



Statutory
CODE OF PRACTICE
ON RACIAL EQUALITY
IN HOUSING

England

CONSULTATION DRAFT



COMMISSION FOR
RACIAL EQUALITY

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1

Introduction

1

Introduction

- 1.1 This statutory code of practice replaces the statutory codes of practice in rented and non-rented housing, issued by the Commission for Racial Equality (CRE) in 1991 and 1992, respectively. It covers all areas of housing in England. Separate codes have been produced for Wales and Scotland.¹
- 1.2 References to the Race Relations Act 1976 (RRA) include all subsequent amending legislation.
- 1.3 The RRA gives the CRE a legal duty to:
 - a. work towards the elimination of racial discrimination and harassment; and
 - b. promote equality of opportunity and good relations between people from different racial groups.
- 1.4 Section 47 of the RRA gives the CRE the power to issue codes of practice in the areas of employment and housing, and to give such practical guidance as it sees fit, to prevent unlawful racial discrimination and harassment.

Aims of the code

- 1.5 Since the first codes were produced, there have been marked changes in the way housing is provided and managed in England. For example, a range of new social landlords has come into existence; the housing association and private rented sectors have grown considerably; the owner-occupied sector has continued to thrive, with many more organisations and individuals involved in this market; and the law on housing has changed.
- 1.6 The context of racial equality work has also changed, with important amendments having been made to the RRA, and legal protection extended to other areas of equality. England's ethnic minority population is no longer the same, and the question of community cohesion has become an increasingly important consideration for housing organisations and agencies.
- 1.7 Lastly, while there have been improvements for some ethnic minority communities, overall, significant differences still persist in the type and quality of housing available to people from ethnic minorities, who are more likely to live in inferior housing, and to have fewer opportunities to improve their circumstances.

1. This code does not cover Northern Ireland, to which the Race Relations Act 1976 does not apply, and which is covered by separate legislation.

For example, ethnic minority households are more likely to live in overcrowded conditions, be more dissatisfied with their homes and be more anxious to move, compared with households from white groups. Ethnic minority communities are up to three times more likely to be represented in statistics on homelessness. Segregation, mainly in urban areas where one ethnic group predominates over others, continues to pose problems for social integration in parts of the country. Racial harassment is a continuing reality for ethnic minority communities in some areas; for example, they are four times more likely to see racial harassment as a serious problem in their areas than white households.²

- 1.8 The code needs to reflect all these changes, and build on the experience and lessons of the 14 years since the CRE's first codes in housing were published. The aims of this code are to:
 - a. set standards for achieving racial equality;
 - b. provide practical guidance that will help organisations and individuals involved in all areas of housing to avoid unlawful racial discrimination and harassment, promote equal opportunities for all, and encourage good race relations; and
 - c. make sure that anyone who is considering taking a legal case, or who has concerns about the way decisions on housing matters have been made, understands the legislation, their rights, and what constitutes good practice in the field of housing.
- 1.9 The good practice referred to in this code draws on measures taken by housing organisations and agencies that have proved successful, and refers to sources of further information and guidance. This code should therefore be seen as complementing these approaches.
- 1.10 The code will be useful to anyone involved in housing as well as to those who make decisions about housing provision, housing opportunities and services related to housing.

Status of the code

- 1.11 This code is a statutory code. It has been approved by the secretary of state and laid before parliament. This means that courts and employment tribunals must take its recommendations into account in cases brought under the RRA, if they appear relevant to any question arising during the proceedings. Anyone with responsibility for the activities and decisions of a housing organisation, including those involving direct letting, should be able to defend themselves better in any case of alleged racial discrimination brought against the organisation, if they have

2. See Office of the Deputy Prime Minister (ODPM), *Housing and Black and Minority Ethnic Communities: Review of the Evidence Base*, May 2003. This provides a detailed review of relevant data and statistics.

followed the code's recommendations. The code is not an authoritative statement of the law; this can only be provided by the courts and tribunals.

Application of the code

- 1.12 The code applies to all providers of housing and related services in England, both in the public and private sector, including landlords, house builders, private sellers and estate agents. It is also relevant to users of housing and related services. The code covers all forms of housing tenure as well as planning as it relates to housing under section 19A of the RRA. It covers caravan sites as well as 'bricks and mortar' housing.
- 1.13 The code is not restricted to what is required by the law, but also includes guidance on good practice. Most of the guidance applies to all housing organisations, whatever their size. Occasionally, the guidance may need to be adapted, to suit a housing organisation's individual circumstances – for example, smaller organisations may not need the detailed procedures recommended in the code, such as complex housing monitoring systems. However, they must make sure their policies and practices are consistent with the RRA, and follow the general spirit and intentions of this code.

Public authorities

- 1.14 While the RRA applies to all organisations, section 71(1) gives public authorities additional statutory duties. The aim is to make the promotion of racial equality and good race relations central to their work. Inevitably, this means that the code places greater responsibilities on public authorities than on other housing organisations. The text makes this clear.
- 1.15 However, it should be emphasised that much of the guidance on meeting the duties is relevant to all housing organisations. A separate summary of the recommendations of the code for housing organisations and agencies in the private sector will be produced.

Benefits of the code

- 1.16 This code should help housing organisations and agencies to:
 - a. understand and meet their legal obligations under the RRA;
 - b. adopt and put into practice effective policies, designed to prevent unlawful racial discrimination or harassment, and promote equal opportunities and good race relations;
 - c. make sure users of housing services are treated equally, and that their needs are taken into account, wherever possible, and reflected in the services the organisation provides;

- d. make people happier with the services they receive;
 - e. reduce the risk of legal liability, costly and time-consuming disputes, and potential damage to an organisation's reputation; and
 - f. be regarded as an organisation that does what it says, and provides a fair and useful service for everyone in the area it serves.
- 1.17 The code should also help those who use housing services to know their rights under the RRA, and to be aware of what constitutes good practice in the field of housing and race relations.

Other areas of equality

- 1.18 This code is concerned with housing matters as they affect people from different racial groups. However, its recommendations may also be useful, and be seen to complement initiatives taken, in other areas of equality, including disability, sex, religion or belief, age and sexual orientation.

How to use the code

- 1.19 The code is divided into four chapters, including this introduction.
- a. Chapter 2 looks at the legal context, and explains the implications of the RRA and other relevant laws and instruments for the functions of all housing organisations, and for all housing tenures.
 - b. Chapter 3 makes recommendations on good practice in nine key areas of housing. It also lists the main outcomes housing organisations can expect to see, by following the code's recommendations.
 - c. Chapter 4 gives advice on training, monitoring and impact assessment, three activities that are key to meeting the code's recommendations.
- 1.20 Appendix 1 lists exceptions to the general prohibition of racial discrimination and harassment under the RRA. Appendix 2 lists sources of further information, guidance, advice and assistance, and Appendix 3 provides a glossary of terms, as used in this code.
- 1.21 The code uses several examples to illustrate or explain legal concepts and other points in the text. Most, though not all, are drawn from the area of housing. Where an example is based on a particular case, this is made clear. The examples should not be regarded as statements of the law.

2

The legal context

2

The legal context

2.1 This chapter sets out the legal definitions of racial discrimination and harassment and explains how they apply to the organisations or individuals who let, manage or sell housing, or provide related services; for example, estate agencies, letting agencies, valuers, home insurance providers, mortgage lenders and providers of environmental health or planning services. The chapter begins by explaining the general provisions of the Race Relations Act 1976 (RRA), before going on to consider its specific provisions for providers of housing and services related to housing.

What is racial discrimination?

2.2 The RRA makes it unlawful to discriminate on racial grounds (see para 2.3). The Act defines four main forms of discrimination:

- a. direct discrimination;
- b. indirect discrimination;
- c. victimisation; and
- d. harassment.

2.3 The RRA defines racial grounds as including race, colour, nationality (including citizenship) or ethnic or national origins. Racial groups are groups defined by these grounds. All racial groups are protected from unlawful racial discrimination or harassment under the RRA.

2.4 To comply with the EC Race Directive (2000/43/EC), the government introduced the Race Relations Act (Amendment) Regulations 2003,³ which give legal protection from racial discrimination and harassment on grounds of race or ethnic or national origins. Since the grounds protected under the original RRA differ from those protected under the Regulations, the amended RRA contains disparities in certain definitions and standards, such as indirect discrimination and harassment. However, this does not substantially affect the practical guidance given in this code.

3. The Race Relations Act (Amendment) Regulations 2003 (SI 2003 No 1626) came into force on 19 July 2003.

Direct discrimination [Section 1(1)(a) of the RRA]

- 2.5 Direct discrimination occurs when a person is treated less favourably on racial grounds than another person is or would be treated in the same or similar circumstances.
- 2.6 In cases alleging direct racial discrimination, the courts have recognised that it may not always be possible to compare the alleged treatment with the treatment of an actual other person, and that a hypothetical comparison might have to be made with a person from a different racial group in a similar situation. The question to be asked is: 'how would a person from a different racial group be treated, in circumstances that are not identical, but not too dissimilar?'
- 2.7 Apart from limited exceptions⁴ to the principle of non-discrimination, direct discrimination is automatically unlawful, whatever the reason for it. There can be no justification for the difference in treatment.

Example 1

An estate agent does not give details of a suitable property to an Asian buyer, because the seller has made it clear he does not want to sell to an Asian family. The agent also withholds information about properties in 'Asian areas' of the town from white buyers, on the assumption that they are not interested in living in those areas. Both practices are unlawful and constitute direct discrimination.

Example 2

A local council would be discriminating directly if it refused to find a place in a hostel for a Somali refugee because it was afraid he would be harassed by the hostel's white residents, and took no action to prevent such harassment.

- 2.8 It should be noted that the immigration status of an applicant for local authority housing or assistance as a homeless person is only relevant when the applicant is a 'person from abroad'.⁵ Where decisions not to house a person or to give assistance on homelessness are taken in line with these laws and regulations, they will not constitute unlawful racial discrimination. Local authorities should follow the guidance on homelessness, issued by the Office of the Deputy Prime Minister.⁶

4. For details of the exceptions, see Appendix 1.

5. See sections 160A and 185 of the Housing Act 1996, the Allocation of Housing (England) Regulations 2002 and the Homelessness (England) Regulations 2000.

6. *Homelessness: Code of Guidance for Local Authorities*, ODPM, 2002

Example 3

A local council discriminates directly when it asks only ethnic minority applicants for housing to produce passports as proof of their identity.

Example 4

An analysis of the monitoring data on a housing association's allocations reveals a pattern of ethnic minority applicants being allocated inferior properties, compared with other applicants in similar housing circumstances. The pattern cannot be explained by objective factors and the monitoring report concludes that unconscious racial stereotyping must have influenced the decisions on allocation. The housing association would be found liable for direct racial discrimination.

Segregation

- 2.9 Segregating a person from others on racial grounds (section 1(2) of the RRA) automatically means treating her or him less favourably, and constitutes unlawful direct discrimination. Segregation for the purposes of the RRA means that one or more persons are kept apart from others, on racial grounds. Segregating tenants by racial group is unlawful, even if they have access to the same or similar quality of accommodation and services. Congregation is not the same as segregation, and the failure of a housing provider to intervene and insist on the integration of tenants from other racial groups, against their choice, does not amount to unlawful direct discrimination. However, if congregation has adverse consequences, such as racial hostility, which alienates or deters tenants from other racial groups from moving to the area in question, the housing provider's failure to act might constitute unlawful direct racial discrimination.⁷

Example 5

Over several years, neighbourhood A has become a predominantly Asian area, with shops, businesses and places of worship which serve the local community. The adjacent neighbourhood B has remained predominantly white during the same period. This is not segregation.

However, if the local estate agents automatically refer Asian clients to neighbourhood A and white clients to neighbourhood B, their actions might constitute an act of segregation.

- 2.10 Discrimination on racial grounds does not have to be related to the racial group of the person complaining of discrimination. See Example 6.

7. See also paragraphs 3.42 and 3.50.

Example 6

A bank directly discriminated against a white woman, on racial grounds, when it turned down her application for a mortgage, because the street where she wanted to buy was in an 'Asian area'.

Indirect discrimination

[Sections 1(1)(b) and 1(1A) of the RRA]

- 2.11 The RRA contains two definitions of indirect discrimination, depending on the grounds of discrimination. Which definition applies depends on the nature of the discrimination, and on the racial group that is disadvantaged by the rule or practice (see paras 2.13 and 2.14).
- 2.12 The definition of indirect discrimination introduced under section 1(1A) of the RRA to comply with the EC Race Directive applies when the discrimination is on grounds of race or ethnic or national origins. When indirect discrimination is on grounds of colour or nationality, the original definition under section 1(1)(b) applies.
- 2.13 *Grounds of race or ethnic or national origins [section 1(1A) of the RRA]*
Indirect discrimination occurs when a provision, criterion or practice which, on the face of it, has nothing to do with race or ethnic or national origins, and is applied equally to everyone –
- puts or would put people of a certain race or ethnic or national origins at a particular disadvantage when compared with others, *and*
 - puts a person of that race or ethnic or national origin at that disadvantage; *and*
 - cannot be shown to be a 'proportionate means of achieving a legitimate aim'.
- 2.14 *Grounds of colour or nationality [section 1(1)(b) of the RRA]*
Indirect discrimination occurs when an apparently non-discriminatory requirement or condition, which applies equally to everyone –
- can only be met by a considerably smaller proportion of people from a particular racial group than the proportion not from that group who can meet it; *and*
 - puts a person from that group at a disadvantage because he or she cannot meet it; *and*
 - cannot be justified on non-racial grounds.
- 2.15 The concept of 'provision, criterion or practice' which was introduced to comply with the EC Race Directive is broader and less restrictive than the concept of 'requirement or condition' in the original definition of indirect discrimination in

the RRA. The concept of 'provision, criterion or practice' covers the full breadth of informal and formal policies and practices used by the organisations and individuals covered by this code of practice.

Example 7

A housing cooperative relies on its members to spread information about vacant properties by word of mouth. As its members are predominantly from one racial group, people from other racial groups rarely hear about housing vacancies. Unless the cooperative is able to justify its practice as a reasonable and proportionate way of letting properties, the practice would amount to unlawful indirect discrimination.

- 2.16 Although the definition of indirect discrimination introduced to comply with the EC Race Directive does not apply to racial groups defined by colour or nationality, in practice, a criterion that disadvantaged someone because of his or her colour would also be likely to disadvantage that person because of his or her race or ethnic or national origins.
- 2.17 The same argument applies to the ground of nationality (or citizenship), in that if a practice disadvantaged someone on grounds of his or her nationality, it would also be likely to disadvantage that person on grounds of his or her national origins.

Example 8

A contractor has a rule prohibiting his workers from wearing their hair in locks. This would disproportionately disadvantage black people, compared with white people, but the prohibition could also be challenged on the grounds of the ethnic or national origins of the person discriminated against; for example, Jamaican.

- 2.18 Both definitions of 'justification' for a discriminatory practice, namely, a 'proportionate means of achieving a legitimate aim' (para 2.13) and 'justifiable, on non-racial grounds' (para 2.14), are based on drawing an objective balance between the discriminatory effects of the provision or criterion or rule and the reasonable needs of the organisation or individual to apply it.
- 2.19 When assessing the justification for policies and practices that could have a disproportionate effect on a racial group (or groups), it would be useful to consider the following questions, in the order given below:
 - a. Does the provision, criterion, practice, requirement or condition correspond to a real need?

Example 9

A rural housing organisation decides to reserve some affordable housing (for rent or purchase) for people with local connections in the community. The aim of the policy is to encourage younger people, in particular, to remain in the area. The housing organisation has objective evidence that younger people are being forced to move away because of the lack of affordable housing.

The organisation recognises that its policy could disproportionately disadvantage newcomers and outsiders without any local connections, and that if the newcomers who want houses are from different racial, ethnic or national backgrounds to people in the local community, for example, refugees, and Gypsies and Travellers⁸ (or non-Welsh language speakers in Wales), the policy could have a discriminatory effect. To strike a balance between the legitimate aims of the policy and any discriminatory effects it might have, the housing organisation considers the following questions, to determine the scale of any possible discrimination.

- a. How many people in need of affordable housing are excluded by the policy, and what proportions are excluded on racial grounds? How restrictive are the criteria for access to the housing in question? – The more restrictive the criteria, the more likely they are to be unreasonable, and therefore to result in unlawful indirect discrimination; for example, the longer an applicant is required to have been a resident in order to qualify, the less likely it is to be reasonable.
- b. What type of local connection is required? For example, does the applicant have to be born in the area, or have extended family living in the area, or have a job in the area? – The more ways in which an applicant can demonstrate eligibility, the less likely the requirements are to be indirectly discriminatory.
- c. Are there other ways, besides having a local connection or being a resident, of qualifying for the housing? – Again, the less restrictive the criteria, the less likely they are to be indirectly discriminatory.
- d. Do the restrictions apply to all affordable housing or only a portion of it? – If all the affordable housing provided, or a large proportion of it, is bound by restrictions, the more likely the practice is to be indirectly discriminatory.

8. While it is Gypsies and *Irish* Travellers that have been recognised by the courts as racial groups for the purposes of the RRA, this code uses the term ‘Gypsies and Travellers’ throughout.

- b. Does the need pursue a legitimate aim; for example, health and safety?
 - c. Are the means used to achieve the aim appropriate and necessary?
 - d. Is there any other way of achieving the aim in question?
 - e. Is there a way of reducing any potentially unlawful discriminatory effect?
- 2.20** The key question to be answered when assessing a potentially discriminatory rule or practice is whether it strikes a proportionate balance between avoiding a racially discriminatory effect and meeting the legitimate aim of the rule. Ultimately only the courts can decide whether such a practice is lawful or unlawful. In the absence of case law on this subject, housing organisations and agencies should consider questions similar to those listed in Example 9.
- 2.21** The definition of indirect discrimination introduced to comply with the EC Race Directive (see para 2.13) applies to most of the activities carried out by housing organisations and related agencies, including lettings, sub-lettings and management of premises by landlords; and services provided by estate agents, mortgage lenders, accommodation agencies and insurance agencies.
- 2.22** Planning authorities and the services they provide are also covered by the definition of indirect discrimination in section 1(1)(b) of the RRA (see para 2.14).

Institutional racism

- 2.23** ‘Institutional racism’ is the term coined by Sir William Macpherson in his report of the inquiry into the death of Stephen Lawrence, to describe:

... the collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping.

The concept of institutional racism, and the inquiry report, led to key amendments to the 1976 Race Relations Act, including the introduction of a legal duty for public authorities to promote race equality in all their functions (see paras 2.41 – 2.49). However, the concept itself has no legal force.

Victimisation [section 2 of the RRA]

- 2.24** It is unlawful to treat a person less favourably on racial grounds than others in those circumstances because he or she has:
- a. brought proceedings under the RRA; or
 - b. given evidence or information in connection with any proceedings under the RRA; or

- c. alleged that an act of unlawful discrimination has been committed; or
 - d. has done anything under the RRA in relation to someone, or intends to do so, or is suspected of having done or intending to do so.
- 2.25 For a claim of victimisation under the RRA to succeed, a complainant would also have to show that:
- a. he or she has been or would have been treated less favourably, on racial grounds, than others in those circumstances; *and*
 - b. the treatment was a result of his or her action in relation to allegations or proceedings under the RRA.

Example 10

In the case of *Aziz v Trinity Street Taxis Ltd* (1988 ICR 534), the complainant secretly taped conversations between fellow members of his trade association, because he suspected that he was being discriminated against on racial grounds. He was expelled from the association when his actions were discovered, on the grounds that they were a breach of trust. The Court of Appeal held that Mr Aziz was entitled to protection from victimisation, because, even though he had not at that point lodged a claim in the court, he had done something that was encompassed by the RRA.

Example 11

An estate agency dismisses a temporary worker who has informed the CRE that a manager instructed staff not to show the properties to Asian enquirers, because they were 'all time wasters and not serious about purchasing properties'.

Harassment [Section 3A(1) of the RRA]

- 2.26 The definition of harassment introduced to comply with the EC Race Directive applies when the conduct in question is on grounds of race or ethnic or national origins, but not colour or nationality. Harassment on grounds of colour or nationality involves less favourable treatment and may constitute unlawful direct discrimination (see para 2.5).
- 2.27 A person harasses another on grounds of race or ethnic or national origins when he or she engages in unwanted conduct that has the purpose or effect of:
- a. violating the other person's dignity, or
 - b. creating an intimidating, hostile, degrading, humiliating or offensive environment for that person.

- 2.28 The definition of what is intimidating, hostile, degrading, humiliating or offensive is mainly a subjective one. In considering a claim of harassment, unless the conduct was intentionally hostile, it would only be considered to have the effects described above (see para 2.27) if, after considering all the circumstances, including, especially, the perceptions of the person affected, it was reasonable to do so. This means a court could decide that a complainant was oversensitive and had unreasonably taken offence.
- 2.29 While the statutory definition of harassment in section 3(A)1 of the RRA only applies to grounds of race or ethnic or national origins, and not to those of colour and nationality, in cases where abuse is overtly directed at a person's skin colour, employment tribunals and courts may interpret 'race' widely, to include colour.
- 2.30 Similarly, offensive behaviour in relation to a person's nationality may also be regarded as offensive on the grounds of that person's actual or perceived national origins, and would therefore be covered by the statutory definition of harassment.

Example 12

A tenant brings a complaint of racial harassment against his landlady, when she persists in making racially offensive remarks to him, despite his attempts to explain his unhappiness.

Example 13

Racially offensive graffiti appears on a tenant's property. The tenant complains to the landlord, but nothing is done about removing it. If the landlord normally takes prompt action to deal with complaints about other types of anti-social behaviour, the tenant could argue that the landlord has not provided housing management services on a fair and equal basis.

Pressure or instructions to discriminate

[Sections 30 and 31 of the RRA]

- 2.31 It is unlawful to instruct or induce or attempt to induce a person to discriminate against, or harass, someone, on racial grounds. The pressure does not have to be applied directly; it is unlawful if it is applied in such a way that the other person is likely to hear of it. The courts have clarified that the pressure can amount to no more than persuasion, and need not necessarily involve a benefit or loss. The discriminatory pressure or instruction is in itself unlawful, whether or not the person who was put under pressure or instructed goes on to commit an act of unlawful discrimination or harassment.

Example 14

The chairman of the Accrington branch of the National Front circulated a leaflet to residents in Accrington, Lancashire, urging them to write to the local authority's planning department, to lodge objections to planning applications from Asian businesses. The county court decided he had acted unlawfully in pressurising the local authority to discriminate against Asians applying for planning permission. The court also granted the CRE a five-year injunction preventing him from continuing these activities. (*CRE v D Riley*, Manchester County Court 1982)

Example 15

The Greater London Council received a petition from tenants on the Exmouth estate in Tower Hamlets, objecting to a Bangladeshi family being re-housed on the estate. The CRE wrote warning the signatories that they were acting unlawfully and that legal action might be taken. The small number of signatories who refused to give an undertaking that they would refrain from such action in future appeared before the county court and had to give the court legally binding undertakings.

Example 16

An estate agency discriminates directly by accepting instructions from white sellers not to send Asian buyers to view their properties.

Discriminatory advertisements

[Section 29 of the RRA]

- 2.32 It is unlawful to publish or to be responsible for publishing an advertisement that indicates or may reasonably be understood to indicate an intention to discriminate, even if the act of discrimination were lawful.
- 2.33 The test for deciding whether an advertisement indicates an intention to discriminate is whether a reasonable person would consider it to be discriminatory. The definition of an advertisement is very wide and includes any form of advertisement or notice, whether public or not; for example, internal circulars or newsletters, emails, displays on notice boards or shop windows, and pop-up windows and banners on websites.
- 2.34 The RRA allows a small number of limited exceptions, where the advertisement refers to a situation where discrimination is not unlawful; for example, a lawful

Example 17

An advertisement on the internet for a 'House for sale to white family' or a 'House for sale to Indian family' would be unlawful. Both the person who placed the advertisement and the actual publisher, in this case the owner of the website, may be liable.

positive action training measure (see paras 2.38 – 2.39), or a genuine occupational qualification (see Appendix 1 and the glossary at Appendix 3). The advertisement should make it clear that the housing organisation or agency is making use of the exception.

Remedies

- 2.35 Individuals who believe they have been discriminated against, or harassed, on racial grounds, by a provider of housing or related services have the right under the RRA to bring legal proceedings in the county court.

Burden of proof

- 2.36 As a result of the amendments required by the EC Race Directive, the burden of proof used by the tribunals and courts will vary according to the grounds of the discrimination.
- Grounds of race or ethnic or national origins* [Section 54A of the RRA]
If a complainant can establish the facts from which a court can conclude that an act of racial discrimination or harassment on grounds of race or ethnic or national origins has occurred, the housing organisation will have to prove that any difference in treatment was not in any way due to discrimination or harassment. If the explanation is inadequate or unsatisfactory, the tribunal *must* find that unlawful discrimination or harassment has occurred.
 - Grounds of colour and nationality.* If the alleged act of discrimination or harassment is on the grounds of colour or nationality, and the complainant establishes facts from which a court could conclude that she or he has suffered racial discrimination, the court will ask the housing organisation for an explanation. If the explanation is unsatisfactory, the court *may* find that unlawful discrimination has occurred.

Charities [Section 34 of the RRA]

- 2.37 Housing organisations which are charities operate under charitable instruments (see the glossary at Appendix 3). If a charitable instrument makes it lawful to

confer benefits on people from a particular racial group, then the organisation may do the same, so long as the beneficiaries are not defined by colour. For example, this means that, given the appropriate instrument, a housing association that is a charity may allocate accommodation or provide housing services to households of a particular ethnic or national origin.

Positive action

[Sections 35, 37 and 38 of the RRA]

- 2.38 The term ‘positive action’ refers to the measures that providers of housing and related services may lawfully take to meet special needs involving training, education or welfare (section 35 of the RRA), or to train or encourage people from a particular racial group that is under-represented in particular work (sections 37 and 38 of the RRA).⁹
- 2.39 Section 35 allows housing organisations, including ethnic minority housing associations, to make special provision for certain groups; for example, by developing temporary hostel accommodation catering especially for newly-arrived Somali refugees, who may have needs arising from shared traumatic experiences; or sheltered housing schemes for Chinese elders; or by providing wardens and carers who speak a particular Asian language; or by meeting certain dietary and religious requirements.
- 2.40 To take advantage of this exception, the housing or service provider must have objective evidence of the special need they wish to meet.

Public authorities [Section 71 of the RRA]

- 2.41 Section 71(1) of the RRA gives public authorities listed in schedule 1A of the RRA a statutory general duty to have ‘due regard’ to the need to eliminate unlawful racial discrimination, and to promote equality of opportunity and good relations between people from different racial groups, in carrying out all their functions.
- 2.42 The aim of the duty is to make the promotion of racial equality central to the work of public authorities. The general duty expects public authorities to take the lead in preventing unlawful racial discrimination, and in promoting equality of opportunity and good race relations. In practice, this means building racial equality considerations into the day-to-day work of policy-making, service delivery, employment practice and other functions.¹⁰

9. PATH (Positive Action Training in Housing) schemes and ‘Tomorrow’s Planners’ are examples of ways in which organisations can use sections 37 and 38 to provide training for people from ethnic minorities in housing and related areas.

10. See the *Statutory Code of Practice on the Duty to Promote Race Equality*, CRE, 2002, for further information and guidance.

2.43 To help public authorities meet the general duty, most of them have been given specific duties, to:

- a. prepare and publish a race equality scheme (see paras 2.45 – 2.48), which states how they will meet the general duty in the areas of policy and service delivery; and
- b. monitor specified employment procedures and practices, by racial group, and make this data public in an annual report (see para 2.49).

2.44 Listed public authorities responsible for housing, and services related to housing, include government departments and agencies, local authorities, the Housing Corporation, and the Audit Commission. Housing associations are not directly bound by the duty under the RRA, but they are effectively covered through the regulatory requirements of the Housing Corporation.¹¹

Race equality scheme

2.45 A race equality scheme is a published document that sets out the arrangements a public authority has made to meet the duty.

2.46 The authority's race equality scheme must include the following:

- a. a list of the functions and policies that the authority has assessed as being relevant to the duty;
- b. the authority's arrangements for assessing and consulting on the likely effects its proposed policies will have on promoting racial equality (also known as 'race equality impact assessment');
- c. the authority's arrangements for monitoring the effects of its policies on different racial groups;
- d. the authority's arrangements for publishing the results of assessments, consultations and monitoring;
- e. the authority's arrangements for making sure information about its activities, and the services it provides, is readily available to the public; and
- f. the authority's arrangements for training staff on the race equality duties.

2.47 The assessment of functions and policies that are relevant to racial equality must be reviewed every three years, when housing organisations should consider revising the race equality scheme and action plan.

11. See *The Way Forward: Our Approach to Regulation: Regulatory Code and Guidance*, Housing Corporation, 2002, and *Race Equality and Diversity: Regulatory Code Good Practice Note 4*, Housing Corporation, 2002

2.48 A race equality impact assessment¹² challenges the assumption that policies affect everyone in the same way. It involves anticipating the likely effects of a proposed policy on a particular racial group (or groups) before the policy is introduced, and taking the opportunity to remove or reduce as far as possible any negative consequences for promoting race equality. An impact assessment should be carried out at the initial planning or review stage of a policy or strategy (see also paras 4.10 – 4.15).

Duties in employment

2.49 Listed public authorities have a specific duty to monitor, by racial group, all staff and applicants for employment, training and promotion. Authorities with more than 150 full-time staff must also monitor, by racial group, the number of staff who receive training, benefit or suffer a detriment as a result of performance assessment, take grievances, are disciplined, and cease employment with the authority. These statistics must be published each year. The CRE has advised that authorities should include the arrangements they make to meet the duties in employment in their race equality scheme.

Enforcement

2.50 The CRE has the power under section 71D of the RRA to enforce the statutory duty to promote race equality. If a public authority does not meet any of its specific duties, the CRE can serve a compliance notice, to the effect that the organisation must meet its duties and tell the CRE within 28 days what it has done or is doing to meet them. This compliance notice can be enforced through a court order. If the authority fails to comply with the order, the individual responsible (for example, the chief executive) will be liable for contempt of court proceedings.

Procurement

2.51 The procurement of goods, facilities and services from private contractors is a function of a listed public authority that is relevant to the duty to promote race equality.¹³ The public authority is responsible for meeting the duty in respect of any relevant function or policy, even if it is carried out by an external supplier on its behalf. While contractors must not discriminate unlawfully on racial grounds, they do not have the same legal duty to promote equality of opportunity and good race relations.

2.52 This means public authorities should build racial equality considerations into the procurement process, to make sure any function that is relevant to the duty meets the requirements of the RRA, whoever carries out the function. Central to

12. *Race equality impact assessment: A step-by-step guide*, CRE website (www.cre.gov.uk/duty/reia/index.html), 2004.

13. See *Public procurement and Race Equality: Guidelines for public authorities*, and *Race Equality and Procurement in Local Government*, both CRE, 2003.

carrying out works or services should be the requirement that the contractor's workforce is capable of providing the service to the standards specified in the contract, including, where appropriate, any racial equality standards.

- 2.53 Procurement by all public authorities in EU member states must follow the basic principles of competition, transparency and non-discrimination (between providers in different member states). To demonstrate the principle of transparency, an invitation to tender by a public authority must list the specific criteria by which it will evaluate tenders, including any criteria relating to the promotion of racial equality, where it is relevant to the subject matter of the contract. The criteria for assessing the successful contractor's performance must also be transparent, and made clear in either the advertisement inviting expressions of interest or the 'invitation to tender' document.
- 2.54 The EC directives and the government's 'best value' regime (see the glossary at Appendix 3) require contracts to be awarded on the basis of the lowest price or the most economically advantageous tender (or best overall long-term value for money). Racial equality considerations, such as how the contractor is proposing to provide suitable services to people from ethnic minorities, and whether the workforce is equipped to do this, are valid considerations in selecting a contractor, where the race equality duty applies to the contract in question.
- 2.55 The EC directives specify the grounds on which prospective contractors may be disqualified; for example, bankruptcy, non-payment of tax or conviction for an offence of grave professional misconduct, including racial discrimination or harassment. Otherwise, they should be assessed as being suitable or unsuitable on the grounds of their technical capacity, and economic and financial standing.

Housing and the Race Relations Act

Planning services

- 2.56 Section 19A of the RRA prohibits discrimination on racial grounds in the way a planning authority carries out its land use functions. For example, if a local authority's planning department refuses planning permission on racial grounds, this would be unlawful direct discrimination.
- 2.57 Gypsies and Travellers who live on unauthorised caravan sites in a movable structure, but have no place where they are entitled to put it or are not permitted to live in it, may be vulnerable to homelessness. Local authorities are expected to take account of the needs of homeless Gypsies and Travellers for site provision in their area, when drawing up their homelessness strategy. An authority that fails to do this could be in breach of its responsibilities under the Homelessness Act 2002. It could also be in breach of its duty to promote race

Example 18

A planning authority responds to pressure from residents objecting to an application for a Gypsy caravan site, because they do not want Gypsies living in the neighbourhood. Gypsies have full protection as a racial group under the RRA and the planning authority is acting unlawfully if it succumbs to pressure and treats racist representations as material grounds for refusing planning permission. Decisions by local authorities on planning applications must be based on their merit in terms of planning; for example, the effects the proposal might have on amenities or on the local environment.

Example 19

A planning committee rejects a proposal for a development that includes affordable housing, in response to local residents' objections to social housing in the area. If people from ethnic minorities are over-represented among people on the council's priority list for housing, the committee's decision could be construed as a failure to meet its statutory duty to promote race equality.

Example 20

A planning authority fails to take account of the needs of its ethnic minority communities in drawing up regeneration plans for the area. This could be construed as a failure to meet its statutory duty to promote race equality, and could lead to enforcement action by the CRE.

equality under the RRA, since it has failed to consider how its policies for carrying out a function that is relevant to the duty – to house the homeless – affect a particular racial group. This could lead to enforcement action by the CRE.¹⁴

Providing services

- 2.58 Section 20 of the RRA makes it unlawful for a person who provides goods, facilities or services to the public or to a section of the public to discriminate against, or harass, a person who wants to obtain or use them, on racial grounds. This includes refusing or deliberately failing to provide any of the goods, facilities or services in question; or refusing or deliberately failing to provide goods,

14. For further information, see the England and Wales-based *Gypsies and Travellers: A Strategy for the CRE*, CRE, 2004, and the 'Code of Practice on Gypsies and Travellers' (CRE, forthcoming).

Example 21

A bank limits its mortgage loans to a maximum of 80 per cent of the value of a property in areas with large ethnic minority populations, compared with 95 per cent of the value of the property in white areas. There is no objective evidence that the properties in ethnic minority areas pose a greater lending risk. This could be indirectly discriminatory.

Example 22

A lettings agency doesn't give information on certain properties to black applicants. This is direct discrimination. A CRE formal investigation,¹⁵ based on a programme of testing for discrimination by lettings agents, found that nearly 21 per cent of lettings agencies discriminated on racial grounds. One agency had a nationality question on the application form, indicating that it accepted discriminatory instructions from private landlords.

Example 23

A council discriminates directly when it refuses to accept a booking for a wedding reception from a Romany Gypsy, on the assumption that the family and guests will cause trouble. [*Smith and Smith v Cheltenham BC, Avery, Lambert and Hogg*, 7 June 1999 (CN755478) (unreported), Bristol County Court, HHJ Rutherford]

Example 24

A property management agent consistently provides a poorer repairs and maintenance service to ethnic minority tenants than to other tenants whose property he manages. This is direct discrimination.

Example 25

An estate agent discriminates directly by failing to give information about properties for sale to telephone callers with Asian accents.

Example 26

An estate agency employee makes racist remarks to a prospective house buyer of African origin. The buyer complains to the branch manager, but the remarks continue. This is racial harassment.

¹⁵ Sorry, It's Gone: Testing for racial discrimination in the private rented housing sector, CRE 1990.

Example 27

A valuer knowingly undervalues a particular property, because the seller is from a particular racial group. This is direct discrimination.

Example 28

An insurance company refuses to provide home insurance policies in a certain part of the inner city. Most of the residents in that area are from ethnic minorities. The company has no objective evidence that it is taking a greater risk in that area. This may be indirectly discriminatory.

facilities or services of similar quality, or in a similar way, or on similar terms as are normal with other members of the public or sections of the public.

- 2.59 This section of the RRA covers hotel and boarding house accommodation; home insurance and mortgage lending; local authority services, such as housing advice and housing renovation grants; and trade or professional services provided by estate agents, lettings and accommodation agents, surveyors or valuers, property managing agents, solicitors, and others.

Management, lettings and sales

Landlords

- 2.60 Under section 21 of the RRA, it is unlawful for all landlords, private or social, to discriminate against a person, or harass them, on racial grounds in either the management or letting of premises, except in very limited circumstances.¹⁶ As well as ordinary rented accommodation, 'premises' include hostels, student accommodation and temporary accommodation for the homeless.
- 2.61 Landlords may not discriminate against, or harass, an applicant or tenant, on racial grounds:
- by refusing to rent premises;
 - in the terms on which they offer premises;

16. The Race Relations Act (Amendment) Regulations 2003 partly abolished the exception for small dwellings (see the glossary at Appendix 3) which permitted landlords and sellers to discriminate when letting or selling premises where they lived themselves, and if the premises were small. Discrimination is not permitted on grounds of race or ethnic or national origins, although it is still permitted on grounds of colour or nationality. However, even when such discrimination is permitted, the landlord or seller cannot use the services of a lettings agent or estate agent to discriminate on his or her behalf, nor place a discriminatory advertisement.

Example 29

A landlady discriminates directly by charging a higher rent, and asking for a larger deposit from black tenants, than from white tenants.

Example 30

A local authority generally allocates the worst properties to homeless applicants, whereas tenants transferring to another council property receive better properties. Ethnic minority applicants are over-represented in the homeless category. This policy would be indirectly discriminatory, unless the council could justify it objectively, on non-racial grounds, as well as unlawful under the Housing Act 1996.

Example 31

A housing association's allocation policy gives priority for re-housing to tenants' sons and daughters. If the racial profile of tenants does not reflect the racial profile of people in housing need in the association's catchment area, the policy could disadvantage prospective ethnic minority tenants in greater need of housing, and could be unlawful indirect discrimination.

- c. in the way they treat someone, compared with others in need of such premises;
- d. in the way they make benefits or facilities available to tenants, or by refusing to provide those benefits and facilities – benefits and facilities include repairs, maintenance, car parking, and dealing with complaints of racial harassment or discrimination; and
- e. by evicting tenants or occupiers, or subjecting them to any other detriment.

Sellers and property developers

- 2.62 Section 21 of the RRA makes it unlawful for owners of property, including residential property developers, to discriminate against, or harass, a person on racial grounds in:
- a. the terms on which they offer the premises;
 - b. by refusing his or her application for those premises; and
 - c. in the way they treat that person, compared with others in need of the same or similar premises.

Example 32

A developer only offers black buyers properties that are not immediately visible to the public, and refuses to sell them properties at the entrance to a new building scheme. The developer believes that white buyers will be deterred by the presence of black residents. This is direct discrimination.

- 2.63 Discrimination on grounds of colour or nationality in the disposal of a property is only permitted by the person who owns the premises or has an interest in them, and only if he or she wholly occupies them. However, discrimination would still be unlawful if he or she uses an estate agent to dispose of the property, or publishes an advertisement, or if the premises are small (see footnote 16, p 30, and the glossary at Appendix 3).

Subletting

- 2.64 Section 24 of the RRA makes it unlawful for landlords and others to discriminate on racial grounds against a person who applies to sublet a tenancy, or to harass them, by withholding consent or a licence to sublet premises. It is unlawful to discriminate, regardless of the size of the premises (unless the person is covered by the statutory exception for small dwellings; see footnote 16, p 30, and the glossary at Appendix 3), or whether the person withholding consent lives on the premises.

Example 33

If a tenant wants to sublet her flat to an Asian family, and needs her landlord's agreement, the landlord would be discriminating directly if he withheld that consent on racial grounds.

Estate Agents Act 1979

- 2.65 This Act gives the Office of Fair Trading (OFT) the power to prohibit any person from doing estate agency work, if the OFT is satisfied that that person has unlawfully discriminated against, or harassed, someone on racial grounds in the course of the work.¹⁷
- 2.66 The CRE has a duty to give the OFT any information about:
- a finding of racial discrimination or harassment in an individual case;

17. Section 3(1)(b) and schedule 1, paragraph 2, Estate Agents Act 1979.

- b. the issue of a non-discrimination notice;
- c. an order or injunction restraining an estate agent from discriminating.

Consumer Credit Act 1974

2.67 Under this Act, estate agents or property developers involved in arranging mortgages or other credit facilities for property purchases must obtain a licence from the OFT. The OFT can refuse, revoke, or not renew a licence, if there is evidence that the applicant for, or the holder of, the licence has discriminated on grounds of colour, race or ethnic or national origins in the course of their business (nationality is excluded).

3

*Housing and
good practice*

3

Housing and good practice

Introduction

- 3.1 This chapter gives practical advice on how housing organisations and agencies can avoid unlawful racial discrimination and harassment, and promote good race relations. The chapter covers nine broad aspects of housing:
- a. governance and the role of governing bodies;
 - b. new and improved housing, rented and non-rented;
 - c. sales and lettings;
 - d. neighbourhood development and community cohesion;
 - e. mortgage lending and insurance;
 - f. tenancy and housing management;
 - g. racial harassment and anti-social behaviour;
 - h. contractors and procurement; and
 - i. involvement of residents and tenants.
- 3.2 Because of the nature of the legislation, especially the RRA as it applies to public authorities (and indirectly to other social housing agencies such as housing associations), the emphasis of the code is inevitably on the public sector. However, many of the issues, and much of the guidance, also apply to housing in the private sector. A short summary of the code will be available, drawing out its implications for private housing organisations and landlords.
- 3.3 The guidance in this code builds on steps that have already been taken to promote equality, by regulatory bodies such as the Housing Corporation, the Audit Commission and other agencies. It draws extensively on examples of good practice, not only in England but from other parts of the UK, too. While examples and guidance that could date quickly have been avoided, the areas covered by this code will change over time, and, inevitably, some of the references will become less relevant. However, the principles should continue to have resonance and relevance for the foreseeable future.
- 3.4 The concept of community cohesion has become increasingly relevant to the promotion of good race relations and the creation of stable, successful communities. The code suggests how housing organisations and agencies might

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build on it; for example, to develop better relations between local communities and certain groups, such as asylum seekers, refugees and Gypsies and Travellers, who have experienced growing harassment and violence.

- 3.5 Each section in this chapter ends with a list of the main outcomes that housing organisations and agencies should be working towards. They represent the achievable and measurable results of following the code's recommendations, and should complement other performance or audit systems that housing organisations might be using.
- 3.6 The code deals with all aspects of housing, and the various stages of its development and use. However, it is important to remember that, although the steps taken to promote racial equality will depend on the nature of the housing organisation, its role, sector, area of operation and size, racial equality should be seen as a corporate issue. A strategy for working towards racial equality should be an essential part of the organisation's planning framework, with race equality impact assessments routinely carried out on new housing policies and projects. The scope and nature of such a racial equality strategy will depend on the housing organisation, and its size,¹⁸ and should take account of any codes of practice and regulatory arrangements the organisation is bound by, such as the Housing Corporation's regulatory code, the Audit Commission's inspection framework, and the National Association of Estate Agents' code of practice.
- 3.7 Housing organisations should consider the following guidelines in developing a racial equality housing strategy and putting it into practice.
 - a. Racial equality, and equality more generally, should be one of the organisation's core values and should be reflected in any mission statement it might adopt.
 - b. Leadership and commitment from the board, councillors, and senior managers should be secured at all stages of the racial equality strategy, from development to realisation.
 - c. The organisation's functions and policies should be audited and reviewed, to make sure they cover all housing needs in the area served, and the information used to develop a racial equality strategy and action plan.
 - d. The organisation should consult staff and local communities, including recent arrivals and traditionally excluded groups, such as Gypsies and Travellers, in developing its racial equality strategy and action plan.
 - e. The organisation's housing plans and arrangements should be based on up-to-date information about the housing needs of people from all the communities in the area it serves.

18. The Housing Corporation has produced guidance on race and diversity that will be useful for small housing organisations (forthcoming).

- f. The organisation should make sure information about its services and its racial equality strategy reaches people from all communities.
 - g. The organisation's staff should be trained to provide an equal service to all customers, regardless of their racial group.
 - h. The organisation should keep its racial equality strategy and action plan under regular review, and revise it as necessary.
 - i. The organisation's progress in achieving racial equality should be monitored and evaluated against the work and achievements of other housing organisations, and good practice promoted as widely as possible.
- 3.8 The nine broad areas looked at in detail in the rest of this chapter each contain the following:
- a. background, including any legal requirements;
 - b. areas of potential discrimination and disadvantage;
 - c. recommendations on good practice; and
 - d. key outcomes, based on the evidence.

A. GOVERNANCE AND THE ROLE OF GOVERNING BODIES

Background and legal requirements

- 3.9 Governance is concerned with how organisations are run, who runs them and who is accountable for their acts or failures to act. Good governance is a precondition for consistent action to promote racial equality. Key figures are likely to include board members, local authority councillors, the chief executive and senior managers. The nature of the leadership will depend on the roles and functions of the leaders, and on whether they are appointed or elected. The CRE's revised statutory 'Code of Practice on Racial Equality in Employment' (forthcoming) covers general employment matters, so this code deals only briefly with the recruitment and appointment of board members.
- 3.10 Board members and councillors set the vision, direction and standards of an organisation. They are liable if things go wrong. They are also ultimately responsible for the actions and activities of the organisation's staff, and for the services it provides. They will be responsible for any cases of racial discrimination taken against the organisation, unless they can show they have taken all practicable steps to prevent it. They therefore play an essential role in ensuring that an organisation follows the RRA and promotes good race relations.

Areas of potential discrimination and disadvantage

- 3.11 **Recruitment and appointment of board members.** Research shows that the board members of housing organisations tend not to reflect the ethnic and racial composition of the population the organisation serves. It also shows that a sizeable number of organisations still rely on informal recruitment methods, especially by word of mouth. This can disadvantage, and even discriminate against, people from some racial groups.
- 3.12 **Induction and training.** Do the organisation's leading decision-makers understand their responsibilities under the RRA?
- 3.13 **Working methods.** How does the leadership meet its responsibilities for promoting racial equality in the organisation, take the lead in this area, evaluate performance and progress, and discharge its responsibilities under the RRA?

Recommendations on good practice

- 3.14 Housing organisations should have clear procedures for recruiting board members, and should advertise posts as widely as possible. The organisation may want to set targets, and take steps to attract people from racial groups that are under-represented in the organisation (see 'positive action' at Appendix 1). The recruitment of board members, and the composition of the board, should be regularly monitored, by racial group.
- 3.15 Housing organisations should have formal induction procedures for all staff in decision-making roles, including board members. The procedures should cover their responsibilities under the RRA, and racial equality more generally. Leaders should also receive training on racial equality matters, so that they are able to take informed decisions, and assess progress in this area.
- 3.16 The leaders of housing organisations should make sure the organisation's commitment to racial equality is given high priority; that its strategies are monitored, by racial group, and reviewed; and that projects and initiatives are given proper support, to achieve their aims.

Key outcomes

- 3.17 The housing organisation has effective and fair recruitment systems for appointing board members and other leaders.
- 3.18 The board broadly reflects the different communities the organisation serves.

- 3.19 The leaders of the organisation are aware of their responsibilities under the RRA, and each member knows what is expected of him or her. Staff are clear about the stand the organisation's leaders have taken on questions of racial equality.
- 3.20 It can be demonstrated that the organisation's leaders are meeting their responsibilities under the RRA, and are actively advancing the organisation's strategy for racial equality.
- 3.21 Regular progress reports on racial equality are presented to the leaders of the organisation for consideration and decision.

B. NEW AND IMPROVED HOUSING

Background and legal requirements

- 3.22 It is unlawful to discriminate directly on racial grounds, or to have policies and procedures that are indirectly discriminatory and effectively bar people from a particular racial group (or groups) from access to new or improved housing (see paras 2.5, 2.13 and 2.14). This applies to all housing providers, public and private, including housing associations, landlords and developers of residential housing.
- 3.23 Section 19A of the RRA also makes it unlawful to discriminate on racial grounds in the area of planning.
- 3.24 Under the duty to promote race equality, public authorities must assess the way policies they are proposing, including strategies and plans, are likely to affect different racial groups, including groups that have been overlooked, such as Gypsies and Travellers. Public authorities must also consult people who are likely to be affected by their policies, and take account of any particular needs (see para 2.45b).

Areas of potential discrimination and disadvantage

- 3.25 **Funding and grants.** Are funding decisions about grants made fairly and equitably? The organisation should take steps to make sure its decisions do not have an adverse impact on a particular racial group (or groups).
- 3.26 **Planning.** Are the organisation's strategic planning decisions free of unlawful racial discrimination? Has proper consideration been given to the possible effects of the organisation's housing strategies and plans on different racial groups, before final decisions are taken?

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- 3.27 **Improvement programmes and temporary accommodation.** Have any arrangements to re-house tenants or residents as part of an improvement or decanting programme been made without discriminating unlawfully between racial groups? Do the arrangements take account of the needs of particular groups?
- 3.28 **Assessment of need.** Has the organisation carried out an audit of housing needs in the area it serves? Does the organisation's assessment of housing need reflect the differing needs of all ethnic groups in the area? Are these reflected in its strategic plans? Failure to do this could amount to indirect discrimination (see paras 2.13 and 2.14).
- 3.29 **Development and design.** Does the organisation have procedures for considering people's preferences for certain areas, and the implications of particular religious or cultural practices for design, when developing house-building programmes?

Recommendations on good practice

- 3.30 Proposals to fund or develop new housing, caravan sites and improvement programmes should be assessed for their likely effects on racial equality (see para 2.46b), if the housing organisation is bound by the race equality duty. The projects should then be monitored regularly for their actual effects on different racial groups (see para 2.46c).
- 3.31 Planning decisions should be monitored by racial group to make sure they do not result in unlawful racial discrimination (see paras 4.7 – 4.9).
- 3.32 Housing organisations should develop a strategy for assessing housing needs in the areas they serve. This is required of public housing authorities under the RRA, and under some regulatory approaches. The strategy, which should reflect any contributions from partners, staff and local communities during consultation, should inform all stages of the planning and development process. The following factors should form part of any assessment of housing needs:
- information provided by different communities, including Gypsies and Travellers;
 - preferences for certain areas;
 - special considerations, including, for example, the number of bedrooms, or any design modifications needed to meet religious or cultural requirements; and
 - information from other sources, such as national and local studies, or the organisation's housing lists, or from any specially-commissioned survey of unmet needs.

- 3.33 Housing organisations should draw up procedures for using their assessments of need to develop specific housing projects, including bids for funding, and partnership proposals.
- 3.34 Any temporary re-housing arrangements – for example, decanting programmes – should be monitored by racial group and evaluated in the light of reaction from residents or tenants.
- 3.35 Satisfaction surveys, and other arrangements to learn what residents, tenants, applicants for housing and related services and others in the community think, will be invaluable in assessing a housing organisation's strategy for promoting racial equality.

Key outcomes

- 3.36 All planners have received training on racial equality and take account of it when making planning decisions. If there is evidence that a policy could result in racial inequalities, the housing organisation considers the reasons for the inequalities and decides whether they can be justified. If the inequalities cannot be justified, the organisation considers changes to the policy, and monitors it, to make sure it is achieving the desired outcome.
- 3.37 The housing organisation has a good understanding of the needs of all the communities it serves.
- 3.38 Programmes for new and improved housing stock (especially when the organisation is a listed public authority) are based on the audited needs of local communities, including ethnic minority communities.
- 3.39 The housing organisation can give examples of good practice, which it shares with other agencies.
- 3.40 Customer surveys, and other information, show that people from ethnic minorities are as satisfied with the housing organisation's services as people from other groups.

C. SALES AND LETTINGS

Background and legal requirements

- 3.41 It is unlawful to discriminate directly on racial grounds (but see also paras 2.60 – 2.62 and footnote 16) or to have policies or procedures, including policies or procedures on access to information, that make it disproportionately difficult for

people from a particular racial group (or groups) to obtain housing. The legislation applies to estate agents, local authorities, housing associations, valuers and surveyors and other housing service providers in both the public and private sectors.

Example 34

A local council (or housing association) fails to make sure that information about its lettings services reaches people from all racial groups; for example, by omitting to advertise the service in outlets which it knows are preferred by ethnic minority residents. This could amount to indirect discrimination.

Example 35

A valuer discriminates directly, by giving a lower valuation of a property, based on the seller's racial group.

Example 36

A surveyor discriminates directly, by refusing to survey a property, because the buyer is from a particular racial group.

Example 37

A housing association's allocation policy gives priority to some types of applicant over others, such as tenants seeking transfers. This could have adverse effects on a particular racial group (or groups) and could amount to indirect discrimination. It would therefore need to be carefully considered, and the justification for the policy tested against any possible discriminatory effects.

Example 38

Analysis of a council's housing allocations shows that people from certain racial groups are consistently offered inferior accommodation. This constitutes direct discrimination.

Example 39

An estate agent discriminates directly, by showing an Asian and a white buyer different selections of properties. This is not based on each buyer's preferences, but on whether the area in question is 'white' or 'Asian'.

- 3.42 It is unlawful to segregate people by racial group in the way housing is provided, even if the segregation leads to better living conditions for those who have been segregated. However, the segregation of racial groups which results from individuals' and households' choices will not in itself be unlawful (see para 2.9).
- 3.43 The RRA also gives public authorities specific duties to promote race equality (see paras 2.43 – 2.49).

Areas of potential discrimination and disadvantage

- 3.44 **Information about services.** Are all applicants, regardless of racial group, given the same information about sales and lettings? Are staff aware of their responsibilities under the RRA?
- 3.45 **Valuations and surveys.** Are these carried out in the same way, and on the same terms, for all racial groups? Are staff aware of their responsibilities under the RRA?
- 3.46 **Access.** Is access to the organisation's housing system non-discriminatory? Are any of the systems informal or restrictive, for example, systems that rely on 'word of mouth' information and recommendations, with the result that vacancies are filled primarily by residents who are mainly from one racial group spreading the word among their friends and families?
- 3.47 **Lettings and quality.** Does the organisation use non-discriminatory procedures and criteria for letting accommodation? For example, have steps been taken to make sure that the system for 'bidding' for properties under 'choice-based' lettings schemes (see the glossary at Appendix 3) does not put a particular racial group (or groups) at a disadvantage.
- 3.48 **Nomination arrangements.** Does the organisation's system for referring housing applicants to other social landlords put applicants from a particular racial group (or groups) at a disadvantage? Are housing applicants from all racial groups fairly represented among the organisation's nominations?
- 3.49 **Assessment of housing applicants.** Do housing officers assess applicants' housing needs fairly? Have staff been trained to recognise how prejudice and stereotyping can influence an assessment?
- 3.50 **Segregation.** Has the housing organisation taken steps to make sure its allocation policies and practices do not lead to segregation? This is a complex area and will include taking account of positive preferences for particular areas, for example because the applicants want to be near family or friends or religious or

cultural services and facilities, or because they want to avoid areas where they might be at risk of racial harassment.

- 3.51 **Type of property.** Is the housing organisation able to meet diverse needs? For example, does its housing stock include properties with four or more bedrooms that would be suitable for larger families, a frequent characteristic of some racial groups?
- 3.52 **Advice services.** Have the organisation's housing advisors been trained to understand the circumstances and housing needs of particular racial groups, and to deal sympathetically with them? Are the staff who give advice on the organisation's housing services representative of the communities it serves?

Recommendations on good practice

- 3.53 All housing organisations should understand their responsibilities as employers under the RRA; principally, that it is unlawful to discriminate against someone, on racial grounds, either directly or indirectly, or to harass them. Their staff should also be aware of the racial equality approaches of relevant regulatory bodies, such as the Audit Commission and the Housing Corporation, and any associated codes of practice, regulatory arrangements and responsibilities.
- 3.54 Housing organisations should review their operating systems, including the eligibility criteria they use for different types of housing, and make sure they are not potentially discriminatory. Public authorities should identify those functions and policies that are relevant to meeting the duty to promote racial equality, monitor their effects, and assess the likely impact of any new relevant policy proposals on racial equality.
- 3.55 Nomination arrangements (generally between local authorities and housing associations) and any referral systems, including lettings based on applicants' preferences, and 'choice-based' lettings (see the glossary at Appendix 3), where applicants bid for properties, should be assessed to make sure they do not discriminate against housing applicants from a particular racial group (or groups).
- 3.56 Staff should be trained to recognise and avoid prejudice and stereotyping when assessing applications for housing. They should also be trained to understand the needs of different communities, including Gypsies and Travellers.
- 3.57 Housing organisations (especially those providing social housing) should make sure all their information and communication systems – telephone, written, web-based or face-to-face – reach people from all racial groups.
- 3.58 Satisfaction surveys and questionnaires on specific initiatives should be used, possibly as part of a broader survey of housing in the area, to make sure people from all racial groups, including ethnic minorities, are satisfied that they are receiving a fair and equitable service.

- 3.59 Housing organisations should keep their records on applicants' housing needs and preferences up to date, and make sure their lettings and offers of accommodation take these into account.
- 3.60 Housing organisations should make sure their policies do not lead to segregation. Working closely with other local organisations, including ethnic minority community organisations, they should take steps to deal with security matters in all neighbourhoods, so that no one feels they must avoid certain areas. The aim should be to promote all neighbourhoods as desirable places to live for all racial groups.¹⁹
- 3.61 Housing organisations (especially public authorities, see para 2.46c) should make sure they have effective systems for monitoring, by racial group, the way their policies are working in the following areas:
- nomination and referral systems;
 - decisions about allocating housing between different types of applicant, for example applicants for transfer, homeless applicants, and applicants bidding for properties under 'choice-based' letting schemes (see the glossary at Appendix 3);
 - lettings (including 'choice-based' lettings), analysed by time spent waiting for an offer, number of offers made, refusals, preferences (for location and type of accommodation), and quality; and
 - complaints and outcomes.

Housing organisations should consider setting targets, based on any significant racial disparities revealed through monitoring (see para 4.9f).

Key outcomes

- 3.62 Ethnic minority applicants are re-housed in proportion to their representation among applicants, taking into account different preferences and needs.
- 3.63 Information about housing services is available, on request, in the languages used in the housing organisation's catchment area.
- 3.64 The housing organisation has good links with local ethnic minority communities, and uses these to improve its services.
- 3.65 The housing organisation can show that its housing systems work fairly and equitably for people from all racial groups.

19. See D Robinson et al, *How Housing Management can contribute to community cohesion* Chartered Institute of Housing, 2004; and R Blackaby, *Community Cohesion and Housing: A good practice guide*, Chartered Institute of Housing and Housing Corporation, 2004

- 3.66 The housing organisation's staff have been trained on racial equality generally, as well as on the race equality duty, and other responsibilities under the RRA.
- 3.67 The housing organisation's monitoring systems work well, providing reliable information about local housing needs, and how these are met.
- 3.68 People from all racial groups are treated fairly, and to high standards, at all stages of the housing and re-housing process.
- 3.69 Feedback shows that people are equally satisfied with the services they have received, regardless of racial group.

D. NEIGHBOURHOOD DEVELOPMENT AND COMMUNITY COHESION

Background and legal requirements

- 3.70 It is unlawful to discriminate on racial grounds in the way decisions are made on development initiatives involving neighbourhood renewal and sustainability. The RRA gives public authorities specific duties to help them meet the statutory general duty to promote race equality (see paras 2.43 – 2.48). The third part of the general duty, which involves promoting good race relations, is especially relevant to neighbourhood development and community cohesion.
- 3.71 Community cohesion has been defined as:²⁰
- A common vision and a sense of belonging for all communities
 - A diversity of people with different backgrounds and circumstances are appreciated and positively valued
 - Those from different backgrounds have similar life opportunities
 - Strong and positive relationships are being developed between people from different backgrounds in the workplace, in the streets and within neighbourhoods.
- 3.72 Housing organisations which consider the question of community cohesion as part of any action they take to develop neighbourhoods are more likely to be able to avoid segregation; support Gypsies and Travellers, asylum seekers, refugees and other new migrants; encourage residents to get involved; and deal with tensions between communities or neighbourhoods, including anti-social behaviour.

20. See *Community Cohesion: An action guide: Guidance for local authorities*, Local Government Association et al, 2004.

Areas of potential discrimination and disadvantage

- 3.73 **Consultation.** Are all communities, including ethnic minority communities, consulted about neighbourhood or renewal initiatives, and invited to get involved?
- 3.74 **Analysis of needs.** Are all needs, including needs among ethnic minority communities, considered as part of the assessment and planning process?
- 3.75 **Community cohesion.** Has the issue of community cohesion, and the guidance²¹ available in this area, been taken into account; for example, when carrying out impact assessments, or developing and reviewing strategies or policies?
- 3.76 **Community or neighbourhood tensions.** Have forums been set up to discuss local concerns, including anti-social behaviour, and to deal with potential disputes between communities?
- 3.77 **Monitoring and evaluation.** Have arrangements been made to monitor, by racial group, the different stages of the housing and re-housing process, and the effects of new housing projects and schemes on different racial groups?

Recommendations on good practice

- 3.78 The discipline of carrying out race equality impact assessments should be an essential part of the process of developing new housing policies and programmes, including the individual phases of larger housing development programmes. The aim should be to make sure that regeneration programmes, for example, are based on a thorough audit and analysis of housing needs.
- 3.79 Race equality impact assessments of proposals for neighbourhood renewal programmes should consider the following:
- segregation;
 - asylum seekers and refugees;
 - faith groups;
 - Gypsies and Travellers;
 - the role of local residents; and

21. See *Community Cohesion: Advice for those designing and developing area-based initiatives (ABIs)* ODPM, 2003.

3. Housing and good practice

- f. how to deal with possible tensions between communities or neighbourhoods, including anti-social behaviour.
- 3.80 Housing organisations should make arrangements for consulting all the communities in the area it serves, including ethnic minority communities. They should also make sure representatives of these communities are included in steering groups or partnerships.
- 3.81 Housing organisations should take steps to get people from ethnic minority communities involved; for example, in providing translation or interpreting services; or in outreach work with other local organisations and agencies; or in distributing information about vacancies for specialist staff.
- 3.82 The assessment of housing needs among all the communities the organisation serves, including ethnic minority communities, should be an essential part of the review and planning stages of any initiatives developed and funded in this area.
- 3.83 Training on racial equality should cover community cohesion issues, especially for staff involved in development and neighbourhood renewal work.
- 3.84 Housing organisations should monitor decisions at each stage of the housing process, by racial group, and by applicants' needs and preferences, as expressed in their application forms, and through any consultation exercises.

Key outcomes

- 3.85 The needs of any ethnic minority communities in the areas served by the housing organisation have been considered at the earliest stages of developing new housing or housing renewal programmes.
- 3.86 Ethnic minority communities have been consulted, and encouraged to get involved in renewal and regeneration initiatives.
- 3.87 Staff have received racial equality training, and understand their responsibilities under the RRA.
- 3.88 Community cohesion is considered an essential part of renewal and regeneration initiatives, and projects are monitored, by racial group, and evaluated.
- 3.89 Satisfaction surveys and feedback from those who use the organisation's services show similar levels of satisfaction between ethnic minority and other residents.
- 3.90 The housing organisation has effective monitoring and evaluation systems.

E. MORTGAGE LENDING AND INSURANCE

Background and legal requirements

- 3.91 It is unlawful for financial institutions or agents acting on their behalf to discriminate against a person on racial grounds, directly or indirectly, or to harass them, in providing finance for the purchase of property, or in their lending criteria; or for insurers to discriminate in the way they provide insurance services in the area of housing.

Example 40

A bank refusing to lend money for a house purchase to particular individuals, because of their racial group, would be discriminating directly.

Example 41

A bank refuses loans or insurance to residents in certain postal areas, which have large ethnic minority populations. Unless the bank can give objective reasons for its practice, it could be found liable for indirect discrimination.

Example 42

A bank only lends to applicants who have lived in the UK for a minimum period. This rule would disproportionately affect people from a racial group that has migrated to the UK recently. Unless the bank can justify its policy with objective evidence of the risk it would otherwise run, the policy could be indirectly discriminatory.

Areas of potential discrimination and disadvantage

- 3.92 **Lending and insurance criteria.** Have steps been taken to make sure the criteria for loans and insurance do not discriminate on racial grounds?
- 3.93 **Training.** Have staff (particularly staff in public organisations, see para 2.46f) been trained in their responsibilities under the RRA?

3. Housing and good practice

3.94 **Advertising and communication.** Have lenders and insurance companies made sure that information about their services is readily available, and, on request, in the languages used in the areas they serve? This not only ensures that people from ethnic minorities are not disadvantaged but also helps to bring in more customers.

Recommendations on good practice

3.95 Lenders and insurers should make clear, through any codes of practice they follow, that they or their representatives will not discriminate unlawfully in the way services are provided, or harass anyone, on racial grounds.

3.96 Staff should be trained on their responsibilities under the RRA, and what this means in practice. Any complaints about racial discrimination or harassment should be dealt with promptly and seriously, and monitored by racial group.

3.97 Lenders and insurers should make sure the criteria they use to offer loans and insurance are not indirectly discriminatory, and do not disproportionately disadvantage a particular racial group (or groups).

3.98 Lenders and insurers do not have to set up ethnic monitoring systems, but they should consider carrying out regular surveys of all their customers, so that they are alert to any concerns. The responses would also throw light on trends, patterns and gaps in their services.

3.99 Lenders and insurers should make sure their publicity material is readily accessible by customers, and potential customers, from all racial groups.

Key outcomes

3.100 The lender or insurer does not use any criteria or practices that could disproportionately disadvantage people from a particular racial group (or groups).

3.101 The lender or insurer has issued written instructions and guidance for staff (possibly reflecting the guidelines in an industry code) on the relevant legislation, including the RRA. The guidance emphasises that staff should not discriminate unlawfully against someone on racial grounds, or harass them, or act on racially discriminatory instructions.

3.102 The lender or insurer has an increasing number of ethnic minority customers.

F. TENANCY AND HOUSING MANAGEMENT

Background and legal requirements

- 3.103 It is unlawful for a housing organisation to discriminate unlawfully against someone, or harass them, on racial grounds, in the way it makes housing available; in its lettings; in the quality of accommodation it offers; and in services it provides, such as care services and supported housing.
- 3.104 The RRA also gives public authorities specific duties to promote race equality (see paras 2.43 – 2.49).

Example 43

A landlord discriminates directly, by responding more sympathetically to requests for maintenance or repairs from one racial group than another, irrespective of the relative urgency of the request.

Example 44

A private contractor, who deliberately does a worse job for Asian tenants than tenants from any other group, because he doesn't like Asians, is directly discriminating on racial grounds.

Example 45

A housing organisation is discriminating directly when it takes firmer action on rent arrears with ethnic minority tenants than with others.

Example 46

An organisation may be discriminating unlawfully, if its policies and practices result in people from ethnic minority communities being less aware of their benefit entitlements than others, and therefore being unable to claim those entitlements.

Example 47,

An organisation may be discriminating unlawfully if its ethnic minority tenants are given bad advice, due to the prejudices of a member of staff.

Areas of potential discrimination and disadvantage

3.105 **Maintenance and repair services.** Are these made available without unlawful racial discrimination or harassment, whether the services are provided directly or through a contractor?

3.106 **Planning services.** Are ethnic minority communities involved in planning and designing services?

3.107 **Rent arrears.** Are rent arrears and rent collection dealt with in the same way, regardless of tenants' racial groups?

Example 48

'Supporting People' is a programme of grants, administered by local authorities, to provide supported housing and care services for vulnerable people. A range of statutory, voluntary, private and other organisations are involved. The programme is based on a unified policy approach to ensuring equality, and uses review and assessment, commissioning and purchasing to pursue the following aims:

- a. to assess the needs and barriers experienced by ethnic minority older people, ethnic minority young people, asylum seekers, people with mental health problems, and groups that have been traditionally excluded; and
- b. to work with partners to meet the needs of ethnic minority communities.

Operating principles

- Service providers should be explicitly and actively committed to making services equally available to all.
- Services should meet the religious, language, dietary, and cultural needs of those who use, or might use, them.
- All staff should be trained, and all agencies associated with a 'Supporting People' initiative should have robust policies and procedures on racial equality, and on dealing with racial harassment.
- Service providers must have arrangements for collecting and analysing data on racial groups, and using the information to tackle any shortfalls in services.
- Service providers should consider how they might use section 35 of the RRA (see paras 2.38 – 2.40 and Appendix 1) to provide supported housing for people from ethnic minorities.

- 3.108 **Benefits.** Are people from all racial groups equally aware of their benefit entitlements? For example, is relevant information available in ways that allow those who do not speak English well to know and understand their rights?
- 3.109 **Consultation and involvement.** Are all residents and tenants, including those from hard-to-reach groups, such as Gypsies and Travellers, consulted about the housing organisation's proposals? Are they represented in any forums or arrangements for participation?
- 3.110 **Advice services.** Is the advice given to ethnic minority tenants and residents consistent with the advice given to tenants and residents from other groups? Have staff been trained to work with all communities, and to take account of any specific needs they might have?
- 3.111 **Supported housing and care services.** Have housing initiatives and programmes taken full account of the needs and preferences of people from ethnic minorities? Are programmes being developed fairly and equitably?

Recommendations on good practice

- 3.112 Housing organisations should make sure they are able to communicate effectively with all their tenants and residents, and make arrangements to translate material, if needed.
- 3.113 All housing staff should be given training on racial equality, so that they understand their responsibilities under the RRA, and how prejudice and stereotyping can lead to unlawful racial discrimination or harassment.
- 3.114 Housing organisations should make sure the contractors they use for repairs or maintenance have racial equality policies that complement those of the organisation (see section H, page 59), and know that discriminatory behaviour or harassment of tenants is unacceptable.
- 3.115 Repairs needed as a result of harassment or anti-social behaviour should be given priority.
- 3.116 Tenants should be advised on how to make a complaint if they believe a repair was carried out with less care because of their racial group, and made aware of the measures that will be taken to put matters right.
- 3.117 Housing organisations should consider using campaigns, possibly directed at individual communities, to make sure tenants and residents are aware of their rights, including any benefit entitlements.

3. Housing and good practice

- 3.118 Housing organisations should monitor their services in the principal areas of housing, including rent arrears, eviction, repairs, advice and benefits, and complaints about their services. The information should be analysed, and steps taken to deal with any significant disparities between racial groups.
- 3.119 Smaller housing organisations, which do not find it practical to monitor intensively or in detail, should consider carrying out customer (and potential customer) surveys, to see if they are meeting all the housing needs in the area they serve, and take steps to deal with any significant disparities between racial groups. The surveys should also measure satisfaction with the services they provide.

Key outcomes

- 3.120 Tenants and residents receive the same levels of service, irrespective of their racial group.
- 3.121 Satisfaction with services is similar across all racial groups.
- 3.122 Contractors' approaches to racial equality are consistent with those of the housing organisation.
- 3.123 All tenants and residents are aware of, and take up, benefit entitlements, regardless of racial group. Complaints do not reveal any significant disparities between racial groups.
- 3.124 The needs of people from different racial groups for supported housing and related care services are systematically considered and projects are developed specifically to meet those needs.
- 3.125 The housing organisation monitors its services, by racial group, and deals with any shortfalls or gaps revealed by the data.
- 3.126 All tenants and residents are able to access supported housing and repair services, regardless of their racial group.

G. RACIAL HARASSMENT AND ANTI-SOCIAL BEHAVIOUR

Background and legal requirements

- 3.127 Harassment on grounds of race or ethnic or national origins is unlawful in the field of housing and related services. Harassment on grounds of colour or nationality would constitute direct discrimination (see paras 2.26 – 2.30).

The RRA defines harassment as unwanted behaviour, which has the purpose or effect of:

- a. violating a person's dignity; or
- b. creating an intimidating, hostile, degrading, humiliating or offensive environment for that person.

The definition of 'offensive' is mainly a subjective one (see para 2.28).

3.128 Legislation on anti-social behaviour (especially the Anti-social Behaviour Act 2003 and Part 6 of the Housing Act 2004) is also relevant when dealing with racial harassment.²²

Areas of potential discrimination and disadvantage

3.129 **Harassment and anti-social behaviour.** Does the housing organisation, whatever its size, have a policy for dealing with harassment and anti-social behaviour? Does it give enough attention to racial equality? Are tenants and residents aware of the policy, and do they know that harassment could be grounds for eviction? Other questions relevant to a policy for dealing with harassment include the following:

- a. how has the policy been publicised?
- b. have other agencies, such as the police, been involved in drawing up the policy, and helping to put it into effect?
- c. how does the organisation deal with complaints?
- d. have staff been trained to work in this area?
- e. how are victims and witnesses supported?
- f. what action does the organisation take against perpetrators?
- g. how is the policy monitored and evaluated?
- h. has the organisation developed standards for dealing with harassment, based on successful initiatives?

Recommendations on good practice

3.130 Considerable guidance has been developed on how to deal with harassment, much of it based on experience and case law, including the use of anti-social behaviour legislation. An effective anti-harassment strategy should include the following:

22. For further information on racial harassment and the law see www.together.gov.uk or contact the action line 0870 2202000. For good practice in dealing with anti-social behaviour, see the Local Government Ombudsman Special Report: *Neighbour nuisance and anti-social behaviour*, 2005.

3. Housing and good practice

- a. a clear definition of harassment, including examples; procedures for dealing with it; and written guidance and training for staff;
- b. a specific provision in tenancy agreements prohibiting conduct that would constitute harassment, and breach of which would constitute grounds for eviction – tenants and residents should be no doubt that the housing organisation views incidents of harassment with the utmost seriousness; and, as far as possible, tenants' and residents' associations should be involved in getting this message across;
- c. landlords working closely with the police, local education authorities and other relevant agencies, including local ethnic minority groups and victim support agencies;
- d. arrangements to support victims – this is as important in areas where the ethnic minority population is small as those where it is substantial;
- e. firm action against perpetrators, including the use of anti-social behaviour legislation, if necessary;
- f. monitoring of the strategy at every stage, including the use of anti-social behaviour powers, and discussion of the findings with other agencies (see c. above);
- g. feedback from all concerned on the way a particular case has been handled, and on how the problem of harassment is being approached more generally; and
- h. positive steps to support groups that may be especially vulnerable to harassment, including isolated ethnic minority families in rural areas, refugees and asylum seekers, and other newcomers.

Key outcomes

- 3.131 The housing organisation has a comprehensive anti-harassment policy, and procedures for dealing with it that are appropriate to its size and other circumstances. The policy also covers support for victims, action against perpetrators and commitment to working with other agencies, such as the police.
- 3.132 Staff have been trained, and are clear about what is expected of them when dealing with a complaint of racial harassment.
- 3.133 Monitoring reports show that racial harassment cases have been responded to quickly and effectively, at every stage.
- 3.134 Feedback from all concerned shows general satisfaction with the way cases have been handled by the housing organisation.
- 3.135 In areas where harassment is a particular problem, there is evidence that the organisation has taken positive steps to deal with it.

H. CONTRACTORS AND PROCUREMENT

Background and legal requirements

- 3.136 The duty to promote race equality applies to procurement by listed public authorities (see paras 2.51 – 2.55). If an authority has identified a function as being relevant to the duty, and has contracted that function out to an external supplier, the authority will still be responsible for meeting the duty.
- 3.137 Contractors must not discriminate unlawfully on racial grounds, but they do not have the same legal obligation as a listed public authority to promote equality of opportunity and good race relations. This means public authorities need to make sure racial equality questions are considered during the procurement process, so that all functions that are relevant to the promotion of racial equality meet the requirements of the RRA, regardless of who is carrying them out.
- 3.138 Public authorities, which, for this purpose, include housing associations, must comply with EC procurement rules. This means they must make sure that, where relevant, anti-discrimination and equal opportunity requirements are explicitly specified in the procurement process, from the start.
- 3.139 The duty to promote race equality applies indirectly to housing associations (see para 2.44), because they are regulated by the Housing Corporation, which is directly covered by the RRA duties.

Areas of potential discrimination and disadvantage

- 3.140 **Tendering.** Are racial equality considerations built into the housing organisation's tendering processes?
- 3.141 **Supervision and management of contracts.** How are racial equality policies and strategies assessed, within overall supervision and assessment of each contract? If problems of discrimination or harassment arise with subcontractors, how does the housing organisation secure their performance?
- 3.142 **Monitoring and evaluation.** What has the contractor achieved in respect of racial equality? How does this compare with the housing organisation's achievements?
- 3.143 **Positive steps.** What steps does the housing organisation take to make sure businesses run by people from ethnic minorities are on tender lists, both directly, as contractors, and indirectly, as subcontractors?

Recommendations on good practice

- 3.144 As part of the tendering process, housing organisations should give notice that contractors will be expected to demonstrate their commitment to racial equality, both in principle and practice, when this is relevant to the subject of the contract. Housing organisations should make sure they have effective systems for evaluating racial equality, and that their own tendering processes are fair; for example, have ethnic minority businesses, been given the opportunity to apply to be placed on any tendering lists?
- 3.145 Housing organisations should be able to advise contractors as to what is expected of them in the area of racial equality, and should make this clear in the contract.
- 3.146 Housing organisations should try to reach an agreement with their contractors as to how any racial equality requirements will be met by their subcontractors (if relevant).
- 3.147 Housing organisations should monitor the way their contractors are meeting any racial equality requirements, both in service delivery and employment,²³ and take steps to encourage improvement or enforce compliance if their performance falls short.
- 3.148 Housing organisations should consider how they might encourage ethnic minority contractors to bid directly for contracts, or as subcontractors for work already contracted out.

Key outcomes

- 3.149 Tenders and contracts include references to racial equality, and make clear what is required of the contractor and any subcontractors.
- 3.150 Racial equality is assessed as part of the overall arrangements for supervising the contract.
- 3.151 Contractors are able to give concrete examples of promoting racial equality, both in their employment practices and in the way they provide services.
- 3.152 The housing organisation can point to contracts won by ethnic minority businesses, or steps taken to encourage them to tender.

23. See the CRE's revised statutory 'Code of Practice on Racial Equality in Employment' (forthcoming).

I. INVOLVEMENT OF RESIDENTS AND TENANTS

Background and legal requirements

3.153 It is unlawful to discriminate against, or harass, tenants or residents, on racial grounds, when consulting them, or getting them involved in the management of a property. The RRA gives listed public authorities a specific duty to consult anyone who is likely to be affected by their policies, and to make sure a particular racial group (or groups) is not likely to be adversely affected (see paras 2.46 b and c).

3.154 The question of community cohesion is also likely to be important.

Areas of potential discrimination and disadvantage

3.155 **Involvement of residents and tenants.** Has the housing organisation taken adequate steps to include residents and tenants from all racial groups in consultations, and to involve them in the policy and decision-making process? Is this made explicit in the organisation's strategy for consultation and participation?

3.156 **Recognition of residents' and tenants' organisations.** Have criteria for recognising residents' and tenants' organisations been drawn up and agreed between landlords and residents and tenants? Have steps been taken to make sure residents' and tenants' organisations are representative of all residents and tenants, including those from ethnic minorities?

3.157 **Training.** Have residents' and tenants' representatives, and any staff concerned, been given racial equality training, including training on the RRA?

3.158 **Monitoring and evaluation.** Have arrangements been made to monitor and evaluate involvement and participation in residents' and tenants' organisations, by racial group? What steps have been taken to deal with any significant disparities between racial groups?

Recommendations on good practice

3.159 Housing organisations should draw up a strategy for involving residents and tenants, including those from ethnic minorities, in their decision-making processes. The strategy should include arrangements for consultation, involvement, feedback and participation.

3.160 Housing organisations should take steps to involve ethnic minority communities; for example, by translating material, working with individual groups, and appointing specialist staff to work with them.

3. Housing and good practice

- 3.161 Housing organisations should agree criteria for granting recognition to residents' and tenants' organisations, as bodies that are truly representative of all racial groups. Alternatively, housing organisations should help residents' and tenants' organisations to meet the criteria.
- 3.162 Housing organisations should help train representatives of residents' and tenants' organisations (and any staff working with them). The training should include their legal responsibilities under the RRA, and racial equality matters more generally.
- 3.163 Housing organisations should make sure their policies and procedures take account of the cultural backgrounds of ethnic minority residents and tenants in any arrangements to involve or consult them.
- 3.164 Housing organisations should be able to show what they have done to encourage ethnic minority involvement.
- 3.165 Housing organisations' strategies and policies should show an awareness of any obstacles ethnic minority residents and tenants might face in getting involved in initiatives, and include ways of overcoming them.
- 3.166 Housing organisations should monitor involvement by racial group and deal with any significant disparities between racial groups.
- 3.167 Housing organisations should publicise and promote good practice.

Key outcomes

- 3.168 Ethnic minority representation in tenants' and residents' organisations is an explicit aim of the housing organisation's strategy for increasing tenants' and residents' involvement. It is set out in 'local authority tenant participation contracts' or 'housing association resident involvement statements'.
- 3.169 Residents and tenants from ethnic minorities take part in consultation exercises, and are included in arrangements for other kinds of participation. There is evidence that their views are being taken into account.
- 3.170 Residents and tenants, and staff involved in policy and decision-making, have been trained on the RRA, and on racial equality more generally.
- 3.171 All residents and tenants, including those from ethnic minorities, are satisfied with the organisation's arrangements to get them involved.

4

*Training, monitoring and
impact assessment*

4

Training, monitoring and impact assessment

- 4.1 Training, monitoring, and impact assessment are essential to meeting the recommendations of this code.

Training

- 4.2 Training has an important role in ensuring that residents, tenants, the housing organisation's staff, and other agencies understand why the organisation has developed a strategy for racial equality in housing, what it means in practice, and the part they can play in giving effect to it. Employment tribunals and courts will take account of the steps an organisation has taken to train its staff on the RRA in any legal proceedings brought against the organisation under the RRA.
- 4.3 However, training does not take place in a vacuum. It is part of a more comprehensive approach to racial equality as an essential part of the culture of the organisation, extending to all its activities, policies and procedures, and to the way it is managed and led. The training will be more effective if trainees can see that it helps them to do their job better.
- 4.4 While there is no single recommended approach to racial equality training, most programmes are likely to include the basic components of raising awareness, providing information and developing and improving skills.
- 4.5 Racial equality training, whether delivered in-house or by external agencies, can be expensive and an organisation needs to be clear about what it wants from it. Training that is not planned carefully could be a waste of resources; worse, it could alienate staff. Housing organisations will find it useful to consider the following questions before embarking on any training programme.
- What are the aims of the training? What, precisely, do people need to know, and why?
 - What do people know already, and what do they need to know better?
 - Is the training concerned with providing a general understanding of racial equality issues and the RRA?
 - Should it be provided as a stand-alone course or as part of other specialist training, such as training on monitoring or impact assessment?

- e. What methods would be most effective; for example, distance learning, face to-face training, briefings, guidance on the intranet, external training courses, or a mixture of all these?
 - f. How will the training be evaluated?
- 4.6 Whatever approach a housing organisation adopts, it should consider the following as essential components of any training programme.
- a. An explanation of the organisation's approach to racial equality, and equality more generally, and why it is important.
 - b. What the racial equality strategy means in practice, along with background information, for example, the facts and figures behind racial inequality, and the false assumptions behind racial and national stereotypes.
 - c. The law and what it means in practice.
 - d. The business case for racial equality, not only in financial terms but also in relation to customers, staff and other stakeholders.
 - e. The roles and responsibilities of staff in carrying out the organisation's policy on racial equality.

Monitoring

- 4.7 Monitoring by racial group is no longer controversial. Many housing organisations monitor the effects of their housing policies and strategies as a matter of course. Many also routinely include questions about housing needs as part of the data they collect,²⁴ in order to provide a fair and equitable service to all.
- 4.8 Monitoring consists of four stages:
- a. developing a system of collecting, recording and maintaining information about racial and ethnic background;
 - b. activating the system;
 - c. analysing the data; and
 - d. acting on the findings.

- 4.9 The CRE has published detailed advice on monitoring by racial group.²⁵ The key points for housing organisations are listed below.
- a. Monitoring systems should be tailored to the housing organisation's size and circumstances. A small organisation, with only a few lettings, should not need more than a simple system. The aim should be to be able to retrieve and

24. Special exemptions have been included in the Data Protection Act 1998 and EU legislation, to permit the processing of equality data in the UK.

25. *Ethnic Monitoring: A guide for public authorities* (CRE, 2002).

analyse the information quickly, and to compare it with information selected as a benchmark for comparison, such as the 2001 Census,²⁶ or data from other similar local or national organisations.

- b. Housing organisations should use the ethnic categories set out in the 2001 Census, supplemented by more specific categories, if needed. If there is little useful information about particular groups, such as Gypsies and Travellers, organisations should consider using targeted surveys.
- c. If the analysis reveals significant disparities between particular racial groups – for example, a housing organisation may find that, in an area with a large Asian population, very few Asians are being nominated by a local authority to a housing association, or that sheltered units have very few Asian tenants – the organisation should investigate the possible causes, such as organisational barriers to access, communication problems, failure to recognise a particular housing need, or the organisation's reputation among certain communities, and take steps to deal with them.
- d. Apart from continuous monitoring of its main activities, such as access or allocation, the housing organisation might consider occasional snapshot surveys; for example, to assess the take-up of benefits by residents and tenants; or to make sure a programme of repairs has been managed fairly. Customer satisfaction surveys, including focused surveys on specific aspects of a service, also form an important part of the monitoring process.
- e. Staff, residents and tenants, new applicants and other agencies should understand why the organisation has introduced monitoring, and should be assured that all information is treated as strictly confidential. They should be kept informed of progress, the results of monitoring, and any steps that are being taken to deal with any significant inequalities in services. Failure to do this could lead to mistrust, and even cynicism, as well as allegations that some groups are being favoured over others. Openness is essential to the success of a racial equality strategy.
- f. Monitoring by racial group, especially by housing organisations in the public sector, often entails setting 'targets'. It is important to emphasise that targets are not quotas, which are unlawful. Targets are merely a method of managing progress towards a particular end. They are probably better described as 'objectives' or 'goals', set as part of the organisation's racial equality strategy. For example, if an organisation finds that it is allocating fewer properties to people from a particular racial group, it may want to take steps to ensure equality of treatment. These might include looking at the way its systems are operating, or considering different ways of reaching and involving the group in question, or providing fresh racial equality training for certain staff.

26. See the Office of National Statistics' website (www.statistics.gov.uk) and *Housing and Black and Minority Ethnic Communities: Review of the Evidence Base*, ODPM, 2003.

Impact assessment

- 4.10 The RRA gives public authorities a specific duty to assess the impact a proposed policy is likely to have on racial equality, and to consult those who are likely to be affected by the policy, before it is formally introduced. The aim is to ensure that public services are genuinely public, and that public authorities take account of this within their decision-making processes.
- 4.11 'Impact assessment' is best done in a systematic way, by asking whether a proposed policy will affect all racial groups equally, or whether it could have an adverse impact on a particular group (or groups). The 'policy' might be a local housing strategy or a specific proposal to change the way a local service is provided (see Example 49). The duty covers policies on employment and services.

Example 49

A local authority, which runs a number of neighbourhood 'walk-in' advice centres, is proposing to close down some of the centres and provide a more centralised service. The impetus for the proposal is to make the service more cost-effective, and to improve it. The local authority is planning to carry out an impact assessment of its new policy proposal, to see if the closures could affect people from a particular racial group (or groups) negatively. If they do, the authority will have to consider whether it can justify the closures, or whether it can find an alternative solution that would avoid or reduce any adverse impact.

- 4.12 The CRE has published online guidance on impact assessment for public authorities.²⁷ Its aim is to help authorities to:
- take account of the needs, circumstances and experiences of those likely to be affected by a proposed policy;
 - identify any actual or potential inequalities, as well as possible unlawful discrimination, between different racial groups; and
 - consider other ways of achieving the aims of the policy, in order to avoid or reduce any possible adverse impact.
- 4.13 It should be noted that a policy could be drawn up as part of a programme of work to fill gaps in services or meet the concerns or needs of a particular racial group. The policy would have a positive effect on the group in question, and would be justifiable in the wider context of ensuring equality of access to a service between all the groups the organisation serves.

27. 'Race equality impact assessment: A step-by-step guide', CRE website (www.cre.gov.uk/duty/reia/index.html), 2004.

4.14 An impact assessment should be carried out as soon as a new policy is considered. Ideally, it should be a routine part of the development of the policy.

Types of impact assessment

4.15 An impact assessment could involve two stages.

a. **Initial assessment or screening.** All policy proposals should be screened for their likely effects on racial equality. The screening should be based on the best available data on the population the organisation serves, and on its staff's knowledge and experience. The organisation should consider the following questions during the screening process.

- i. Could the policy have an adverse impact on a particular racial group (or groups)?
- ii. Could the policy damage relations between different racial groups?
- iii. Could the policy be an opportunity to meet certain needs, or provide greater equality of opportunity or treatment, or improve relations between different racial groups?

If the answers to all three questions are no, the policy would have no clear implications for racial equality, and the impact assessment process would end at this point. Otherwise, the policy would need to be fully assessed.

b. **Full impact assessment.** A full impact assessment will require more detailed examination of the likely impact of a proposed policy. The organisation should bear in mind the following.

- i. For public authorities, carrying out an impact assessment is a specific duty under the RRA (see para 2.46b), and the CRE has the power to enforce it (see para 2.50).
- ii. Impact assessments are best carried out by staff who understand the policy areas in question, and are able to assess the available information, and recommend any research that might be needed.
- iii. Assessments should not become over-complex or bureaucratic. As far as possible, knowledge and experience of carrying out assessments should be shared with other organisations.
- iv. Impact assessment should be built into the regular process of policy development and risk assessment.
- v. Once a policy has been adopted, with or without modification, to reduce any adverse impact, it should be regularly monitored, to make sure its actual effects do not exacerbate or result in inequalities between racial groups. Any substantive change in the policy (see Example 49, p 68) should be treated as a new policy proposal.

4. Training, monitoring and impact assessment

Appendices

Appendix 1

Exceptions under the Race Relations Act

Positive action [Sections 35, 37 and 38 of the RRA]

The term 'positive action' refers to measures that may lawfully be taken to meet special needs or to encourage people from a racial group that is under-represented in particular work, or among the post-holders of a membership organisation (see also paras 2.38 – 2.40).

Charities [Section 34 of the RRA]

Charities with a provision in their charitable instrument allowing them to confer benefits on people from a particular racial group can do so, as long as the provision is not defined by reference to colour.

National security [Section 42 of the RRA]

Discrimination on racial grounds by an employer may be permitted if it is done to protect national security, and if it can be justified as such.

Employment for training in skills to be used outside Britain

Discrimination on grounds of colour or nationality, but not race or ethnic or national origins, is allowed when employing someone who does not normally live in Britain, in order to train him or her in skills that will only be used outside Britain.

Genuine occupational requirements and genuine occupational qualifications [Sections 4A and 5 of the RRA]

Discrimination on racial grounds is allowed in certain limited circumstances, where being from a particular racial group is 'a genuine occupational requirement' (GOR) or a 'genuine occupational qualification' (GOQ). The GOR exception may not be used to discriminate on grounds of colour or nationality.

GOR and GOQ exceptions are very restrictively defined and it is for the employer to justify selecting or promoting or (in the case of GORs only) dismissing in a way that would otherwise constitute unlawful racial discrimination.

Employers are strongly advised to seek legal advice on using a GOR or GOQ exception, before advertising the post. All advertisements indicating an intention to discriminate are unlawful, unless a statutory exception applies.

Acts done pursuant to statutory authority

Discrimination on grounds of colour, nationality, place of ordinary residence, or the length of time present or resident in or outside the UK, is allowed, if it is necessary in order to fulfil a statutory obligation.

Appendix 2

Guidance and websites

The lists below are not exhaustive. They will be periodically updated on the CRE website (www.cre.gov.uk).

Guidance

Audit Commission. 2004. *The Journey to Race Equality*

Chartered Institute of Housing (CIH). 2000. Blackaby and Chahal. *Black and Minority Ethnic Housing Strategies*

CIH. 2002. *Crime, Disorder and Anti-social Behaviour*

CIH. 2003. *Equality and Diversity Briefing*

CIH and the Housing Corporation. 2004. Blackaby. *Community Cohesion and Housing: A good practice guide*

CIH. 2004. *How Housing Management Can Contribute to Community Cohesion*

CIH and the Housing Corporation. 2004. Blackaby. *Community Cohesion Housing: A good practice guide*

Commission for Racial Equality (CRE). 2002. *Statutory Code of Practice on the Duty to Promote Race Equality*

CRE. 2002. *Ethnic Monitoring: A guide for public authorities*

CRE. 2002. *Performance Guidelines for Local Authorities*

CRE. 2002. *A Framework for Inspectorates*

CRE. 2003. *Public Procurement and Race Equality: Guidelines for public authorities*

CRE. 2003. *Public Procurement and Race Equality: Briefing for suppliers*

CRE. 2003. *Race Equality and Procurement in Local Government: A guide for authorities and contractors*

CRE. 2004. *Gypsies and Travellers: A strategy for the CRE in England and Wales*

CRE. 2004. *Public Authorities and Partnerships*

CRE. 2004. 'Race equality impact assessment: A step-by-step guide' (www.cre.gov.uk)

Department for Transport, Local Government and the Regions (DTLR) and the Housing Corporation. 2001. *Tackling Racial Harassment: A code of practice for social landlords*

DTLR. 2001. *Promoting Racial Equality*

Housing Corporation. 2002. *The Way Forward: Our approach to regulation: regulatory code and guidance*

Housing Corporation. 2002. *Race Equality and Diversity: Regulatory code. Good Practice Note 4*

Lemos and Crane. 2004. *Implementing the Code of Practice for Social Landlords on Tackling Racial Harassment: Guidance and examples*

Lemos and Crane. 2003. *Alternatives for Eviction for Perpetrators of Racial Harassment*

Lemos and Crane. 2005. *Community Conflict: Cause and action*

Local Government Association (LGA) et al. 2003. *Building a Picture of Community Cohesion*

LGA et al. 2004. *Community Cohesion: An action guide for local authorities*

National Housing Federation (NHF). 1998. *Accommodating Diversity: Housing design in a multi-cultural society*

NHF. 2004. *Housing and Support Options for Refugees and Asylum Seekers*

NFH and Federation of Black Housing Organisations. 2001. Jefferey and Seager. *Race Equality: A framework for review and action*

NHF. 2002. *Race Equality Code of Practice for Housing Associations*

NHF. 2004. *Community Cohesion: In business for neighbourhoods*

Office of the Deputy Prime Minister (ODPM). 2004. *Tackling Homelessness Amongst Black and Minority Ethnic People: A development guide*

ODPM. 2004. *Empowering Communities, Improving Housing, Involving Black and Minority Ethnic Tenants and Communities*

ODPM. 2004. *Ethnicity Monitoring: Involvement. Guidance for partnerships on monitoring involvement*

ODPM. 2004. *Ethnic Monitoring: Benefit. Guidance for partnerships on monitoring benefit*

ODPM. 2004. *Piloting Choice-based Lettings and Evaluation*

Websites

ACAS

www.acas.org.uk

Association of Residential Letting Agents (ARLA)

www.arla.co.uk

BMEspark – Black minority ethnic / supporting people action research and knowledge

www.bmespark.org.uk

Chartered Institute of Personnel and Development:

www.cipd.co.uk

Commission for Racial Equality

www.cre.gov.uk

Community Planning Taskforce

www.communityplanning.org

De Mountford University Race Toolkit

www.dmuracetoolkit.com

Disability Rights Commission

www.drc-gb.org.uk

Equal Opportunities Commission

www.eoc.org.uk

Housing Corporation

www.housingcorp.gov.uk

Housemark

www.housemark.co.uk

Local Government Ombudsman

www.lgo.org.uk

National Association of Estate Agents

www.naea.co.uk

National Housing Federation

www.housing.org.uk

Race Action Net

www.raceactionnet.co.uk

Refugee Council

www.refugeecouncil.org.uk

Tenants Participation Advisory Service

www.tpas.org.uk

TOGETHER: Tackling anti-social behaviour

www.together.gov.uk

Appendix 3

Glossary

Adverse Impact

A significant difference in patterns of representation or outcomes between racial groups, with the difference amounting to a detriment for one or more racial groups.

Best Value

A statutory duty, under which local authorities are required to ensure that their management and business practices deliver better and more responsive public services.

Charitable instrument

An enactment or deed passed or made for charitable purposes, or an enactment or deed so far as it relates to charitable purposes.

Choice-based lettings

Schemes operated by social landlords to increase choice in lettings. Vacant properties are advertised and bids invited from new housing applicants and existing tenants. Bids are made on the basis of points awarded for housing need, or banding, or length of time spent waiting for re-housing, or a combination of all three, depending on the local housing market. The tenancy is then awarded to the person with the highest bid.

Commission for Racial Equality

A non-departmental public body set up under the RRA to work to eliminate unlawful racial discrimination; promote equality of opportunity and good relations between people from different racial groups; and keep under review the working of the RRA and, if necessary, make proposals for amending it.

Community cohesion

A government initiative, developed in response to the disturbances in 2001 in the north of England, which gives local authorities a leading role in helping to realise: ‘a common vision, a sense of belonging, and positive relationships between people from different backgrounds among the elements that help create cohesive communities.’

Data use

Data can be lawfully processed, with appropriate safeguards for the rights and freedoms of data subjects, in order to identify or keep under review the existence or absence of equality of opportunity or treatment between people from different racial groups.

Direct discrimination

Less favourable treatment of a person, on racial grounds, compared with the treatment of a person from another racial group in the same or similar circumstances.

Formal investigation

An investigation by the CRE under sections 49 – 52 of the RRA. The investigation may be of a ‘named person’, who the CRE suspects might be discriminating unlawfully on racial grounds; or a general investigation to examine practice in an area of activity. The CRE can make recommendations and, in the case of a ‘named’ investigation, issue a non-discrimination notice (see below) for five years.

Functions

The full range of a public authority’s duties and powers.

General duty

The duty on public authorities under section 71(1) of the RRA, to have due regard to the need to eliminate unlawful racial discrimination, and to promote equality of opportunity and good relations between people from different racial groups. Also referred to as the ‘race equality duty’.

Genuine occupational qualification and genuine occupational requirement

- An employer may discriminate on grounds of colour or nationality only in respect of certain types of work where, being from a particular racial group is a genuine occupational qualification for the job.
- An employer may discriminate on grounds of race or ethnic or national origins only in situations where, because of the nature of the employment or the context in which it is carried out, being of a particular race or ethnic or national origin is a genuine and determining occupational requirement.

Harassment

Unwanted behaviour that has the purpose or effect of violating a person’s dignity or creates a degrading, humiliating, hostile, intimidating or offensive environment for them. Harassment on grounds of race or ethnic or national origins is a specific unlawful act under the RRA. Harassment on other grounds may involve less favourable treatment and may be unlawful direct discrimination.

Housing association

A housing organisation registered with the Housing Corporation, a ‘registered social landlord’.

Impact assessment

A systematic way of determining whether a proposed policy, in employment or service delivery, affects all racial groups equally, or whether it could have an adverse impact on one or more racial groups.

Indicators

Measures set by agencies such as the Audit Commission and the Welsh Assembly Government, to assess the performance of local authorities and housing associations.

Indirect discrimination

- grounds of race or ethnic or national origins: the use of an apparently non-discriminatory ‘provision, criterion or practice’, which puts people of a particular race or ethnic or national origins at a particular disadvantage compared with others, unless it can be shown that the provision, criterion or practice is a proportionate means of achieving a legitimate end.
- all racial grounds (but effectively grounds of colour or nationality): the use of an apparently non-discriminatory requirement or condition, which applies equally to everyone, but can only be met by a considerably smaller proportion of people of a particular racial group than the proportion of people from other groups that can meet it, is to the detriment of someone from that group, and cannot be objectively justified on non-racial grounds.

Institutional racism

A concept introduced by the Stephen Lawrence Inquiry Report and defined as: *The collective failure of an organisation to provide appropriate and professional service to people because of their colour, culture or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racial stereotyping which disadvantages minority ethnic people.* The concept has no legal force.

Monitoring

A process used to collect, store and analyse data about people’s racial groups.

Nomination scheme

An arrangement by which local authorities negotiate with local housing associations for the right to nominate applicants from their housing lists to housing associations for re-housing.

Non-discrimination notice

A notice which the CRE may serve on an organisation in the course of a named formal investigation (see above), if the CRE finds evidence of unlawful racial discrimination or harassment.

Positive action

Measures that employers and service providers may lawfully take under sections 35, 37 and 38 of the RRA, to provide people with services that meet any special needs they might have by way of education, training or welfare; or to train or encourage people from a racial group that is under-represented in particular work.

Procurement

The process by which a person enters into a contract with an outside supplier to provide goods, facilities or services. The term encompasses the full range of contracts, including private finance initiative (PFI) projects and public private partnerships (PPP). It does not include the decision to ‘buy’ from an outside supplier.

Public authority

For the purposes of this code, a body named, defined or described in schedule 1a to the RRA or, depending on the context, a body named, defined or described in one of the schedules to the Race Relations Act 1976 (Statutory Duties) Order 2001 or the Race Relations Act 1976 (General Statutory Duty) Order 2003. In Scotland, additional public authorities are listed in the Race Relations Act 1976 (Statutory Duties)(Scotland) Order 2002 (SSI No 62) and the Race Relations Act 1976 (Statutory Duties)(Scotland) Amendment Order 2003 (SSI No 566). The term includes all central government departments and their executive agencies and non-departmental bodies, all NHS institutions, the governing bodies of schools and of further education institutions, the Scottish Executive and the Welsh Assembly Government.

Race equality scheme

A timetabled plan setting out how a public authority intends to meet its statutory general duty to eliminate unlawful racial discrimination and promote equality of opportunity and good relations between different racial groups. The scheme should list the functions and policies that have been assessed as being relevant to meeting the duty, and state the arrangements that have been made to assess, consult on and monitor present and proposed policies for any implications they might have for promoting racial equality.

Race Relations Act (RRA)

The Race Relations Act 1976, as amended by the Race Relations (Amendment) Act 2000 and the Race Relations Act 1976 (Amendment) Regulations 2003.

Racial grounds

Grounds of race, colour, nationality (including citizenship) or ethnic or national origins.

Racial group

- Racial groups are groups defined by racial grounds, that is race, colour, nationality, (including citizenship), or ethnic or national origins. All racial groups are protected from unlawful racial discrimination under the RRA. Romany Gypsies, Irish Travellers, Jews and Sikhs have been explicitly recognised by the courts as constituting racial groups for the purposes of the RRA.
- A person may fall into more than one racial group: for example, a 'Nigerian' may be defined by 'race', 'colour', 'ethnic or national origin', and 'nationality'.
- The courts have held that a person's actual racial group may be irrelevant to the way they are treated, and that their racial group may be defined by a discriminator's perception of, or (incorrect) assumptions about, their ethnic or national origins.

Segregation

Segregation on racial grounds is automatically regarded as treating a segregated person less favourably than others. It is unlawful direct discrimination.

Small dwellings

- A dwelling qualifies as a ‘small dwelling’ for the purposes of the RRA if:
- the landlord or near relative (defined as wife or husband, parent or child, grandparent or grandchild, brother or sister) lives and intends to continue living on the premises; and
 - the landlord or near relative shares accommodation with the tenant, other than storage space or means of access; for example, a bathroom or kitchen; and
 - there is, in addition to the accommodation occupied by the landlord or near relative, accommodation for no more than two other separate households under separate letting agreements, or six individual boarders or tenants.

The exemption under section 22 of the RRA applies only to landlords and not to accommodation agencies acting on their behalf.

Specific duties

Duties placed on selected public authorities bound by the statutory general duty (see above) under the Race Relations Act 1976 (Statutory Duties) Order 2001 or the Race Relations Act 1976 (Statutory Duties) Order 2003. In Scotland, additional public authorities are listed in the Race Relations Act 1976 (Statutory Duties)(Scotland) Order 2002 (SSI No 62) and the Race Relations Act 1976 (Statutory Duties)(Scotland) Amendment Order 2003 (SSI No 566). The current list of authorities is available on the Home Office and CRE websites. The duties include the production and publication of a ‘race equality scheme’ (see above), and the monitoring, by racial group, of specified aspects of employment.

Statutory code of practice

Practical guidance that has been approved by the secretary of state and laid before parliament. The code is admissible in evidence in a tribunal or a court of law and must be taken into account when it is relevant to any question arising in legal proceedings under the relevant legislation, in this case, the RRA.

Victimisation

Less favourable treatment of a person because they have brought proceedings under the RRA; or given evidence or information in connection with proceedings brought by anyone under the RRA; or because they have alleged that a person has committed an act which would amount to unlawful discrimination; or because they have otherwise done anything under the RRA in relation to any person, or because they intend to do any of these acts, or are suspected of having done or intending to do them.



COMMISSION FOR
RACIAL EQUALITY

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CRE Mission Statement

We work for a just and integrated society, where diversity is valued. We use both persuasion and our powers under the law to give everyone an equal chance to live free from fear, discrimination, prejudice and racism.

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Published May 2005

ISBN 1 85442 559 5 (PDF version)