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EXECUTIVE SUMMARY

Initial Guidance on the Race Relations (Amendment) Act 2000

Equality and Diversity Guidance 001/003

Published March 2002

Subject

Meeting the general and specific duties placed on the Learning and Skills Council by the Race Relations (Amendment) Act 2000 and becoming a race equality exemplar

Name of sender

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Intended recipients

Local LSC Executive Directors, Heads of Quality and Learning Programmes, equality and diversity staff and personnel staff.

Status of document

For information and action. The timelines of required actions will vary within a three year timescale beginning on 31st May 2002. A Race Equality Scheme to be published on 31st May 2002 (see below) will set out precise details for a wide variety of activity across the LSC. It will be considered for final agreement at a Management Board meeting on 23rd April 2002

Summary of content

This guidance note sets out what the Learning and Skills Council has to do to comply with new race relations legislation. Following the Stephen Lawrence Inquiry report, Government brought forward new legislation that places duties on most major public authorities, including the Learning and Skills Council and Further Education Colleges to be proactive in achieving race equality.

The Act requires the LSC to assess the impact on race equality of all of its relevant policies, to agree and implement an action plan to deal with any adverse impact it identifies, to ethnically monitor all aspects of its employment practice, to remove any unfairness it thereby identifies and to train all its staff in how to meet the new duties. The LSC is required to publish a Race Equality Scheme by 31st May 2002 that sums up all of this activity and links it to a three year action plan. One Scheme will apply across all parts of the LSC. This has urgent practical operational implications for all aspects of the LSC's work.

EQUALITY AND DIVERSITY GUIDANCE 001/2003

Initial Guidance to Local Learning and Skills Councils on Implementing the Race Relations (Amendment) Act 2000

Linkages to:

Learning and Skills Act 2000 (Sects 13 and 14)

Race Relations (Amendment) Act 2000

National Learning and Skills Council Equality and Diversity Strategy: Widening Participation and Promoting Inclusion 2001 - 2004

Equality and Diversity Impact Measures Guidance: Equality and Diversity Guidance 001/02

Equality in Practice – Guide to Mainstreaming 2001

LSC Corporate Strategic Planning Guidance – November 2001

Learning and Skills Council Corporate Plan – Strategic Framework to 2002- 04

This guidance will support the Learning and Skills Council (the Council) to:

- meet the requirements of the law and avoid enforcement action by the Commission for Racial Equality
- better understand and meet the needs of learners and employees
- impact effectively on social exclusion and racial discrimination
- set and meet learning targets and equality and diversity impact measures
- become an exemplary employer of choice

For action by : local LSC Executive Directors and Council members, quality and standards and learning programmes staff, equality and diversity staff, strategic planning staff, management information and HR staff.

Introduction

1 Following the Stephen Lawrence Inquiry Report (24th February 1999) the Government enacted the *Race Relations (Amendment) Act 2000* (the Act). This represents the most radical overhaul of race relations legislation since 1976 and

has significant operational implications for the Council.

The Stephen Lawrence Inquiry into the events surrounding the murder of the black London teenager applied recommendations to the entire public sector, with education being given particular prominence. The Act, similarly, applies across the public sector and the country, irrespective of the racial profile of any given part of it.

The Act places an important series of duties on the Council, in common with many major public sector agencies, as an employer and a provider of services. How the Council will go about meeting its new duties has to be summed up in a Race Equality Scheme (RES) to be published by 31st May 2002. The Council is required to have one scheme for the whole organisation that will be equally applicable to and applied by all parts of the organisation.

2 The RES is being developed by a Council project team drawn from each national directorate and a number of local LSCs. There will be council wide consultation on a draft RES before it is

finalised. The RES is required to set out the Council's arrangements to meet its duties over a three year period. It will be open to the Council to prioritise areas of implementation across the three year span of the RES so that compliance with the Act can be phased in. The publication of the RES will represent the beginning of the process of compliance – not the end.

As this guidance note precedes the RES it is indicative. The RES will be accompanied by a final guidance note that will provide precise guidance on implementation.

3 This guidance note describes the duties that apply to the Council and how the Council can meet them. Many of the Act's requirements are already partly met by the Council. Others can be met only by putting new practice in place. We have the opportunity therefore to use the Act to improve the quality of what we do – to keep the best and improve the rest.

The Council's New Duties

The General Duty

4 The Act places a general duty on the council to promote race equality. This means that in everything that it does the council should have due regard to the need to eliminate unlawful racial discrimination, promote equality of opportunity and promote good race relations between people of different racial groups. The Council has to be proactive. A set of specific duties applying to service delivery and employment have been placed on the

Council to guide its implementation of the general duty.

The Specific Duties – Service Delivery

The council is required to identify those of its functions and policies /proposed policies likely to impact on race equality, and its capacity to meet the requirements of the general duty. (For example, policy on Performance Review, strategic planning or the funding of learning will be relevant, while policy on the leasing of cars, or the reimbursement of expenses are unlikely to be so). This list is to be reviewed every three years.

It is then required to set out its arrangements for:

- assessing and consulting on the likely impact on race equality of relevant policies
- monitoring its policies for any adverse impact on the promotion of race equality
- publishing the results of such assessments and consultation
- ensuring public access to information and services
- training staff to meet the new duties.

The Specific Duties - Employment

The Council is required to ethnically monitor:

- staff in post
- applications for employment
- training and promotion
- performance assessment/appraisal

- grievance and discipline
- staff exit
- analyse these data to identify any patterns of inequality
- take any necessary action to remove unjustified barriers and promote equality of opportunity
- publish the results of the monitoring annually

Meeting the Duties

Service Delivery

5 All the main policy and activity areas of the Council are relevant to meeting the duties placed on us. Strategic Planning, Learning Programmes, Adult and Community Learning, Learning Difficulties and Disability, Work Based Learning, Workforce Development, Quality Improvement, Performance Review, Training, Employment, Communications, Funding, Equality and Diversity etc are all of direct relevance to race equality and will need to come within the ambit of the Council's RES. The RES will set a national framework that local councils and national directorates will act on.

For local LSCs, meeting the duties will require in large part, arrangements being put in place with providers. Therefore, working with providers in defining the LSC Strategic Plan, and the role of Council and local LSC contract staff will be key levers for implementation. Working with providers is dealt with below in paragraph 12.

Assessing and Consulting on the likely impact of policies on race equality:

6 The development of race equality impact measures at local LSC level as part of the Council's application of Equality and Diversity Impact Measures, guided by national advice, is already beginning (cf Equality and Diversity Guidance 001/02). It will be part of the corporate strategic planning process for 2003/4. Proceeding from agreed sources of baseline data, the use of such impact measures nationally and locally will facilitate year on year impact assessment. It will be reinforced by a refined set of specific questions in and analyses of the annual national Learner Survey and can be supported by local and national research. The new framework for Performance Review, operational from November 2002 will deal with compliance with the Act. The local consultative aspect of strategic planning should also be used to ensure that communities from all racial groups are involved. Local LSCs may wish to consider the use of focus groups and the systematic use of ethnic minority media to reinforce this work. The Council will have to be able to demonstrate how this impacts on policy.

7 **Monitoring Policy for Adverse Impact** on particular racial groups will require the use of a range of ethnic data at local level. It will be important to know, for example, how different racial groups are affected by policies, how often and in what numbers they use different services, how often they make complaints, and whether they have different rates of success and satisfaction. Guidance on equality and diversity impact measures has provided

advice on base line data availability. The Council's national targets team will be providing further clarification on use of data and will be working with the national Equality and Diversity team to produce twice yearly nationally aggregated ethnic breakdowns of learner recruitment, retention and achievement by learning programme type. Local LSCs will need to ensure that they are able to access appropriate and robust ethnic data from all providers. Thus existing and developing national and local work on Equality and Diversity Impact Measures will enable much of this duty to be met. Local LSCs may wish to prioritise this work in those areas where there is existing evidence of unequal/adverse impact on particular racial groups so that local action planning and target setting can be used to close any unjustifiable gaps in learner recruitment, retention and achievement. The categories to be used for ethnic monitoring are those used by the most recent national census (see annex A).

8 Publication of the results of such assessment and consultation may be a feature of the Council's annual report and annual equality and diversity report. Other national publications and the intranet and website may also be used. Local LSCs may wish to publish details in their own publications and on their own websites. A template for this will be produced as part of the Council's Race Equality Scheme.

9 Ensuring public access to information and services will be achieved by, among other mechanisms, the consistent application of a

translation policy for relevant communication to be put in place by national office, the appropriate targeting of marketing and public relations, the consistent appropriate use of local and national ethnic minority media, staff training, (see below) and consultation with a range of national and local stakeholders. Advice will be available from the Communications Directorate at national office.

10 Staff training is required by the Act to equip colleagues to meet the duties. Arrangements for a national training strategy led by the HR directorate, meeting the needs of national office and local councils will be published as part of the Council's Race Equality Scheme. Local LSCs may wish to build on this to develop bespoke training for staff to meet the duties in the specific context of the communities they serve. Local LSC Council members and national Council members should also be included in training programmes. Training may be delivered as part of existing programmes as well as in the form of discrete activity. It will need to be geared to the practicalities of the duties – that is, monitoring, impact assessment, consultation etc. Advice and support on training will also be available from the national Equality and Diversity team.

11 The Employment Specific Duties applied to the Council are clearly defined. The HR Directorate will put in place the mechanisms at national office and local LSC level for the comprehensive ethnic monitoring required by the Act. The RES will set out the precise arrangements and timescale.

A training programme to be rolled out during 2002/03 will equip all relevant staff to collect and use these data.

12 Working with Providers: Further education colleges are subject to the General Duty and to a particular set of Specific Duties for them set out at annex B. A set of suggested characteristics of a well performing further education college, meeting all its duties under the Act is set out at annex C.

The Council's duty will comprise ensuring that colleges are complying with the general duty and the specific duties applied to them. This will be done through Performance Review, already being revised with this need in mind and through accessing ALI/OFSTED inspection reports and through training. During 2002/003 the Council in partnership with a range of stakeholders will be providing training for colleges in meeting their duties under the Act. All relevant discussions between the Council and colleges will need to take into account the Council's duty to ensure that colleges are complying with their duties. The duties applied to colleges will provide the impetus to improve their data collection where necessary and local LSCs may wish to use this to contribute towards improved planning and target setting.

As Work Based Learning Providers are directly contracted to the Council it will be possible to build standard clauses into contracts to ensure that the Council's duties are being met. The Operations national Directorate will provide a series of standard clauses that can be applied

to a range of Work Based Learning providers, depending on their size and role. The goal will be to ensure that there is an operational commitment to fair recruitment practice and fair treatment of learners without imposing inappropriate burdens. Local LSCs will be able to vary standard clauses to meet their local needs.

Local LSCs may wish to consider specifying outcomes in some contracts. For example, the reduction/removal of disparities based on racial group in take up of Modern Apprenticeships, or a given increase in the retention rates for a particular group on a learning programme etc.

Performance Review will be the principal mechanism for monitoring compliance.

All other contractual partnerships entered into by the Council should be reviewed for relevance to race equality and the contracting process used to ensure compliance. The Council will be the agency responsible if the duties are not met and could, in such circumstances, be open to enforcement action by the Commission for Racial Equality.

13 Positive Action: In seeking to meet their duties both the Council and providers are able to employ positive action – not the same as positive discrimination. The Race Relations Act 1976 allows action to bring people up to the same level for competition. So, for example, if a particular ethnic minority is underrepresented in management it is permissible to provide training for

persons from that group to equip them to compete on equal terms with all others for promotion. It would not be permissible though to discriminate in any way in the appointment process itself. Positive Action may form part of the RES.

14 Enforcement. The CRE has enforcement powers. It is able to use either Judicial Review or the County Court in response to proven failure to meet the duties.

Annex A

Ethnic Monitoring

The purpose of ethnic monitoring is to illuminate patterns of access, retention, achievement, employment, satisfaction etc by racial group. This enables providers of services and employers to identify any patterns of inequality that may require investigation, explanation and remedy.

It is a basic management tool essential to achieving equality of opportunity and high standards. If processes cannot be measured they cannot be managed.

Good ethnic monitoring systems break down ethnicity into a number of relevant groups, using the categories employed by the census. This is because patterns of disadvantage are often specific to one particular racial group. For example, if the impact of exclusion from school were measured on the categories of "white" and "non white" no significant disparity would emerge. If, however, a spread of ethnic categories are used it becomes clear that African Caribbean

boys are significantly overrepresented among those excluded.

Full account must be taken of the *Data Protection Act 1998* in the collection, storing and analysis of ethnic data.

Monitoring is more than just data collection. It requires analysis and interrogation, with follow up to tackle any barriers or failures identified.

Monitoring should be a continuous process – data gathering, analysis, questioning, investigation, proposals and change.

Responsibility for monitoring should reside at senior level.

The Categories

A

White

- British
- Irish
- Any other white background

B

Mixed

- White and Black Caribbean
- White and Black African
- White and Asian
- Any other mixed background

C

Asian or Asian British

- Indian
- Pakistani
- Bangladeshi
- Any other Asian background

D

Black or Black British

- Caribbean
- African
- Any other Black background

E

Chinese or other ethnic group

- Chinese
- Any other

Local LSCs engaged in ethnic monitoring may wish to add particular categories due to the nature of their local communities. So it may be helpful at local level to monitor "Vietnamese" or "Cypriot" etc.

Annex B

Duties placed on further education colleges

It is the intention of Government to apply the duties of the *Race Relations (Amendment) Act 2000* to schools, colleges of further education and institutions of higher education in a way that minimises any undue burden on them. Therefore FE colleges are subject to the general duty and have placed on them a different set of specific duties from those placed on national bodies such as the Learning and Skills Council.

The governing bodies of further education colleges are held responsible for compliance with this law.

The aim of the general duty is to make race equality central to the way all public functions are carried out. Promoting race equality should be a central part of all further education policy making, service delivery and employment practice.

Specific Duties

Colleges are required to:

- prepare and maintain a written statement of their race equality policy for promoting race equality and have arrangements in place for meeting their duties as soon as reasonably possible. Both the statement and arrangements must be ready by 31st May 2002.
- assess the impact of their policies (including the race equality policy) on students and staff from different racial groups.
- monitor by racial group student admission and progress, staff recruitment and career progress
- include in their written race equality policy arrangements for publishing the race equality policy and the results of assessments and monitoring.

Precise, detailed guidance about the content and scope of the required policy and statement are contained in the Commission for Racial Equality (CRE) consultation draft "Statutory Code of Practice on the Duty to Promote Race Equality" circulated to all local LSCs in December 2002. The final code will be available from 31st May 2002 and all local LSCs will receive a copy. The current draft appears on the CRE's website (www.cre.gov.uk.) The final code will also appear on the CRE website.

Annex C

Suggested characteristics of a well performing further education college meeting its duties under the Act

Leadership

- **High – level leadership.** Governing body and senior managers make clear public commitment to tackling racial discrimination and promoting race equality
- **Equitable leadership.** People from a diverse range of ethnic backgrounds are well represented on the governing body and within management

Policies Services and Processes

- **A Race Equality Policy.** This is an engine for development and implementation setting out the practical measures being taken to achieve race equality. Has clear targets and projected outcomes. Is regularly reviewed.
- **Mainstreaming.** Race equality aims and objectives are integrated into all strategies and policies. All staff understand what the race equality policy means for them.
- **Impact Assessment.** Assessing the impact of policies on race equality at every stage of development, using the views of students and staff and using such feedback to shape policy
- **Monitoring.** Using established systems and, where needed, establishing new systems to monitor the impact of policies on students and staff from different racial groups. Particular attention is given to recruitment, retention and

achievement of students and the recruitment and career progress of staff. Monitoring data used to identify targets.

- **Achieving Improvement.** Using data to identify problems, establish targets, underpin and guide intervention and evaluate effectiveness of improvement programmes
- **Safe Learning and Working Environment.** Robust, fair and easy to use systems deal well with complaints of discrimination and harassment.
- **Recruiting and Selecting a diverse staff.** Monitoring and reviewing recruitment procedures regularly to ensure fairness and their appeal to a broad range of potential applicants
- **Supporting staff.** High quality training supports all staff to deliver race equality
- **Using positive action.** Using data on local communities and comparable data on staffing in further education nationally to identify disparities and possible barriers to equality of opportunity. Taking action to remedy inequalities including the use of positive action to target disadvantaged racial groups as appropriate – for example, the provision of management training for any groups underrepresented in management.

Notes

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