



RACE EQUALITY DEFINITIONS¹

Action Plan. A practical and realistic plan, with an agreed timetable and targets, showing how the College is planning to achieve the aims of a policy.

Adverse Impact. Occurs when there is a difference in the representation rates of different racial groups. There is no hard and fast rule for determining the size of the difference that constitutes adverse impact, but a commonly used rule of thumb is the “four-fifths rule”. Under this rule, the success rate of the less successful group should be at least four-fifths of that of the more successful group, that is, if 60% of white learners pass a test, no fewer than 48% of applicants from other racial groups should also pass.

Burden of Proof.

1. *Grounds of race or ethnic or national origins.* If a complainant can prove they were treated less favourably on racial grounds, the employer will have to prove that the difference in treatment was not due in any way to discrimination. If the employer cannot do this, the employment tribunal must uphold the claim.
2. *All racial groups (but principally grounds of colour or nationality).* If the complainant establishes facts from which a tribunal could infer that unlawful racial discrimination on grounds of colour or nationality took place, the tribunal will look to the employer for a satisfactory explanation, and *may* find that discrimination did take place. In effect, this burden of proof will be used in cases of discrimination on grounds of colour or nationality, which are not covered by the definition in paragraph 1 above.

Commission for Racial Equality. The CRE is a non-departmental public body, set up under the Race Relations Act 1976, to work towards the elimination of unlawful racial discrimination; promote equality of opportunity and good race relations; keep under review the working of the RRA 1976; and make proposals for amending it.

Direct Racial Discrimination. Direct discrimination is less favourable treatment of a person on racial grounds compared with the treatment or likely treatment of a person from another racial group in the same or similar circumstances. Racist abuse and harassment are forms of direct discrimination.

Equality and Diversity Impact Measures. EDIMs are a Learning and Skills Council initiative to address equality gaps for example, significant differential participation or achievement rates. They can be stated as a numerical benchmark for planning progress towards a policy goal e.g. to reduce participation, retention and achievement gaps between

¹ Source Commission for Racial Equality, Race Relations Act 1976, Statutory Code of Practice on Racial Equality in Employment, consultation draft, May 2004.

different groups of learners by 5% over a 4 year period, or presented in broad terms e.g. to achieve parity in participation, retention and achievement rates between specific groups of learners over a defined period of time. See also “targets”.

Ethnic group. Defined by the House of Lords as a group that regards itself or is regarded by others as a distinct community by virtue of certain characteristics that will help to distinguish the group from the surrounding community. Two of these characteristics are essential:

1. A long shared history, of which the group is conscious as distinguishing it from other groups, and the memory of which it keeps alive.
2. A cultural tradition of its own, including family and social customs and manners, often but not necessarily associated with religious observance.

Other relevant characteristics (one of which will commonly be found) are:

1. Either a common geographical origin, or descent from a small number of common ancestors.
2. A common language, not necessarily peculiar to the group.
3. A common literature peculiar to the group.
4. A common religion different from that of neighbouring groups or from the general community surrounding it.
5. Being a minority or being an oppressed or a dominant group within a larger community, e.g. a conquered people (e.g. the inhabitants of England after the Norman Conquest) and their conquerors might both be ethnic groups.

Although the House of Lords emphasised the need to interpret the word “ethnic” “relatively widely, in a broad, cultural/historic sense,” it also observed that “the word “ethnic” still retains a racial flavour”. On this basis, tribunals and courts have proceeded to rule that the English, Scots and Welsh, among others, are not racial groups by virtue of distinct “ethnic origins”.

Functions. The full range of a public authority’s duties (and powers if appropriate) e.g. all areas of college activities such as Curriculum, teaching and learning; assessment; the College’s management and governing Corporation; admissions, access and participation; learner support and guidance; behaviour and discipline; partnerships, procurement and community links; training of learners on their responsibilities; staff recruitment, training and career development; training of governors on their responsibilities etc.

General duty. The duty given to public authorities (including FE colleges), under section 71(1) of the RRA 1976, to have due regard to the need to eliminate unlawful discrimination and to promote equality of opportunity and good race relations between people of different

racial groups (referred to in the Code of Practice as the “race equality duty”). The general duty is *obligatory*, it must be met and applied to all *relevant* functions and policies. The weight given to race equality should be in *proportion* to its relevance. The three parts of the duty are complementary and sometimes they may overlap. To achieve compliance the College must meet all three components. The general duty can be enforced through a judicial review.

Genuine occupational qualification or requirement (GOQ or GOR). In exceptional situations, where being from a particular racial group is a determining characteristic of a job, it is unlawful to discriminate on racial grounds. GORs permit discrimination on grounds of race or ethnic or national origins only, but can be used for any job. GOQs permit discrimination on all racial grounds, but may be used only in specified circumstances. In effect, GOQs will be used as an exception for grounds of colour or nationality, which are not covered by GORs.

Harassment. Harassment is unwanted behaviour that has the effect of violating a person’s dignity or creates a degrading, humiliating, hostile, intimidating or offensive working environment. Harassment on grounds of race or ethnic or national origins is a specific offence under the RRA 1976. Harassment on other racial grounds will amount to less favourable treatment and will constitute unlawful direct discrimination.

Indirect racial discrimination.

1. *On the grounds of race, ethnic or national origin.* Indirect discrimination on the grounds of race, ethnic or national origin is the use of an apparently non-discriminatory “provision, criterion or practice” which puts people of a particular race or ethnic or national origin at a particular disadvantage compared to others, unless it can be shown that the provision, criterion or practice is a proportionate means of achieving a legitimate end. This revised definition of indirect discrimination covers formal requirements, conditions and provisions, as well as informal practices, thus widening the circumstances where indirect discrimination can occur.
2. *All racial grounds (but principally grounds of colour or nationality).* Indirect discrimination on grounds of colour or nationality is 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 from a particular racial group, is to the detriment of someone from that group, and cannot be justified objectively. In effect, this definition will be used in cases of discrimination on grounds of colour or nationality, which are not covered by the definition at paragraph 1 above.

Monitoring. A process that involves collecting, storing, analysing and evaluating information, to measure performance, progress or change. Monitoring racial equality involves collecting, storing, analysing and evaluating information about the racial groups people are from.

Nationality. An aspect of a person's identity conveying rights and duties, and defined by a specific legal relationship between an individual and a state, through birth or naturalisation, which is recognised by that state. Article 2 of the European Convention on Nationality defines "nationality" as "the legal bond between a person and a state" which "does not indicate the person's ethnic origin".

National origins. Defined by the Scottish Court of Session as "identifiable elements, both historically and geographically, which at least at some point in time reveals the existence of a nation". National origins are not limited to "nationality" in the legal sense of citizenship of a nation state, which an individual acquires at birth or through naturalisation. E.g. English, Scottish and Welsh people are racial groups, defined by reference to their national origins. National origins may include origins in a nation that no longer exist e.g. Czechoslovakia, or in a "nation" that was never a nation state in the modern sense, such as "the Basque nation" or "the Iroquois nation".

Non-discrimination notice. A notice served by the CRE on an organisation it has investigated under its powers of investigation, if it finds evidence of unlawful racial discrimination.

Partnership. A partnership is a single body that brings together representatives of different sectors and communities e.g. other public authorities, private or voluntary organisations to pursue common aims. College partnership working that involves providing a service either to the public, learners or employees is likely to be relevant to race equality. In these partnerships the College has a duty to ensure that it meets its "general duty" under the Race Relations Act.

Policies. The full range of formal or informal decisions the College makes in carrying out its functions. Any assessment of a policy should therefore include an examination of long-standing "custom and practice" and management decisions, as well as any formal written policy.

Positive action. Action permitted by the RRA 1976 that allows employers and others to provide training and encouragement to people of a particular racial group, if they have been under-represented in particular work during the previous 12 months (sections 37 and 38). See also "under-representation".

Practices. Customary ways in which intentions or policies are actually carried out. They include attitudes and behaviour that could amount to unlawful racial discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping.

Procurement. The process by which a public authority enters into a contract with an external supplier to carry out works or provide goods, facilities and services. The term covers all public authority contracts, including Private Finance Initiative projects and Public Private Partnership projects. It does not include the decision to "buy" from an external supplier.

Proportionate (means). Reasonable means of achieving legitimate ends. See “indirect discrimination”.

Public authority. A body named, defined or described in schedule A to the RRA 1976 or, depending on the context, a body named, defined or described in one of the schedules to the Race Relations Act 1979 (Statutory Duties) Order 2001. The term includes all central government departments and their executive agencies and non-departmental governing bodies, all NHS institutions, the governing bodies of schools and of further and higher educational institutions, the Scottish Executive and the Welsh Assembly government.

Race. The RRA 1976 uses “race” both to describe the catch-all class that receives protection under the Act, that is “racial group”, and as one of the five sub-classes that fall within it. The courts and tribunals have so far not been called to define the term.

Race equality policy. A race equality policy (REP) sets out the College’s arrangements for meetings the general and specific education duties imposed by the Race Relations (Amendment) Act 2000 (RR(A)A 2000). It reflects the circumstances of the College and includes responsibilities and commitments and links to the Race Equality Action Plan which details a timetabled and realistic plan for implementing the policy.

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. A group of people defined by race, colour, nationality and ethnic or national origins. All racial groups are protected from unlawful discrimination. Romany Gypsies, Irish Travellers, Jews and Sikhs have been explicitly recognised by the courts as constituting racial groups for the purposes of the RRA 1976.

Religious discrimination. Discrimination on grounds of religion or belief is not covered by the RRA , unless the discrimination mainly affects people protected from unlawful discrimination on racial grounds. Religious discrimination in employment and training is unlawful under the Employment Equality (Religion or Belief) Regulations 2003.

Segregation. Segregation on racial grounds is automatically regarded as treating a person less favourably than others.

Specific duty. A duty imposed by the Race Relations Act 1976 (Statutory Duties) Order 2001. The College has specific “education” duties. The specific duties focus on how the College can meet its general duty – *they do not replace it*. Under the Race Relations Act, the Commission for Racial Equality has the power to enforce the specific duties.

Statutory code of practice. A document providing practical guidance on the law, approved by Parliament and admissible in evidence in a court of law.

Targets. Numerical benchmarks for planning progress towards a policy goal. Racial equality targets measure progress towards equal participation of all racial groups in an organisation e.g. learners, employees. See “Equality and Diversity Impact Measures”.

Under-representation in an organisation. A situation where, during the previous 12 months, no one from a particular racial group was doing a particular type of work in an organisation, or where the proportion of workers from that racial group doing that work was small, compared to its proportion in the workforce or in the population of the area from which the organisation recruits for that type of work. Section 38 allows employers to provide training exclusively for their workers from the racial group in question, and encouragement exclusively for people from that group.

Vicarious liability. An employer is responsible for the acts of an employee which have been carried out in the course of their employment. This form of responsibility of an employer for the acts of an employee is called “vicarious liability”.

Victimisation. Victimisation is less favourable treatment of a person because they have brought proceedings under the RRA 1976, or are suspected of having done so; or because they have complained of racial discrimination; or because they have given evidence or information on behalf of someone else’s complaint.