



October 2009

## Response to 'Refreshing the Compact: A framework for partnership working'

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### 1. Introduction

#### 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 our regional network, **MiNet**, the 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. We use the term BAME to refer to all groups who are discriminated against on the grounds of their race, culture, nationality or religion. The ROTA definition 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

## 2. 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. We collect evidence through:

- Action Research (qualitative and quantitative surveys)
- London's regional BAME network, [MiNet](#)
- Events, consultations and conferences
- Working in partnership with others.

This response is based mainly on evidence gathered about the BAME and wider third sectors through:

- MiNet, including a consultation with the members of its advisory group.
- ROTA's various research projects which involve a wide range of frontline and second-tier BAME organisations.

Additionally this response is informed by ROTA's seat on the London Compact Working Group.<sup>1</sup>

## 3. Overall comments on the consultation document

We welcome the refresh of the Compact and the opportunity to participate in it. We are aware that many BAME organisations are concerned about some of the limitations of the existing Compact as a framework for developing positive partnerships with statutory bodies and resolving disagreements. Smaller BAME organisations in particular are largely unaware of the Compact and its purpose. As such, we believe this refresh is timely and provides a needed opportunity to develop a refreshed Compact which is useful to and taken up by BAME organisations on a wider basis and to address this perception.

We have chosen not to respond to the consultation questions but to provide general comments which we hope Compact Voice will find useful in developing the refreshed Compact further.

## 4. Detailed comments on the consultation document

### A. A streamlined Compact

We see the value of a single Compact document with an equalities chapter sub-divided into sections covering each equalities sector in turn. Such a format would reflect recent developments in the equalities and human rights landscape,

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<sup>1</sup> The Group is made up of: London Councils, Race on the Agenda, London Voluntary Service Council, Merton Voluntary Service Council, Learning and Skills Council, Government Office for London, Partnership for Young London, Metropolitan Police Service and the Greater London Authority (Office of the Mayor of London, Metropolitan Police Authority, Transport for London, London Development Agency, London Fire and Emergency Planning Authority and London Health Commission). We have joined together to recognise and celebrate excellent partnership working in the Capital.

including the establishment of the Equality and Human Rights Commission, the Single Equality Bill and the emergence of pan-equalities organisations at local, sub-regional, regional and national levels. If done well a single document has the potential to make it easier for public sector agencies to understand and engage with a hugely diverse and sometimes fragmented 'equalities third sector' while supporting approaches to addressing issues of multiple-inequality. However, if not done well, without a full understanding of substantive equality, merging equalities sectors has the potential to perpetuate inequality by failing to recognise and address the specific types of inequality faced by different groups and people.

Equality organisations share many key assets, characteristics and experiences. For example, they:

- Can provide services to meet specific needs that mainstream service providers are either unaware of, find difficult to understand and do not address;
- Have expert community knowledge and are best placed to represent their communities;
- Are marginalised within the third sector, under-represented in local democratic processes, and disproportionately under-funded.

These shared characteristics leave room for some generic blurb and commitments within the equalities section to facilitate a more streamlined Compact. However, equalities sectors are also very different: they respond to very distinct needs within their communities; do different work; and the level of marginalisation, under-representation and under-funding they face varies considerably across equality sectors as well as geographical areas. As a result different equality sectors need distinct support and commitments from public sector agencies. The refreshed Compact needs to strike a fine balance between presenting the complex experiences of the different equality sectors succinctly, without homogenising. While the draft document is on its way to achieving this, it needs further development to ensure that issues do not get lost and to address well-founded fears amongst equality sectors that issues will get lost through such approaches.

As recognised and detailed in the BAME Compact Code, BAME organisations play a vital role in supporting excluded communities and are uniquely placed to help achieve racial equality. They have a specialised role in providing representation on behalf of BAME communities that are excluded from mainstream provision, informing policy development and advocating on behalf of people suffering discrimination. As a result they have a particular place delivering services within the third sector.

The general picture presented by existing research (of both infrastructure and frontline organisations) is that the BAME sector remains relatively fragile, suffering from a substantial lack of capacity due to severe under-investment and access to adequate infrastructure support. Many organisations struggle to grow and develop and even to sustain their operations. They operate in an environment that is probably even more challenging than when the BAME Compact Code was introduced initially. They are being disproportionately impacted on by the

recession<sup>2</sup> and the move from grant making to commissioning, which is favouring large and more resilient mainstream VCS organisations. In addition the sector has been faced by its own specific challenges, particularly:

- CLG's cohesion policies, in particular the draft Cohesion Guidance for Funders which consulted on in 2008 (although CLG did not produce this guidance in the end, the message it sent to funders, as well as subsequent related guidance is impacting on some BAME organisations, which are increasingly having to justify the need for their specialist services to funders and others.)
- The uncertainty of the continuity of support from Capacitybuilders for regional BAME networks under the Regional Infrastructure Programme referred to above could also have a devastating effect on the sector.
- The continued and persistent inequality faced by BAME people.

In its current form, we share concerns in the sector (e.g. Voice for Change England Community Sector Coalition) that the draft refreshed Compact loses much of the clarity about the specific value of and challenges as outlined above that was included in the 'Black and Minority Ethnic Voluntary and Community Organisations: Compact Code of Good Practice' (BAME Compact Code hereafter).

There is a need for more extensive equalities sections, with fuller more descriptive information about each about the inequality experienced by different groups and individuals, and the respective sectors which have emerged to support them in order to aid the understanding of sectors which are often misunderstood and undervalued by both the wider third and public sectors.

The commitments included in the draft refreshed Compact are too vague and need to regain the specificity of those included in the BAME Compact Code.

There is very little specific reference to UK equalities legislation within the refreshed Compact. Considering the Compact is voluntary agreement to ensure the good and fair relations between the public sector and the third sector it forms the basis to understand the nature and expectations of those relationships. The Race Relations (Amendment) Act 2000 created a duty to promote good race relations, equal opportunity and eliminate unlawful discrimination for those organisations delivering public functions. This will include third sector organisations delivering services as partner or other relationship with Public Bodies. The Compact needs to clearly state this responsibility towards promoting equality and tackling racial injustice as a legal duty that is part of the relationship being agreed to by the third sector and public authorities. The Compact will not govern the responsibilities but can recommend best practice to achieve the equality objectives. This stated reference should also apply to the Single Equality Act when it comes into force. We refer to detailed analyses of how well the Consultation

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<sup>2</sup> MiNet (2009) *The Economic Downturn and the Black, Asian and minority ethnic (BAME) third sector*. London: ROTA

Document reflects the Legal Review of the BAME Code<sup>3</sup> and agree that it does not adequately reflect its recommendations.

## **B. The Compact needs to be made more relevant for smaller BAME organisations**

As mentioned, our survey of MiNet advisory group members and existing ROTA evidence found that there is insufficient awareness amongst BAME organisations of the Compact and its use is limited. Members of MiNet's advisory group, which represent a broad range of frontline and second-tier BAME organisations in London were unaware of any instances where the Compact had been used for the benefit of BAME organisations.

There is a distinction between the level of awareness and involvement around any Compact issues when comparing small BAME organisations to medium-sized and some larger BAME organisations. As most BAME organisations are small (1-2 people) they do not have the time to raise their heads above their own work and absorb information about the Compact. The survey of MiNet advisory group members also found that it is also the case that any individual within an organisation who would like to use the Compact needs to have time and be a skilful negotiator, which is not so problematic for many larger borough-based organisations (such as Citizens Advice Bureaux), but is problematic otherwise for those who do not possess appropriate legal capability or capacity.

MiNet advisory group members reported that in the past it was felt that some people have been actively engaged, but this has gone off the agenda to some extent, largely because of reduced awareness, but also because of the supposed limitations of the Compact itself. Additionally, there is the issue that aspects of the Compact are difficult to implement particularly when taking disputes forward there is a need to be specific around facts and actual dates. Terminology within the Compact which is not binding has blurred this and as a result organisations have preferred to be referred to Public Law. Some members have also suggested quite evidently the Compact is not the best model for building relations as firstly they do not want to sour relations with their main funder, whilst also, if organisations are to complain about each breach of the Compact over time, and disputes incrementally build up, there becomes a nature of normalisation and Compact ineffectiveness, unless aspects have legal punch.

Considering the imbalance through which many BAME organisations are disadvantaged, often at the hands of local authorities, it would appear apt that emphasis is needed for BAME organisations, which may be achieved through a separate section. This would seem particularly relevant taking account of recent cases (e.g. Ealing, Harrow) in some local authorities where there appears to be a misunderstanding of how organisations should be treated.

As it currently stands, the draft refreshed Compact is more relevant for established VCS organisations working directly with public agencies. We feel the refreshed

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<sup>3</sup> Monaghan, K., Matrix Chambers (2008) *An Independent Legal Analysis of the Compact Code of Good Practice on Relationships with 'BAME' Voluntary and Community Organisations*. Commission for the Compact.

Compact needs to be made more relevant for smaller community-based organisations which have no financial relationship with public sector agencies, or which receive small grant funding.

### **C. Enforcement and implementation**

There is a need for much greater clarity about the scope and power of the Compact to ensure that expectations are managed. Is it simply a document that guides relationships and seeks to aid the development of mutual understanding between sectors which often share visions and aims, but which work in very different cultures and ways, or is it something more than this and how enforceable is it? We believe, in order to be useful it needs more 'teeth'.

Although there is no statutory authority carried by the Compact, there is legislative duties and responsibilities regarding the third sector, delivery of public services, agreements between parties and fair and equitable access to contracts (e.g. public law, EU procurement law, equalities law, Duty to Involve in the Local Government and Public Involvement in Health (LGPIH) Act 2007). These are contained within separate Acts of Parliament with distinct enforcement systems and penalties to ensure compliance. Although the Compact cannot enforce these, it draws many clauses and principles from these legislative standards and the enforcement penalties within those separate statutes should be referred to and stated as part of the reasoning for, and application of Compact principles. This would act to not give the Compact 'teeth', but point out where 'teeth' exist within the legal system for applying similar principles within the compact. This is one role the BAME Compact Code did in putting the duties of the Race Relations (Amendment) Act 2000 quite overtly within the Compact.

The identification of sanctions within other legislation for duties and requirements mirrored by Compact principles would act as a significant resource for the third sector. It would provide evidence of the need to follow compact principles, where the principle is derived from legislation (if that is the case), and would provide the route to enforcement and what sanctions are potentially available. This would act to empower the third sector as well as inform the public sector of its responsibilities.

For example, in relation to the section, 'allocation resources and commissioning', it has been recognised that when Compact principles are referred to in service level agreements, they can correlate with and be enforceable under contractual and public law as clauses within the contract. The place of the Compact in relation to contractual law needs to be clarified, and its role reasserted. More importantly, this uncertainty requires the detail within the Compact to be more specific as part of the Compact to ensure easier enforcement and interpretation. The refreshed document is vague in terms of expectation and this will lead to further confusion for both the voluntary and community sector and public sector alike.

Similarly the limitations and purpose of the Compact need to be clear. The Compact governs relationships between third sector organisations and public services. Where these are a contractual relationship the obligations and rights of the parties concerned will be covered by public law, which mirror and are legally

stronger than Compact. Also the responsibilities of competitive tendering will be covered by EU directives and where these apply the protections for the parties concerned are quite clear and made from statutory provision. As a result the compact should not be used to govern the relationship in these cases as it is weak compared with the statutory regulations. Therefore the Compact should be clarified in terms of governing the relationships where public law, and EU directives do not apply and the relationship is not contractual.

Additionally, there is a need for a greater focus on how it can be implemented practically. We understand it will be accompanied by an Implementation Guide, but there is a need for reference within the Compact document itself as to how its implementation will be resourced and how good practice will be promoted to encourage its uptake by both the public and third sectors.

## 5. General comments on specific sections of the draft document

### Part 3, sub-section 2: The diversity of the third sector

While this section is useful in its description of the third sector it should also include some detail about the diversity of the sector in terms of equality groups. Such descriptions are included in 'HEAR (2008) *Gaps & solutions: Supporting London's Equalities sectors*'; and 'NEP (2008) *Supporting Equality Groups: An overview of support to the diverse third sector in England. WRC.*' and would be useful here.

### Part 4, Involvement in policy development

We are pleased to see the explicit acknowledgement of the barriers faced by equality groups in engaging with the development of policy that affects them and agree that the commitments for Government and the public sector listed in this section are necessary. We are aware, however, that even with the guidelines for effective engagement and involvement referred to in this section already in place, BAME organisations are still often excluded from policy development as evidenced by much of ROTA's work, for example:

- ROTA's research projects, 'Building Bridges Project' and 'Female Voices in Violence', which look at the impact of serious youth violence, gangs and serious group offending on BAME communities and have reported the under-engagement of BAME organisations in the development of gang crime and youth violence policies.
- ROTA's 2007 report '*Developing the Mayor's Health Inequality Strategy for London: Stakeholder Engagement on Race Equality. Event report*' which found that BAME communities were not fully engaged in the development of in health policy affecting them.

This evidence is complimented by that of many others which finds the under-representation of BAME organisations and their community members in more generic democratic structures at local, regional levels and other levels.<sup>4</sup>

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<sup>4</sup> For example, 'Voice 4 Change England (2007) *Bridge the Gap: What is known about the BAME Third Sector in England. Final report & appendices. Abridged version*', which reviews a wide range

Again, the Compact needs to be more enforceable with more concrete plans for implementation to ensure involvement and consultation processes that actually engage all parts of the third sector.

We are aware that Government is spending considerable sums on programmes aimed at strengthening 'community empowerment'. We are deeply concerned that such programmes will have minimal, if any, impact on those who are 'least empowered'. For many in the BAME sector who are aware that such significant government programmes are failing to benefit their communities, the refresh of the Compact may seem meaningless unless new and radical measures are included to address the under-representation and under-funding of BAME organisations.

We also agree with the 'Commitments for the third sector' listed in this section but are concerned that the lack of capacity of many BAME organisations due to under-investment and lack of support, can act as a major barrier to producing good quality responses to consultations. This needs to be noted and the evidence provided by such organisations, which may be often be anecdotal, should also be valued, for example by using it and providing support and resources to develop it and make it more robust. We recommend including some pointers about this either here or in the Implementation Guide that will accompany the refreshed Compact.

#### **Part 4, Allocating resources and commissioning**

In theory, this section looks as though it would go some way towards creating an environment in which equality organisations have equal and fair access to commissioning and procurement, and other financial opportunities. However, again, the Compact needs to be made more enforceable and measures need to be included to support its implementation.

We have concerns in relation to sub-contract is that in more complex commissioning environments contractors may contract out of their equality obligations by mistakenly believing it does not apply to third or private sectors. To help avoid this happening, we suggest these paragraphs are rephrased as follows:

"Public authorities should ensure that subcontracting and partnership arrangements, when using public money or delivering 'public functions', are both distributed and monitored to ensure compliance with equalities legislation. Equally procurement activities should be impact assessed to identify opportunities to mitigate any adverse impact by contracted out services and should use subcontracting opportunities with BAME organisations or third sector organisations to deliver equitable service.

Public authorities should ensure Compact principles are fully compliant with the Race Relations (Amendment) Act 2000 and other equalities legislation and this should be applied throughout the distribution of public moneys and commissioning of services. This applies to all services and not just specific for BAME communities or needs."

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of existing literature about the BAME sector, reports the under-representation of BAME communities in the development of policy that affects them at many levels and in many areas.

We believe that point 10.1 is of particular importance. Equality organisations play a unique and vital role in addressing inequality and have significant social impact that larger, mainstream organisations, which may be able to provide cheaper services, are not usually able to achieve. Commissioners and funders often do not consider this added value, which can be difficult to demonstrate and which places equality organisations at an unfair disadvantage. This point should be made stronger to help ensure that funders and commissioners are more aware and appreciative of this added value. Additionally the Implementation Guide should give details about how this added value can be demonstrated, articulated, remunerated, and how funders and commissioners can identify it.

## **Part 4, Achieving equality**

### **Commitments for the Government and public bodies**

We agree with the points in this section, but, again, are concerned that in reality it is unlikely they will be implemented in many situations unless the Compact is made more enforceable and its implementation resourced. In particular, we believe point 20.2 and 20.3 is very important as the role of BAME and other equality organisations in the development and delivery of equitable services cannot be under-estimated. It is recommended as part of the entire commissioning process that service users and those representing them should be consulted and involved in the design process. To ensure the compliance with their General Duty to show due regard to race equality under the Race Relation (Amendment) Act 2000, public authorities should consider the impact of the procurement process on BAME communities. Public authorities should seek to address any adverse impact on BAME communities and a direct mechanism is to consult with BAME communities in the design of the services. The Compact codes should include reference to the specific equalities legislation to ensure that the legal basis for these recommendations is recognised and asserted as part of the Compact.

### **More general overall comments**

- It is difficult to comment on the consultation document without seeing the Implementation Guide. We believe it is important to consult on the Implementation Guide and would have found this to be an easier and more efficient task if both documents had been produced and consulted on simultaneously.
- We are unclear about how well the consultation document fully reflects response to last year's review of the BAME Compact Code and believe this needs to be considered further.
- The 'Best practice examples' and 'Action point checklists' included in the BAME Compact Code should be included in the Refreshed Compact or its accompanying Implementation Guidance.
- Point 6.4 of the BAME Compact Code is of particular importance and should not be lost given the fragile financial state the BAME sector is currently in. There is a need to carry out an Equality Impact Assessment in relation to the removal of the BAME Compact Code. Local Compacts should be developed and subject to an equality impact assessment as a policy of a public body that can have a significant effect and potential adverse impact on BAME communities and eliminating racial discrimination.

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