



briefing no 15

Positive Action

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policy briefing

Introduction

It is not unusual to experience disadvantage and discrimination in the labour market resulting in members of certain Black and minority ethnic (BME) groups being under-represented in particular areas of work. Positive action is an attempt to counter that disadvantage. This briefing focuses on positive action with respect to BME groups and the Race Relations Act (RRA 1976). It clarifies the distinction between positive action and positive discrimination and recommends its wider use as a policy measure.

What is Positive Action

“Positive action is a range of measures which employers can lawfully take to encourage and train people from under-represented (racial and ethnic groups) in order to help them overcome disadvantages in competing with other applicants. However, selection for interviews and jobs must be based on judgements of individual’s ability to carry out the work required.”

Taylor, 2000:159

Positive action is a term often misused and misunderstood. It has been described as soft affirmative action (Bleich, 2003), however, it should not be confused with affirmative action nor positive discrimination as it often is. Positive action is not positive discrimination and does not allow for Affirmative Action.

Why is it required?

BME People experience a disadvantaged position in the labour market in relation to their white counterparts. In terms of employment, they have lower employment rates, suffer higher levels of unemployment, experience longer periods of unemployment, occupational and industrial segregation and lower earnings. Therefore positive action can provide opportunities for BME individuals to develop their full potential.

Aims and Objectives of Positive Action

Positive action is, “A means of combating the under-representation of black and other ethnic minority groups and counter the impacts of racism, racial discrimination and racial disadvantage” (Boddy, 1992). Essentially, positive action seeks to remove educational and other forms of disadvantage that prevents individuals from BME groups competing on an equal basis in the labour market. It is also a means to help ensure that BME people are properly represented in more skilled or senior positions in proportion to their presence in the job market.

Rationale for positive action

There are three broad reasons for undertaking positive action. These are a commitment to equality, business benefits and legal obligations. Some organisations undertake positive action because they are committed to equality and seek to remove discrimination. This is particularly so in London as BME groups constitute an increasing proportion of the working population. Positive action also often seeks to address past inequalities. Positive action can also bring benefits for business in that it can lead to an improved market and image. It can aid in attracting a wider pool of applicants, accessing a greater range of skills. It is also an opportunity to enter ethnic community markets, increasing profitability and achieving contract compliance in order to gain contracts with public authorities. Though the legal obligations are considered weak in the UK, some organisations may adopt positive action activities to overcome inequalities in order to prevent legal cases against them.

TYPES OF POSITIVE ACTION

Positive Action is lawful under the Race Relations Act (RRA) (1976). There are essentially four types of positive action, which can be utilised under different sections of the act. These are:

- Encouragement measures
- Pre-entry training
- In-service training
- Special needs

Encouragement measures can be used in order to encourage members of a particular racial group to take advantage of opportunities for employment where they are under-represented. This could, for example, be in the form of a statement in job advertisements welcoming applications from individuals belonging to a specific under-represented racial group (sections 37 and 38 of the RRA).

Pre-entry training can be provided for members of a particular ethnic group who have been under-represented over the previous 12 months in a particular type of work. Employers and specified training bodies will be able to provide access to facilities for training in order to gain the skills required to carry out the

particular job concerned. However trainees do not have employee status and are not guaranteed employment at the end of the training (section 37 of RRA).

In-service training. That is not to say that positive action cannot be offered to those in employment. For those in employment, employers can provide training for persons currently under their employment or they can secure the services of a training organisation to carry out the training on their behalf (section 38 of the RRA). This is what constitutes the subtle difference between sections 37 and 38 of the act.

The special needs of persons of a particular racial group can be met with regard to their education, training or welfare or any ancillary benefits under section 35 of the RRA. This can be exemplified by the provision of English language courses for speakers of other languages.

Subsequently, the RRA (1976) makes provisions for both employers and training providers to encourage members of particular BME groups to apply for posts where they have been previously under-represented. It also makes provisions for training. The aim of which is to allow members of under-represented BME groups to compete on equal terms for employment opportunities, whereby selection is based solely on merit. Therefore, in theory positive action may be able to aid in increasing the level of BME groups at organisational, occupational and industrial levels.

Under-representation is a key pre-requisite for any positive action measure under the UK legislation. The following criteria is used to assess 'Under-representation':

- There are no persons of that racial group employed in that work by the organisation;
- That the number of employees engaged in that work who belong to that racial group is small in proportion to:
 - I. their representation as a percentage of the Great Britain workforce
 - II. their representation amongst the population of the area from which the organisation normally recruits either locally or nationally

Taylor, 2000:160

Positive Discrimination

Positive discrimination is often confused with positive action. Generally speaking, positive discrimination is where members of a particular disadvantaged group are given preference over others for no other reason other than their belonging to that group, rather than on grounds of qualifications, merit or relevant skills. The legislation in the UK does not allow for recruitment or promotion in favour of a BME candidate; this is based solely upon merit. The practice of positive discrimination is illegal in Britain.

Examples of positive action

There are a number of examples of Black and minority ethnic training providers delivering positive action training programmes under sections 37 and 38 of the RRA (1976) across the UK. Many of these training providers began by delivering programmes in the housing sector, but have since diversified offering training in a wide range of professions.

The first scheme to be established was in Liverpool in 1983, followed by other schemes in Bristol (CEED (Charity) Ltd, Birmingham (PATH West Midlands), Scotland (PATH Scotland), Sheffield (Sheffield Positive Action Consortium (SPAT-C)) and one based in London with trainees throughout England (PATH National). They offer training under section 37 of the RRA (1976) whereby they are offered a traineeship of between 12 to 24 months, with on-the-job training at a host placement and the opportunity to study for a qualification. Specialist training, such as time management are also provided. At the end of the training period, trainees must apply for jobs in open competition. Research show these programmes to be effective, for example, over 80% of trainees that have been through positive action training programmes at CEED (Charity) Ltd in Bristol gained employment at the end of their training period.

In London the Public Sector Employment project supported by the LDA, overachieved by 33% in its initial three years and is now scheduled to do the same in 2005-2006. Target sectors include housing, environmental health and health and social care. PATH National is also working with North East London Strategic Health Authority (NELSHA) on a management development programme for BME staff.

An example of positive action under section 38 of the RRA (1976) is the Black Leadership Initiative (BLI). This innovative, positive action programme supported the progression of BME staff to senior management level in the post-16 sector. It was funded by the Learning and Skills Council (LSC). Although this was only a pilot, it was successful in exceeding its targets (Zahno et al, 2003)

Rota Comments

Rota welcomes positive action as a means of combating disadvantage and discrimination and creating a level playing field for BME people; particularly in professions where BME people are under represented such as teaching and the judiciary. The Department for Education and Skills (DfES) has recognised the value of positive action by setting targets to increase the number of BME teachers entering the profession. Universities are revising their diversity policies to enable them to actively select students from disadvantaged groups, recognising the educational benefits of diversity.

The absence of BME people in the judiciary continues to be a matter of concern. Linda Dobbs became the first Black person to be appointed as a High Court judge in October 2004 and only 6% of magistrates come from BME communities. It is vital to improve access to the legal profession as a whole, including better funding, so that students of all backgrounds have an opportunity to become solicitors or lawyers and eventually progress into the judiciary.

CONCLUSION

Positive action is legal under the RRA (1976). It is a means of combating labour market disadvantage among BME groups. It allows for encouragement measures and training in order for BME individuals to apply for employment on a more 'level playing field'. It is distinct from positive discrimination and affirmative action as employment can only be gained upon merit and all applications must be treated equally.

Positive action can be implemented in industries and occupations where there has been an under-representation of a particular racial group at any time within the last 12 months. This under-representation exists across both the public and private sector and can be utilised to train recruits for a more representative workforce. Such measures will be able to make a difference within such fields as teaching, medicine, the criminal justice system and the police force where BME staff are under-represented or 'snowy peaks' are prevalent.

Although the RRA (1976) has been around for almost 30 years, its use has been very limited. Rota argues that there should be more proactive use of Positive action particularly within the public sector. Organisations should think about including positive action measures in their wider strategy of increasing BME representation.

References

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Race On The Agenda (ROTA) is a social policy think tank devoted to the issues that affect London's Black and Minority Ethnic (BME) community. We work towards the elimination of discrimination and promote equality of opportunity and best practice.

For more information about this briefing please contact Dinah Cox, Email: dinah@rota.org.uk

ROTA, Suite 101, Cremer Business Centre, 37 Cremer Street, London E2 8HD
Tel: 020 7729 1310; Fax: 020 7739 6712; Website: www.rota.org.uk.

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