significant effect on the lives of people from the protected groups?
- Does the organisation have significant direct dealings with service users?
- Is the organisation of a sufficient size to operate the specific duties without them being unduly burdensome?

ROTA believes that the criteria set out forms a reasonable broad qualification clause for the specific duties, but **they are not sufficient** to ensure that absolutely all services that could reasonably be delivering public functions and affect the achievement of equality outcomes will be included.

**There should be no regression from the coverage of specific authorities under the general race duty of the Race Relations (Amendment) Act 2000** that sets out a comprehensive list of potential authorities who should be covered by the specific duties set out in this consultation. This would mean that the specific duties would cover all government departments and executive agencies (which had once been part of government departments), non-departmental public bodies, all local authorities except parish councils, local education authorities and education authorities in Scotland, all NHS institutions, all Chief Police Officers and Police Authorities.

This should ensure that the relevant authorities who act as major employers, deliver services and influence public policy have a due regard to the single equality duty and the specific duties.

We would also ask that consideration should be given to Parish Councils inclusion due to their role in influencing planning and spatial strategies for local areas and the potential discrimination incurred by highly excluded groups such as Irish Travellers and Gypsies.

**Q2: Are there any other criteria we should use? If so, what do you suggest?**

ROTA was disappointed with the limited scope of the Equality Bill and of the Public Sector Equality Duty (Clause 143) in particular. The duty applies to the listed 'core public authorities' and to an ambiguous list of 'hybrid public authorities'. The former has some obvious omissions such as the Police. The latter is defined as those authorities exercising 'public functions' as this is developed under the Human Rights Act 1998.

The Minister Michael Foster informed the Coalition that he believed the two pronged approach of applying the duty to any organisation carrying out a public function, but only in respect of that function, and a list of organisations attached to the Bill in schedule 19, would provide adequate coverage. The minister stated he believed the Bill covered 90 % of public authorities through the list but recognised that some authorities, such as the

Metropolitan Police Authority, academies and the British Museum, were not included and gave assurances that these would be in the final Bill.

**ROTA believes that the ‘public function’ test of the Human Rights Act 1998 is insufficient to provide adequate coverage of public authorities due to the misinterpretation of Section 6(1).** This has led to a body of jurisprudence that has narrowed the coverage of the human rights act leaving out many vulnerable and discriminated groups. Several cases have identified this<sup>1</sup> and in 2004 the Joint Committee on Human Rights concluded that test being applied by the courts was “highly problematic” as in many cases it resulted in an organisation “standing in the shoes of the State”, but without the State’s legal responsibilities under the Human Rights Act. We propose that the Equality Bill should use the definition of the Joint Committee on Human Rights (29<sup>th</sup> report 2008) constituting a public authority as covering all bodies (including private and third sector organisations) that provide public services.

We have been given assurance in a letter from Michael Foster MP that the Ministry of Justice are committed to consulting on the public authority definition in due course but are yet to see any details or further information on this. We would like to see a commitment to a framework of consultation that avoids regression from the present definition, ensures consistency and is independent from government. We would also like to see a commitment to a timescale that ensures that this issue is examined in detail and independently of any changes in government.

**Q3: Do you agree that public bodies should have a specific duty to publish equality objectives with reference to the relevant evidence and their wider general Equality Duty obligations?**

ROTA agrees the public bodies should publish their objectives in addressing inequalities, but we are concerned about the coverage of policies and functions that the described equality objectives would achieve. It is possible that significant levels of discrimination and exclusion will continue to be perpetuated outside of these equality objectives and this should be addressed with equal impetus

ROTA has concerns that the lack of clarity stated in the role of equality objectives will lead to a dilution of the protections under the protected characteristic of race. The aim of equality objectives was identified in the Discrimination Law Review 2007 which stated that the level of administration burden of race equality schemes and impact assessing every relevant policy was excessive. As a result it recommended prioritising inequalities to be tackled as published ‘*equality objectives*’ to more efficiently address these needs.

As the consultation document presently describes, this duty appears to require public bodies to identify a number of inequalities to be tackled but says nothing about how other unspecified inequalities will be addressed. These objectives will not even be required for each protected characteristic. As a result the equality objectives might only succeed to identify certain inequalities or direct discrimination to be tackled, with other less prominent inequalities continuing to be perpetuated. This could lead to a situation where public bodies do not seek to address race based exclusion and discrimination at all if it is not determined to be a priority.

We are given to understand from the Government Equalities Office that the Single Equality Duty to show ‘due regard’ to protected characteristics will in effect be a duty to gather

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<sup>1</sup> Poplar Housing v Donoghue (2001), Heather v Leonard Cheshire Foundation (2002), Hampshire v Beer (2003), Aston Cantlow (2003) and YL v Birmingham (2007)

evidence on the outcome and assess the impact of policies and functions. It is from this evidence and impact that the equality objectives will be derived. As the Single Equality Duty applies to all functions and policies the equality objectives will not prioritise between gaps but are expected to meet all gaps.

The specific duties need to ensure that inequalities are addressed in all policies and processes and to identify direct and indirect discrimination across all strands. The document is very unclear on whether there remains a requirement to do this. There needs to be further clarification and specific link between the setting of equality objectives and public bodies showing 'due regard' to all inequalities and failures under the Single Equality Duty. Under the Race Relations (Amendment) Act 2000 specific duties statutory order the requirement to publish a race equality scheme required race equality impact assessment of all relevant policies and processes and therefore ensured fullest possible coverage. By creating the link between evidence of gaps, setting equality objectives to meet those gaps, and fulfilling the general duty the specific duties will clarify the outcome focus of the specific duties.

**Q4: Do you agree that public bodies should set out the steps they intend to take to achieve their equality objectives?**

ROTA believes public bodies should be **required** to set out the steps they will take to meet equality objectives addressing inequalities in their service delivery and employment. ROTA is concerned that if public bodies are given discretion over what steps they lay out then there will be inconsistency of quality in meeting the equality objectives. The requirement must lay out a minimum standard of steps to ensure consistency across public bodies and quality in the strategies to address those needs. This could be done through a framework outlined in the specific duties. Compliance with this framework of steps would measure the compliance of public bodies. This framework could be laid out within the delegated legislation.

The provisions of the Race Relations (Amendment) Act 2000 and the subsequent specific duties, laid out specific steps for public bodies to adequately impact assess and address the inequalities in their services. This laid out steps of consultation, monitoring and assessing likely outcome of services. Allowing public authorities themselves to outline what steps they will take represents an increase in their discretion to act under the duty.

**Q5: Do you agree that public bodies should be required to implement the steps they have set out for themselves within the business cycle period unless it would be unreasonable or impractical to do so?**

ROTA agrees that public bodies should be required to implement the steps and activities outlined in the answer to question 4 within the business cycle period.

**Q6: Do you agree that public bodies should be required to review their objectives every three years? If not, what time-period do you suggest instead?**

ROTA agrees that three years is a reasonable period for a review of objectives and is line with the present requirements of the Race Relations Amendment Act 2000, but we have concerns about how public bodies will be measured as meeting the objectives or identifying the correct objectives. Measuring the achievement of these objectives should be part of the enforcement role within the Duty

The Equality and Human Rights Commission (EHRC) is mentioned as the only bodies tasked with enforcement responsibilities. ROTA is concerned that there is limited

resources for the EHRC to cover all public bodies and ensure the review of their objectives. The EHRC themselves recognise this problem. We believe there is a key role for bodies such as the regulators, inspectorates and auditors and this needs to be clearly identified by the specific duties. Examples of organisations would include the Audit Commission, the Healthcare Commission, the Commission on Social Care Inspection and Ofsted.

The minister identified that to ensure adequate enforcement there needs to be clear lines of responsibility concerning who is assessing and taking legal action concerning compliance. Otherwise confusion between inspectorates and regulators may lead to no action being taken at all. ROTA recognises the benefits of this theoretical model of enforcement, and understands the need for clear lines of responsibility. To ensure these clear routes of responsibility are exercised there needs to be some statutory provision of responsibility on inspectorates and regulators to report to EHRC on equality issues for further action to be taken, and to clearly delineate where inspection responsibilities lie.

**Q7: Do you agree that public bodies should set equality objectives taking into account priority areas set by the relevant Secretary of State?**

ROTA disagrees that objectives should take into account priority areas relevant to the Secretary of State. Showing due regard under the Single Equality Bill should be delivered through identifying need through locally based evidence of inequality and equality impact assessment and this should be outlined in the specific duties.

If priority areas of equality objectives are identified by the Secretary of State it will result in equality and specific inequalities being dependent on recognition by this government and subsequent change of government. For equality reality to be achieved and public bodies need to recognise this regardless of the government in power. ROTA believes that the priority areas set by the Secretary of State must be overtly restricted to only additional points to any assessment process and should be seen as a last resort when audit and inspection has found equality targets of public bodies lacking.

**Q8: Do you agree that public bodies should not be required to set equality objectives in respect of each protected characteristic?**

ROTA disagrees that there should be no requirement for equality objectives to be set for all protected characteristics. This is because if the specific duties do not make clear that inequalities in all characteristics are to be addressed then those inequalities will continue to be perpetuated. If the equality objectives are to be derived from evidence on the outcome of policies and functions then not setting equality objectives for any protected characteristic should be due to no evidence of adverse outcome. **The burden of proof should be on the public body** to evidence no gap, exclusion or failure to show due regard (rather than merely no evidence) and therefore justify having no objective for that protected characteristic.

Under the Race Relations (Amendment) Act 2000 there is requirement to have due regard to eliminate unlawful discrimination and to promote good relations between people of different ethnic groups. This is identified through impact assessment of policies and functions in the specific duties stemming from that Act. If public bodies are not required to set equality objectives with regard to race and, as stated above, the equality objectives replace the conducting of impact assessments on all policies and functions, then it is highly possible that race will no longer be a consideration for public bodies in developing their functions. It will also create inconsistency in terms of activities to address race

inequality across the UK and public bodies. This will represent a regression from the Race Relations (Amendment) Act 2000 and undermine the aims of the Equality Bill.

**The GEO needs to clarify and reassert in its proposals that the equality objectives are additional targets to a wider ranging impact assessment process and use of evidence. They should also ensure that race is a statutory requirement among equality objectives across all relevant policies and functions.** To ensure this is consistent with the present duties this should outline both how equality objectives should be identified and achievement against those objectives.

**Q9: Do you agree that public bodies should be required to report annually on progress against their equality objectives, but that the means by which they do so should not be prescribed in legislation?**

ROTA agrees that the progress against equality objectives should be reported on annually. We are concerned that by not prescribing the means by which the progress is reported will lead to a lack of accessibility for certain groups, or the essential issues and measures will be missed out. It will also not ensure consistency across public bodies and result in difficulties in monitoring, auditing and assessing progress against equality objectives. Although there is specific role for the EHRC to outline the minimum standards for reporting, the specific duties should outline what should be reported on, using what types of data, and guarantee transparency and accessibility from which the EHRC could derive the minimum standards.

Equally the EHRC is under resourced for such a role and as the single enforcement body for the single equality duty will encourage the consideration of equalities as distinct from general policy development and delivering functions. Therefore ROTA believes in order to move away from the process focused approach to race equality and equality, and ensure consistency of application, bodies such as the regulators, inspectorates and auditors need also to be clearly identified by a specific duty.

**Q10: Do you agree that public bodies with 150 or more employees should be required to publish their gender pay gap, their ethnic minority employment rate and their disability employment rate? We would welcome views on the benefits of these proposals in encouraging public authorities to be more transparent.**

Although ROTA agrees that public bodies of more than 150 employees should be required to publish monitoring data on equality but we are alarmed by the simplification of required reporting data and disagree that it should be limited to the gender pay gap, ethnic and disability employment rate.

At present the Race Relations (Amendment) Act 2000 specific duties outline a responsibility on public authorities to set out how it will be *monitoring its policies for any adverse impact on race equality*. Public bodies affect individual and communities of different ethnicities in many ways throughout its employment policies and service delivery, with all subject to the potential of causing adverse impact. As such under the present requirements the many different facets of service delivery and employment are required to be monitored in detail to ensure there is no adverse impact including data on recruitment, promotion, retention, training, grievance and complaints as well most elements of service delivery within each public authority. The codes of practice advise this approach and for the past 8 years public bodies have been effectively developing monitoring systems across all of these functions, have systems in place and have refined data collection and analysis mechanism by a significant degree to minimise administrative burden.

ROTA understands from the Government Equalities Office that data will be reported by recruitment, training, retention, progression, disciplinary, grievances, service delivery measures and any other issue when public bodies consider 'evidence' to be used to show 'due regard' and identifying equality objectives. Without clearly stating that this type of evidence should be used public bodies may become confused and only see a requirement to gather and report on the simple employment data stated. The types of activity and functions that should be considered as part of the 'general duty' and evidence gathered on needs to be clearly outlined and clarified so that public bodies do not monitor at the simplest level.

By simplifying the requirement under the new specific duties and statutory instruments to employment rates in three strands, the level of monitoring data required for race is reduced. This effectively undermines the present requirements for transparency for public bodies under the Race Relation (Amendment) Act 2000 and is a regression on previous duties under race.

Additionally the monitoring requirements under the general race duty were there to both aid transparency and to identify indirect discrimination and place the responsibility to ensure there is evidence for such cases on the public authority rather than the individual claimant. As a result of this change the responsibility of gathering the appropriate data will again fall on individual claimants and will reduce the effectiveness of equality legislation to the position prior to the Race Relations (Amendment) Act 2000.

**Q11: Do you agree with the proposal to use the overall median gender pay gap figure? Please give your reasons. If not, what other method would you suggest and why?**

To identify where and how gender discrimination is happening it is essential to make comparisons within grades, job roles and departments and therefore fairly compare individuals of equal or comparable seniority. Therefore the median pay gap fails to achieve this by aggregating a wide range of different employees and failing to provide the required detail. The specific duties should specify the need for comparability in pay gap data within grades and departments.

**Q12: Do you have any evidence of how much it would cost to produce and publish this information, and of what the benefits of producing and publishing this information might be?**

Organisations with 150 or more employees will have computerised pay roll systems that can cross reference large amounts of data. There should not be significant costs to implementing more complex gender pay reporting requirements than the median pay gap and would arguably be simpler to identify within grades than exporting the data and aggregating by gender, therefore carrying an administrative cost benefit.

**Q13: Do you agree with the proposal not to require public bodies to report employment data in relation to the other characteristics protected under the Equality Duty? If not, what other data do you think should be reported on?**

The proposal to require public duties to report on the protected characteristics of race, if expanded as suggested in answer to question 10, does meet the needs of ensuring equality of access to employment and services for BAME communities. Whilst recognising the benefits of monitoring services and employment to identify inequalities in terms of race, this approach may not be appropriate for other protected characteristics. As a race focused organisation ROTA does not carry the expertise or experience to comment on this issue. Other organisations that are responding to this consultation on behalf of groups

with the other protected characteristics will be more appropriate to provide a response to this question.

**Q14: Do you agree with the move away from an emphasis on describing process, to requiring public bodies to demonstrate how they have taken evidence of the impact on equality into account in the design of their key policy and service delivery initiatives and the difference this has made?**

ROTA agrees that there is a need to place outcomes at the centre of the equality impact assessment process. We welcome the steps to demonstrate impact as a specific duty, but that this should include identifying that quantitative monitoring data, and consultation involving stakeholders informing and challenging public bodies, should be included in assessing the impact made on the policy or process.

Case study - The power of impact assessment process

The requirements to impact assess policies is important to ensure public bodies consider equality. One Race Equality Council when faced with the further development of an airport in areas of high BAME population believed equality had not been considered. It requested to see the impact assessment from the Department of Transport. The Department stated that it was not required to do an impact assessment and the decision was due to be announced.

With help from partner organisations the Race Equality Council mounted a legal challenge that the decision was illegal without an impact assessment under the Race Relations (Amendment) Act 2000. The department agreed to back the decision and announcement and opened a consultation on the plans. The consultation received 70,000 responses.

It is unclear from the guidance that there will be requirements to impact assess all policies and processes. The proposals state *'demonstrate how they have taken into account evidence of the impact on equality in the design of key policy and service delivery initiatives'*. This seems to be lesser requirement to the Race Relations (Amendment) Act 2000 specific duties on race which outlines a requirement to *'assess the likely impact of its proposed policies on race equality'*. By only requiring public bodies to demonstrate how they have taken evidence into account is the recounting of a process rather than the assessment of 'likely' outcome as is required under the present race duty. As such the proposals have embedded a process rather than an outcome focus on the impact assessment process. As referred to in the answer to question 3 ROTA the Government Equalities Office expects there to be an assessment of outcomes when using evidence under the general duty. This needs to be clarified and reasserted to ensure it is clearly implemented.

Case Study - Considering the evidence

A local authority hired a consultancy to do a 'fit for purpose' review of its services. A local race equality organisation asked to see the impact assessment of what this would mean for race equality in local authority services. The local authority responded that the process had been assessed and there would be no impact on BAME communities. The local race equality organisation asked to see the evidence there would be no impact. The local authority has failed to give any evidence over a year since the review leading to concerns among communities about the quality of the review.

The government also needs to clarify in the specific duties exactly what it means by 'key public services' and this should be based on any service that can have a different impact on different groups as stated under the Race Relations (Amendment) Act 2000. 'Key public services' could be interpreted as the main objectives of the public body regardless of if they have a different impact on racial groups and miss out on a large number of functions that have significant impact on different ethnic groups. Equally in combination with the setting of equality objectives the direction of the proposals appears to be to identify a prioritised few policies and functions to address any inequalities. This will allow other less prominent inequalities to continue.

The specific duties should require impact assessment against all relevant functions and policies using the definition from the Race Relations (Amendment) Act specific duties. The impact assessment process should be specified as public bodies assessing the **likely outcome** of their functions and policies on different racial groups and for promoting equality of all groups with protected characteristics. From this they should be required to demonstrate the actions they have pursued mitigate any adverse impact identified within those outcomes and their progress against those actions.

**Q15: Do you agree that public bodies should have a specific duty, when setting their equality objectives, deciding on the steps towards their achievement and reviewing their progress in achieving them to take reasonable steps to involve and consult employees, service users and other relevant groups who have an interest in how the body carries out its functions – or where appropriate their representatives; and in particular take reasonable steps to consult and involve the protected groups for whom the duty is designed to deliver benefits?**

ROTA disagrees that public bodies should be required to only take 'reasonable steps' to involve and consult employees, service users, and other relevant groups. The specific duties are supposedly moving from a 'process' focus to an 'outcome' focus. The requirement that public bodies take 'reasonable steps' to consult and involve the relevant employees, service users and communities is demonstrating a process rather than an outcome for this particular specific duty.

Under the Race Relations (Amendment) Act there is a requirement on public authorities to 'arrangements' to consult with BAME communities. As a result many public authorities did consult with BAME communities. A major criticism of public authorities was that that rarely did they seem to take action regarding the issues raised or consider the contribution made by these communities. The requirement to 'take reasonable steps' is similar to that outlined under the Race Relations (Amendment) Act specific duty in that it does not require an outcome under the duty. This continues to be a process focussed duty and needs to be reassessed.

Equally the requirement to consult employees, service users and those of protected characteristics when focusing on race will need to involve BAME communities. **To facilitate involvement and consultation there will be significant role for the BAME third sector in achieving this objective by representing BAME groups, which has been significantly under resourced for many years.** There will need to be work to capacity build the BAME third sector and fairly reimburse the time and effort that will be used to help public bodies meet the specific duty.

### Case study – BAME third sector at the heart of policy development

Consultation with BAME communities happens in many different ways, and is included in policy development to inconsistent degrees across the UK. One local authority has benefited by involving communities and groups with protected characteristics into the heart of the impact assessment and policy development process. It formulated an Equality and Diversity Advisory Panel which is presented to regularly from different departments in the local authority on their impact assessment, new policies and the strategies under development.

The panel advises on the quality of the impact assessments, policies and whether there are considerations that have been missed. By involving several equality strands the aim is for the panel to work in partnership and results in it taking a wider perspective on how to achieve equality for all communities. It also provides a route for the BAME third sector, and wider third sector, to provide information and intelligence on excluded communities to the local authority. It inspires confidence among the third sector organisations and cements a place for the BAME third sector

The specific requirements to consult should be coordinated with the impact assessment duty under the proposals. Public bodies should be required to show how the likely outcome identified under the impact assessment is informed by the relevant service users, employees and relevant groups and where, if any, disagreement by consulted peoples with the assessed outcome of the function or policy is. This should then be backed with specific requirements for enforcements bodies including inspectorates, regulators and auditors to examine the consultation contribution to impact assessment.

**Q16: Do you think that imposing specific equality duties on contracting authorities in relation to their public procurement activities are needed, or are the best way to help deliver equality objectives? Do you think such an approach should be pursued at this time?**

**ROTA was disappointed that there was no specific duty in the Act to ensure public bodies did not contract out of delivering equalities.** ROTA agrees that specific duties on contracting authorities in relation to public procurement activities are needed. Under the Race Relations (Amendment) Act 2000 procured services that continued to delivering the 'public function' of the public body were not excluded from the liability of the public body under the duty. Even though his was the case many public authorities did not see the contracted out services as part of the public duty, nor did those private organisations delivering the services see the race duty as applicable to themselves. As a result there was inconsistent delivery of the public duty in contracted out services. This left many essential services with no consultation, monitoring or impact assessment for different racial groups. Examples being social care a service which has significant impact on BAME elders.

£175billion is spent through public procurement, and an increasing trend for delivering public services through contracting out. Considering there is an increased role for commissioning in public services there will be an increase in the number of services that constitute a 'public function' that should be subject to the single equality duty but are delivered by external organisations. Including a specific duty on contracting authorities the role of procurement and the responsibility to fulfil the race duty and proposed specific equality duty will be ensured for contacted out services.

The specific duty should involve implementing the specific duties for those contracted out

services. Public bodies must use equality impact assessment to identify how a contracts performance will impact on different groups or communities.

**Q17: Do you agree that contracting authorities should be required to state how they will ensure equality factors are considered as part of their procurement activities to help contribute to the delivery of those objectives?**

£175 billion is spent each year by the public sector in contracts for works, goods or services. This represents approximately one-third of total public expenditure. It is important to ensure that employees in the private and third sector do not receive less protection than those in the public sector.

The current equality legislative framework has not provided consistency and a clear picture on the consideration and implementation of equality standards by private and Third sector contractors who have been procured to deliver public services. It is reported by members and partners organisations representing BAME communities in local areas that there is inconsistency in its implementation and that impact assessments for different groups are only considered after contracts are awarded<sup>2</sup>. This is not only seen across different public bodies, but also within a single body. It is also reported that some public authorities are ignoring equality throughout the procurement process including management, planning, performance and monitoring.

It is therefore essential there should be a statutory obligation placing anti-discrimination and equality measures at the heart of public sector procurement. The route of non-statutory guidance as recommended in the 2007 green paper has failed and leads to inconsistent delivery. There needs to be a specific duty on public bodies linking the single equality duty to show due regard to equality to specifically cover the entire process of commissioning from developing the planning, tendering, delivery, monitoring and renewing contracts.

**Q18: Do you agree that contracting authorities should be required to consider using equality-related award criteria where they relate to the subject matter of the contract and are proportionate?**

ROTA supports the development of the Equality related award criteria as described in this proposal. Under EU directive 2004/18/EC and article 53 the wording only permits the inclusion of such criteria where it they relate to the subject matter of the contract and are proportionate. The contracting authority shouldn't have to be '**required to consider**' such criteria given the public bodies requirement to show 'due regard' to equality of opportunity it is difficult to see where the use of equality related award criteria would not relate to the subject matter of the contract and are proportionate. It is essential that equality award criteria are built into specification of contracts to be included in award criteria and this should be a specific duty.

**Q19: Do you agree that contracting authorities should be required to consider incorporating equality-related contract conditions where they relate to the performance of the contract?**

ROTA agrees that contracting authorities should include equality related contract conditions when they relate to the performance of the contract. The single equality duties will mean that public authorities are already under a duty to 'give due regard to' equality in all that they do. Article 26 of directive 2004/18/EC provides that contracting authorities may lay down such special conditions providing that they are compatible with community

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<sup>2</sup> Telephone interview with local Race Equality Council

law. These community law provisions relate entirely to ensuring that there is a level playing field between Member States all of whom have to comply with the EC Equality Directives, which the Single Equality Bill seeks to make the UK compliant.

**Q20: What would be the impact of a regulatory proposal aimed at dealing with suppliers who have breached discrimination law? What might be the benefits, costs and risks?**

Under the present race duty the Chief Officer of a public authority would still be liable for actions of contractors delivering a public function. There is confusion among suppliers of these responsibilities and a regulatory proposal would firstly make the responsibility clear, but would also give the powers to the public authority within contracting processes to remove potential contractors who have or could be believed to breach the required legislation. The benefit would be to clarify the responsibilities and powers for public bodies, would be at minimal cost compared to the significant requirements of pre-qualification and public service commissioning processes, and would mitigate the risk of non-compliance through contracted out services. It would also embed anti-discrimination practice among potential suppliers over time as suppliers who have breached are removed.

**Q21: Do you support the proposal to establish a national equality standard which could be used in the procurement process? If so, do you believe this is achievable through a specific duty or is this better tackled through a non-legislative approach? Are there any practical issues that would need to be considered?**

ROTA supports the proposal for a national equality standard for the procurement process. This does not need to be a specific duty but should be based on statutory requirements from the specific duties and the equality legislation that enforces a responsibility to ensure equality is driven by the procurement process.

**Q22 :Which of the above four models do you consider achieves the best balance between joined-up working and senior accountability for equality outcomes, while avoiding unnecessary burdens? Please explain why.**

The proposed models would act as a regression from present reporting requirements on race and with only three yearly reporting would move equality down the priorities of government departments rather than ensuring it is a fundamental part of all government actions. We would recommend an annual reporting requirement for secretaries of state that adequately outline the distance travelled against objectives and mitigation of inequalities.

**Q24: Are there any specific requirements, other than those that we have proposed, which you think are essential to ensure that public bodies deliver equality outcomes in an effective and proportionate manner?**

There needs to be specific monitoring requirements targeting the areas of concern as covered under the previous Duties and inclusive of grievances, complaints, all stages of employment including dismissal and a wide range of service delivery activities identified through equality impact assessment processes.

There appears to be a requirement to rely on past race equality impact assessments rather than a full equality impact assessment process on already existent policies. As there are new equalities and a new baseline in a unified Equality Bill there should be an initial process of equality impact assessment to ensure that existent policies are not indirectly discriminating against other protected characteristics inadvertently.

Also, the specific duties need to include a specific duty requiring public bodies to train staff on awareness of the Single Equalities Bill and the single general duty. Under present Race Relations (Amendment) Act 2000 statutory order 2001 No. 3458 section 2 subsection (2)(v) there is requirement for Race Equality Schemes to state arrangements of *(v) training staff in connection with the duties imposed by section 71(1) of the Race Relations Act and this Order.* In combination with the General Duty to show 'due regard' to race equality this imposed a duty to train staff in the obligations toward race equality. This is seen as essential to embedding race equality in the working practices and consideration of staff implementing the duty. Rota believes it is essential that there is a similar clause and specific duty is made to ensure this essential part of promoting race equality is continued.

**Q25: What role do you think the guidance from EHRC should play in helping public bodies implement the specific duties in a sensible and proportionate manner? What do you think it would be helpful for such guidance to cover?**

Clear accessible practical guidance which brings together good practice and expertise from different stakeholders. This should include clear examples of benefits of meeting specific duties for operational effectiveness. This should be supplemented by training that delivers the guidance not just to the judiciary but also throughout [public bodies and the third sector. This training should also include the Human Rights Act and how this intersects with tackling inequalities. It is essential guidance is developed well with all interested parties and disseminated across communities. This will develop awareness to ensure the equality Bill is known about and can be used more widely than lawyers and policy makers.

The EHRC is at present consulting with users and stakeholders in developing the statutory codes and non-statutory guidance to the specific duties. There is key role for the BAME third sector in developing this guidance to meet the needs of users and in disseminating it to the most excluded and those that need it the most. The EHRC has stated that **no funding or resources will be made available to support the BAME third sector to engage with this process.** This decision will undermine developing the guidance to adequately meet the need of the most vulnerable communities, and will limit the dissemination of guidance to policy makers. This will result in the Equality Bill and its specific duties being inaccessible to the community and directly undermine its effectiveness and we urge the EHRC to rethink its position on this.

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