

NUT RESPONSE TO THE CRE CONSULTATION ON THE DRAFT CODE OF PRACTICE ON THE DUTY TO PROMOTE RACE EQUALITY AND ACCOMPANYING GUIDANCE

Introduction

1. The National Union of Teachers (NUT) welcomes the opportunity to respond to the Commission for Racial Equality's (CRE) consultation on the draft Code of Practice on the Duty to Promote Race Equality (the Code) and the accompanying guidance.

General Comments

2. Whilst welcoming the detail provided in all the consultation documents, the NUT is concerned that much of the guidance is repetitive and confusing. The NUT believes that the previous, and now superseded, code of practice on education was much clearer and enabled educational institutions to have no doubts as to their duties under the 1976 Race Relations Act.
3. The NUT believes that the Code of Practice would benefit from clear examples of good employment practice and case law.
4. The NUT recognises that the CRE has attempted to develop the Code and the guidance in ways which would minimise bureaucratic burdens on public authorities, including schools. The NUT is concerned, however, that the format of the documents is likely to increase burdens on public authorities and schools. In order to get a full picture of the duties and the guidance, public authorities and schools will have to consider in detail each of the four documents. The NUT believes that it would be preferable to include everything in one document according to the intended audience, for example schools. This would ensure that governing bodies and headteachers have all the information on their duties and guidance on implementation available in one place.
5. In providing guidance to public authorities, the CRE should consider the context in which different organisations work, including their size, current practice and their capacity to meet the duties.
6. The NUT is surprised that the documents do not explicitly place the new duties under the Race Relations (Amendment) Act 2000 within the context of the 1976 Act. This sometimes gives the impression that the legal duty not to discriminate in employment on the grounds of race does not apply to some institutions – for example, schools. The NUT would argue that any statements which assert that the specific employment duty does not apply to schools, should be set firmly in the context of the duties on governing bodies arising from the 1976 Act.

7. The NUT is concerned that the format of the consultation questionnaire does not aid genuine consultation. A series of tick boxes is unlikely to yield information on ways in which the Code can be clear, useful and user-friendly, as well as provide information to public authorities on how to comply with the new duties.
8. The NUT welcomes broadly the thrust of the guidance provided within the consultation documents. This response only includes comments on sections of the consultation documents where the NUT believes that further consideration or advice is needed. The NUT's comments are made particularly in relation to the impact of the Code and accompanying guidance in the field of education.

Statutory Code of Practice on the Duty to Promote Race Equality

General Comments

9. In the Foreword, reference is made to 'institutionalised racism'. The NUT would wish to point out that it is important to be mindful of terminology. The Stephen Lawrence Report referred to 'institutional racism' and not to 'institutionalised racism'. The NUT believes that it is important to be consistent with terminology and would urge the CRE to exercise caution in using the two terms interchangeably.
10. The Glossary at the beginning of the Code is useful. It would, however, be helpful to provide a footnote to the definition of 'indirect racial discrimination' indicating that this may be subject to change when the Government incorporates the EU Race Directive into UK law. The NUT would also suggest that the definition of 'school' is expanded in order to ensure that the governing bodies of all the schools (community, voluntary aided, voluntary controlled and foundation) are in no doubt as to their duty to comply.
11. Throughout the Code, a much clearer distinction needs to be made between what is statutory and what is provided as guidance on good practice. Where the statements in the Code refer to a statutory duty, it is essential that the language used makes clear that it is a duty which has to be complied with.

Chapter 1: Promoting Race Equality: Introduction

12. Paragraph 1.7 states that "the code's aim is to help public authorities avoid legal action by adopting good practice and eliminating racial discrimination". The NUT believes that the tone of this section of the Code is unnecessarily negative. In contrast, the Government's current consultation 'Towards Equality and Diversity: Implementing the Employment and Race Directives' is far more positive in tone and makes the case for equality and diversity in terms of benefits for individuals and for business. Whilst by adopting the Code public authorities could indeed avoid legal action, it is important that the Code is couched in positive terms

and highlights the benefits of promoting race equality. References to the avoidance of legal action should not be given greater prominence in the Code than tackling race discrimination, promoting equal opportunities and good race relations. The avoidance of legal action is a secondary gain in promoting race equality.

Chapter 2: Promoting Race Equality: The Legal Framework

Paragraphs 2.1 - 2.7

13. This section does not state clearly the relationship between the general duty and the specific duties placed upon public authorities. The explanation given in 2.5 could be given more emphasis.
14. The CRE has decided to use the phrase “promotion of race equality” as shorthand for the three parts of the general duty under section 71(1) set out in paragraph 1.1. This shorthand phrase may lead some readers to undervalue the first part of the general duty, i.e. to seek to eliminate unlawful racial discrimination. For example, in paragraph 2.5, the requirement to meet the duty is followed by examples of the specific duties to prepare and publish a Race Equality Scheme and race equality policy and to monitor employment practice. It would be helpful if the first element of the general duty, to seek to eliminate unlawful race discrimination, were referred to specifically.
15. This shortcoming is reflected in other parts of the Code – for example, in Chapters 3 and 4 (see below).

Private or Voluntary Organisations Carrying Out a Public Authority’s Functions (Paragraphs 2.9-2.10)

16. Whilst the NUT welcomes the extension of the application of the general duty on public bodies to promote race equality, and that this will include public functions carried out by private or voluntary organisations, the NUT is concerned that identifying exactly which public bodies would be included is difficult to determine. This is particularly difficult in light of the highly complex way in which the education service is now delivered. The fragmentation of the education service has been exacerbated by the introduction of City Academies, Excellence in Cities and other similar initiatives. Fragmentation in education has also occurred due to the introduction of fair funding mechanisms and their impact on centrally employed teams supported by race equality funding. Issues also arise where parts of the education service have been outsourced and contracted out to organisations from the private and voluntary sectors. There are also relevant issues which will arise in early years education and childcare, where voluntary and private sector nurseries are involved in the provision of early years education.
17. The NUT believes that clarification on the relationship between public procurement and the duty to promote race equality is required.

18. Paragraph 2.10 states that 'if an external service provider is currently delivering a function that is relevant to promote race equality; the authority will need to consider whether the existing arrangements can meet the general and any specific duties.' However, there is no guidance provided on how an authority can achieve this objective. The actions and processes needed to ensure compliance with the duty to promote race equality when a function is contracted out, or involves a partnership, are likely to be radically different than where the local authority is directly responsible. It would, therefore, be helpful if the Guidance to local authorities were more specific about the steps they need to take in such circumstances.

19. The fact that the duty remains with the public authority is regarded by the NUT as a second best position. The best position, in the NUT's view, would be for the general and specific duties to also apply to the private and voluntary sector. The NUT, therefore, takes this opportunity to reiterate its call for an extension to the 2000 Act in order to include the voluntary and private sector within its ambit.

Partnership (Paragraphs 2.11 – 2.13)

20. When working in partnership, as opposed to agreeing contracts for external service delivery, public authorities must ensure that arrangements meet the general duty. It should be emphasised that a failure to do so will be a breach of the duty contained in section 71(1).

Chapter 3: Promoting Race Equality: The General Duty

Guiding Principles (Paragraph 3.2)

21. The guiding principles appear to reflect the second part of the general duty to the exclusion of the first. There is, for example, no explanation of how an assessment of relevance and proportionality should be carried out if there is the possibility of unlawful discrimination. Whilst this is referred to in paragraph 4.21 regarding the Race Equality Scheme, a failure to refer to unlawful discrimination in this Chapter is a missed opportunity to build on existing case law and guidance on the duties of public authorities.

'Relevant'

22. The suggestion in paragraph 3.4 that the assessment "may involve identifying those functions that involve or affect the public" may not be helpful. This statement may lead decision-makers to conclude that the duty is relevant only to functions that involve service provision direct to the public. Rather, the general duty involves assessment of the relevance to all functions. It will, in particular, be necessary to assess the possibility of any policy or practice resulting in any unlawful race discrimination.

'Proportionate'

23. Paragraph 3.5 states that 'the weight given to race equality should be proportionate to its relevance to a particular function'. The NUT believes that the concept of 'proportionate' needs further clarification. A few examples here may be helpful.
24. Whilst recognising that it would not be acceptable for a public authority to claim lack of resources to meet the duty (paragraph 3.6) because meeting the duty is a statutory requirement, it is important for the CRE and the Government to acknowledge the need for resources for implementation and to make adequate provision. It is also important to take into account the fact that some local authorities, with small minority ethnic populations, may find it very difficult to meet the requirements of the Act as a result of lack of expertise in the area of race equality combined with limited resources.

How to Meet the General Duty?

25. This is an important section of the Chapter, setting out the steps that the Code would expect a public authority to take in order to meet the statutory duty in section 71(1). It might usefully be given further prominence in the text.

Assessing Impact and Considering Change (paragraphs 3.14 - 3.16)

26. Whilst the questions posed in paragraph 3.16 may be helpful to assess the effects of a policy, they need to be phrased more clearly. Currently the questions are framed in a way where there seems to be some confusion between the legal definitions of the 'general duty' and 'indirect discrimination'. Again, examples here would be helpful and clarify for public authorities what they need to look at when assessing the effects of a policy on race equality.
27. The third and fourth bullet points might be stronger, as they appear to suggest that a public authority might be able to meet the statutory duty whilst maintaining a policy which has adverse impact but is not objectively justified – i.e. a policy which would be unlawful if challenged.
28. In this context, detailed guidance on justifying adverse impact would be helpful. This could include guidance on conditions under which justification would be appropriate and the steps which could be taken to minimise any adverse impact, where it may be justified.

Chapter 4: Promoting Race Equality: Specific Duties: Policy and Service Delivery

Identifying Relevant Functions and Policies (Paragraphs 4.8 – 4.14)

29. The NUT believes that wide consultation, including with trade unions, is essential if the Race Equality Scheme is to command widespread support. The NUT also believes that it is vital that consultation takes place throughout the process of designing policies rather than on policies which have already started to take shape. In this context, the NUT would suggest that paragraph 4.11 emphasises the need for wide consultation in drawing up the list of a public authority's functions and assessing the relevance of these functions to the duty to promote race equality. Trade unions will have views as to the effect of a range of policies including employment-related matters.

Arrangements for Assessing, and Consulting on, the likely Impact of Proposed Policies

30. In paragraph 4.16 the phrase 'public authorities are expected to' should be replaced with 'public authorities are required to' in order to reflect the statutory nature of the duty. This paragraph should also make reference to the statutory obligations of public authorities to consult with the public and the workforce on certain areas.

Consultation (Paragraphs 4.18 – 4.21)

31. In paragraph 4.19, reference should be made to the need to consult staff and their representatives. A Race Equality Scheme which does not have the support and confidence of staff is unlikely to succeed.

32. Paragraph 4.21 appears to reflect the stated position in paragraph 3.16 that a policy could be unlawful if challenged as not objectively justified, whilst still meeting the duty to pay due regard to the need to eliminate unlawful race discrimination. The guidance needs to clarify the general duty of public authorities not to act unlawfully. The guidance also needs to clarify the necessity for a high standard of objective justification in circumstances where the authority has itself established that unlawful discrimination is a likely result of a policy.

Arrangements for Training Staff

33. The NUT welcomes the duty on public authorities to ensure that staff responsible for meeting the general and the specific duties are aware of these and have the necessary skills to carry them out. The NUT would also argue that training is provided to decision makers in public authorities such as councillors, trust members and members of school governing bodies. The training of decision makers sets a good example for the whole organisation and would ensure that decision makers take account of race equality in a more systematic way.

Chapter 5: Promoting Race Equality: Specific Duties: Employment

34. At the beginning of this chapter it is stated that schools are not bound by the employment duty. However, Appendix 3, which lists the public authorities bound by the employment duty, cites 'governing bodies of educational establishments maintained by local education authorities' as being included. This is clearly not the case and the reference to governing bodies of schools should be removed from this Appendix. Also, as stated in paragraph 5 above, it should be made clear that schools still have to comply with their legal obligations under the 1976 Act.
35. This chapter should clarify the meaning of "staff" in this context. The Race Relations Act 1976 defines 'employment' as including both those employed under a contract of service and a contract personally to execute any work or labour. It also applies to contract workers. The meaning of staff should be clarified to include such workers to ensure that ethnic monitoring is meaningful, by covering all those working at providing a public service.
36. The NUT is surprised that section 5 (2) (b) of the Race Relations Act (Statutory Duties) Order 2001 does not require public bodies to provide monitoring information on staff by grade. The NUT would recommend that the Code and the Guidance remedy this omission.
37. The NUT welcomes the suggestion in this chapter that it would be useful to combine and analyse ethnic monitoring data with other data, for example on gender and disability.
38. The NUT believes that the section on positive action needs to be set out in stronger terms and expanded. It would also be useful to provide examples of positive action in employment here.

Chapter 6: Specific Duties: Educational Institutions

39. Under this section, the NUT is only making some preliminary comments. The NUT's substantial comments on education will be made later in this document in response to the Guide for Schools.
40. In its response to the Home Office Consultation on the Race Relations (Amendment) Act 2000: Proposals for Implementation, the NUT welcomed the proposals to place specific duties to promote race equality on educational establishments, including on schools in England and Wales. The NUT believes that it is important that the duties are translated into positive approaches in education and schools generally rather than becoming mere bureaucratic measures to be complied with. Schools will, therefore, need practical guidance from the DfES on how to promote racial equality in practice.

41. The NUT believes that the application of the specific duty in schools has implications for a substantial financial investment in professional development for all those involved in schools. It is also important that the DfES disseminates models of good practice to schools and provides guidance on how to build on current good practice in order to meet the spirit of the Government's proposals to make a real and lasting impact on the elimination of racial discrimination and the promotion of race equality.
42. The NUT welcomes in the introduction to this section (paragraph 6.1) an explanation of the range of educational institutions to which the specific duty will apply. This will ensure that governing bodies of maintained schools will be clear about their duty to comply. The NUT would urge the CRE to make this clear also in the Guide for Schools.
43. The duty on schools includes the requirement to assess the impact of the policies on pupils, staff and parents. Whilst recognising the need to emphasise the impact on the attainment of pupils from different racial groups, the NUT would recommend that more detailed advice is issued on the assessment of the impact of policies on staff and parents. In the current draft references to staff and parents are very scant. The NUT would recommend that the CRE (in consultation with other partners in education) provide examples of how schools could assess the impact of school policies on staff and parents.

Chapter 7: Enforcement and Partnership: The Role of the Commission for Racial Equality

44. This is a helpful chapter and provides information in a clear and concise manner. The NUT believes that this chapter would be strengthened by clarifying when and how individuals and trade unions can approach the CRE when a duty has not been met by a public authority.

Statutory Code of Practice on the Duty to Promote Race Equality: A Guide for Public Authorities

45. The NUT's response to the Guide for Public Authorities is made in the context of its statements on the need for a single guide for each intended audience as outlined in paragraph 4 above. In general, this Guide is useful, particularly the guidance on the Race Equality Scheme.

Chapter 3: Specific Duties: Race Equality Scheme

What Should the Scheme Include?

46. In this section the suggestions on what should be included in the Race Equality Scheme are helpful. The NUT would recommend that the Scheme should also include details on the resource implications within the action plan. It is also vital that consultation includes staff and their trade unions.

Does the Scheme Need Special Procedures?

47. The NUT recognises that the CRE is mindful of not imposing further burdens on local authorities and has therefore suggested that they should use existing systems and procedures to draw up and monitor their Race Equality Scheme. Whilst existing procedures may be appropriate in most circumstances, this will not always be the case. Existing procedures should be reviewed to ensure that they are robust enough to tackle the new challenges posed by the 2000 Act. A review of procedures will be particularly important where a record of achievement is not apparent.
48. The NUT would recommend that the proposed 'steering group' to oversee the process and to help coordinate different activities in relation to the Scheme, should include other stakeholders, specifically trade unions.

Functions and Policies

What Do We Need to Do?

49. This section advises public authorities that in order to meet their duties, they will need to list all their functions and policies. This seems highly cumbersome. Local authorities encompass a huge range of functions. The Local Government Information Unit (LGIU) estimates that for an average unitary authority over 200 functions could be involved, many of which would be relevant to the duty to promote race equality. The NUT endorses the view of the LGIU that it would be helpful to provide guidance on the level of complexity of the function and policy that would be needed for the purposes of the Race Equality Scheme.

How Should We Decide How Relevant a Function or Policy is?

50. Whilst it is right that local authorities should decide on priorities on race equality, it is also right that they should be accountable for deciding which areas to tackle above others. The process by which decisions are made and the reasons for those decisions should be in the public domain so as to promote openness, accountability and to generate trust and confidence in the system.

The Assessment Grid

51. The Assessment Grid for use by local government and others to assess their functions and policies is particularly useful and should help authorities assess relevance to the general duty and to prioritise.

Monitoring Policies

52. The flow chart outlining the monitoring process is helpful. It would be strengthened further by the inclusion of a further box with the insertion 'Designate Monitoring Officer'.

Assessing and Consulting on Proposed Policies

Whom Should we Consult?

53. It is important that a clear distinction is made between 'consultation' and 'involvement'. This should be agreed between all the stakeholders, including trade unions.
54. The CRE should take the opportunity of the publication of these documents to emphasise to public authorities the importance of partnership with trade unions. Trade unions are in a unique position to add value to the efforts of employers and service providers in promoting race equality.

Access to Information and Services

How Should we Provide Access to Services?

55. The suggestions to provide access to services in this section are useful. To this list could be added the use of local radio stations which are aimed at ethnic minorities. It is also important to ensure that, when providing access to services for minority ethnic communities, local authorities take into account their duties under the Disability Discrimination Act.

Chapter 4: Specific Duties: Employment

How Should we Collect the Information?

56. The NUT believes that those who are asked to provide information about their ethnic background should do so on a voluntary basis. The NUT believes that ethnic group relates to how the individual sees themselves. The question of ethnic identity is a personal and sensitive matter. Staff and job applicants should be given the maximum opportunity to provide the information they feel most accurately applies to themselves (self-classification). This should not involve them in explanations and negotiations of terminology with the employer. In this context, the NUT finds the proposal to ask the manager or personnel officer to 'ascribe' an ethnic group or to use 'management top-up' to be at odds with the principle of self-classification. In any case, managers and personnel officers should not be put in the invidious position of having to make judgements about employees or prospective employees' ethnic group.

Performance Management of Race Equality

57. In this section the flow chart for performance management of race equality is very useful. The NUT would recommend that this approach of explaining ideas is used more widely throughout the documents.

Ethnic Monitoring: A Guide for Public Authorities

General Comments

58. The NUT welcomes the detailed advice to public authorities on ethnic monitoring contained in this document. The NUT is, however, concerned about the duplication of information and advice to schools and the fact that sometimes the advice contained in this document is contrary to advice issued recently by the DfES on collection of ethnic data on school pupils. This underlines the Union's concerns expressed at the beginning of this document regarding the confusion which is likely to arise from the need for educational institutions to have to refer to several documents on any one issue.

Chapter 3: Planning, Communication and Consultation

59. The NUT agrees that careful planning is vital when introducing ethnic monitoring.

Data Collection

60. The NUT believes that the questions set out in this section are helpful. The NUT would recommend the inclusion of a further question as follows:
“ Is it possible to collect the data using existing systems?”

Chapter 4: Collecting the Data

What Other Data Should we Collect?

61. The NUT recommends that the data collected should also include information on Gypsy/Roma and Travellers of Irish Heritage.

How Complete Should the Data Be?

62. The NUT agrees that it is important to attempt to gain as complete a return as possible on ethnic monitoring information. The NUT is concerned, however, about the suggestion in this section that organisations do not say anything in their explanation of the ethnic background question which might encourage people not to answer it. It would be far better to make a positive statement which would encourage the maximum possible return from respondents.

Who Should Supply the Data?

63. As stated above, the NUT is opposed to the use of 'other-classification', 'management top-up' or 'ascription' in order to complete any missing information.

64. This section is an example of conflicting advice on a single issue. The recently published DfES circular 12/2002: 'Guidance for Local Education Authorities on Schools' Collection and Recording Data on Pupils' Ethnic Group' warns LEAs not to place pressure on schools to undertake ascription of pupils' ethnic group in the event of a non-response from parents. On the other hand, this section of the document strongly recommends 'other-classification'.

Chapter 7: Ethnic Monitoring: Employment

Where Application Forms are Not Used

65. The NUT would recommend that the CRE strongly discourage the use of CVs as part of the recruitment process. The use of CVs has long been recognised as bad practice in terms of the promotion of equality of opportunity in the recruitment process.

What if We Use Recruitment Agencies?

66. The NUT endorses the advice contained in this section with regard to ethnic data on agency staff. Increasingly LEAs and schools are using recruitment agencies as a consequence of the crisis in teacher recruitment and it is right that they should check whether agencies are putting forward candidates from a range of ethnic backgrounds.

Training

67. The NUT agrees that for the purpose of the ethnic monitoring of training received, it is important for public authorities to define what is meant by 'training' and by 'an application'.

68. The NUT also supports the suggestion in the document that public authorities consult staff representatives and, together, review what kind of training is central to career development, including management development programmes.

69. The NUT would recommend that the questions posed in this section also include a question on how training outcomes are measured. The NUT believes that it is important that an analysis of training not only concerns itself with access but also includes outcomes.

Appraisals

70. The advice contained in this section on analysing appraisal outcomes is helpful. This section should further underline the responsibility of employers to ensure that no discrimination takes place in the appraisal process. It is also important to ensure that appraisers are fully trained in their responsibilities under equal opportunities legislation and good practice.

Dismissals and Other Reasons for Leaving

71. In examining the reasons why employees leave, in addition to using the ways suggested in the document, the NUT would wish to add the use of independent research.

Chapter 8: Ethnic Monitoring: Service Delivery

Monitoring Pupils' Attainment

72. The assertion in this section that LEAs should be aiming for a 100 per cent response rate to the ethnic background question, and that they should be prepared to use someone else's classification to top up gaps in the data, is contrary to advice issued by the DfES recently to LEAs.

Chapter 9: Taking Action and Setting Targets

73. As a general principle, the NUT would argue that the setting of targets for action should be done in collaboration with staff and their trade unions. The targets should be based on sound data and be flexible enough to be altered in the light of emerging data from the monitoring process and changing circumstances. In other words, partnership with unions needs to be seen as a key component in target setting.

Statutory Code Of Practice on the Duty to Promote Race Equality: A Guide for Schools (The Guide)

General Comments

74. The NUT wishes to reiterate its comments made at the beginning of this document in relation to the need for a single Code and Guidance document for schools. Having to consider all the documents and their implications has the potential to increase substantially the bureaucratic burdens in schools. This is likely to lead schools to take short cuts and to be in danger of not complying with the law.

75. In order to ensure that schools are not overwhelmed by the new requirements on schools, the NUT would suggest that the CRE supply schools with a suggested timetable for implementation. The implementation of the duties on schools should be seen as a staged process with a clear timetable. This would mean providing advice to schools on the minimum requirements in order to meet the 31 May deadline, with further advice on when schools need to do what. As a matter of urgency schools will need model policies and guidance on what needs to be considered to comply with the duty to 'have in place arrangements for fulfilling their duties'.

76. Schools will be at various stages of readiness in order to comply with the duties. Guidance to schools needs to take this into account to ensure that schools are able to build on existing practice and systems.

77. The NUT also believes that advice is needed from the DfES and the CRE for LEAs. Such advice would clarify LEAs' responsibilities within overall local authorities' duties. It would also give guidance to LEAs on the need to support schools in their compliance with the duties.
78. The NUT is disappointed that the Guide for Schools makes no reference to the importance of the early years in promoting race equality.

Introduction

79. It would be helpful to set out at the beginning of this Guide precisely which schools are covered by the public duty by reference to their definition under current education legislation. That is, community schools, voluntary aided, voluntary controlled and foundation – so governing bodies reading the document are in no doubt that the public duty applies to them. This would logically go in the Introduction.
80. It is suggested that the Introduction refers to the range of educational provision which now characterises the education system – the range of initiatives and structures in education – ranging from Excellence in Cities, City Academies and Specialist schools, means that the Code will need to be very specific in its guidance on how the 2000 Act will apply in different circumstances.
81. The paragraph on who the Guide is for would benefit from explicit examples – for instance, in relation to 'contractors' it would be helpful to have an example of organisations that have service level agreements with education providers.
82. There should also usefully be a reference to outsourced education services. Generally, the Introduction needs to take account of the variety of current education provision. Also, in the Introduction, there needs to be clarity as to whether the various other bodies need to comply with the Code. They could be encouraged to follow it as good practice where they are not required to comply.

Chapter 2: Promoting Race Equality

What are the Benefits of the Duty?

83. The benefits of the duty outlined in this section are useful. However, the benefits identified tend to concentrate on the first two parts of the general duty, with not enough emphasis placed on the third part i.e. to promote good relations between people of different groups.
84. It is important to place equal emphasis on the third aspect of the duty in light of the disturbances in some northern towns in Summer 2001. It is also important in relation to mainly mono-ethnic schools that the advice

contained in the Guidance is relevant to their specific needs and circumstances.

Chapter 3: The General Duty and the Specific Duties

What are Functions and Policies?

85. This section states that 'public functions' means functions that affect (or could affect), the public. Whilst only courts may decide this, public functions would normally not include internal management or contractual matters such as staff employment'. Further on this chapter it is stated that 'race equality will always be relevant to service delivery and employment'. Under the section on 'proportionate', staff selection and employment are cited as examples of relevant functions to which the duty would apply. These statements appear to be contradictory. At the very least they are confusing and need clarification. Schools should not have to engage lawyers in order to interpret the extent of their duties under the 2000 Act.

'Proportionate'

86. The NUT agrees that when judging 'relevance' or 'proportionality', the size of the ethnic minority population in the area does not matter. However, the NUT believes that the Guide does not place enough emphasis on the different ways in which the general and the specific duties will apply to schools in mainly white areas. It would be helpful if the Guidance included separate model policies for multi-ethnic schools and for mainly mono-ethnic schools.

87. The NUT notes the statement in this section that schools cannot claim that they do not have the resources to meet their responsibilities. Legally this may be the case. However, it would be impractical to ignore entirely the fact that a substantial investment of funding will be required to ensure that schools are able to comply with their legal duty to promote race equality.

How Does the General Duty Affect Partnerships?

88. The NUT notes the statement in this section that private and voluntary partners do not have any obligation to promote race equality. This is potentially confusing and is a consequence of the Guidance not being placed firmly in the context of the 1976 Act. Whilst the positive duty to promote race equality does not apply to the private and voluntary sector, they are still bound by the 1976 Act and the duty not to discriminate on racial grounds.

89. Also, as stated earlier in this response, the NUT regards the exclusion of the private and voluntary sector from the positive duty as highly regrettable. The CRE should continue to lobby the Government to extend this duty to the private and the voluntary sector.

Chapter 4: Specific Duties: Policies and Services

What Should the Race Equality Policy Cover?

90. The pointers on the race equality policy are helpful. The NUT would suggest that a new bullet point on the resource implications is added to the current list.
91. The list of main areas that are relevant to promoting race equality is also helpful. It is suggested that a new bullet point on 'preparing pupils for life in a multi-ethnic society' is added.
92. On the issue of admissions and transfer procedures it should be noted that in the vast majority of cases, schools will be part of LEA-wide admission policies. It therefore, seems logical to provide guidance to LEAs on admission and non-discrimination and the promotion of race equality. The NUT believes that the implementation of the 2000 Act is a renewed opportunity for the CRE to highlight its formal investigation into Hertfordshire County Council and its findings in relation to admissions policies.

How Should We Put the Policy into Practice?

93. The NUT agrees that in order for schools to meet their general and specific duties, staff and governors will need training in their new responsibilities. The NUT would urge the CRE to press the DfES to provide funding to make this a reality.

Assessing the Impact of Policies

94. Under the duty, schools must assess the impact of their policies on pupils, parents and staff from different racial groups. As commented on earlier in this response, whilst recognising the need to emphasise the impact on pupils, this Guidance provides very scant advice on assessing the impact on parents and staff. In the final Guidance, this needs to be remedied.

Monitoring the Impact of Policies

95. Under the duty, schools must monitor the impact of their policies on pupils, parents and staff. The same observations as in the previous paragraph apply, that is, there is no advice given in relation to parents and staff. Additionally, it seems rather odd that the employment duty, and specifically, the duty to conduct ethnic monitoring, does not apply to schools. It is difficult to see how schools could meet their general and specific duties without conducting ethnic monitoring in relation to staff.

How Should We Use the Monitoring Data?

96. This section advises schools to use positive action, where necessary, in considering further action to meet particular needs and to improve the

performance of pupils from different racial groups. Positive action has a specific legal meaning and needs explaining with examples. Additionally, schools must be cautioned against drawing simplistic conclusions from ethnic data on the performance of pupils from different racial groups.

Chapter 5: Specific Duties: Employment

97. The NUT supports governing body level ethnic monitoring and LEA-wide monitoring on employment and employment related matters. This would help to identify problems in individual schools compared with the broader picture.
98. There appears to be some confusion in the interpretation of the employment duty in relation to LEAs. This is partly due to the way in which the Statutory Instrument is worded. For the vast majority of staff in maintained schools (particularly in community and voluntary controlled schools), the LEA remains the employer. Consequently, the full range of the employment duties should apply to LEAs, including the ones which are triggered when the number of staff exceeds the 150 full-time staff threshold. In other words, LEAs should monitor all the aspects specified in the employment duty. It would be highly regrettable if this were not to be the case. The NUT would urge the CRE to provide clarity on this matter and communicate this to all the relevant employer bodies.
99. It should also be made clear that capability procedures are included within the definition of 'disciplinary procedures'. The NUT is aware that a disproportionate number of black teachers are the subject of capability proceedings and many of these proceedings are sparked by parental complaints, which can be an indication of racism amongst certain parents. There need to be some examples in the document of instances of such as this and recommendations on how this can best be tackled at governing body and LEA level.
100. Another example is racial harassment of teachers by pupils and how governing bodies and senior management teams should respond to this. In other words, practical examples are needed in this chapter just as they are in the other chapters. The impression could be gleaned from the whole document that the drafters have concentrated on the need to take positive action to protect the pupil population from racism, whilst very little is offered by way of advice or example to protect teachers against racism.