

# BTEG

BLACK TRAINING & ENTERPRISE GROUP

## Are they doing their duty?

A guide for BAME groups on how to use the Equality Act 2010 to hold public organisations to account in your local area.

- **Job opportunities** • **Access to social housing** • **Tackling crime** •
- **Educational attainment** • **Responsive health services** •





# About this guide...

This guide is for local Black, Asian and minority ethnic (BAME) forums and groups. It is intended to help BAME groups to keep track of how the public authorities in their local area are eliminating unlawful discrimination and promoting equal opportunities - as they are legally obliged to do under the Equality Act 2010.

Local BAME forums and groups have a vital role to play in holding public authorities to account for their equalities actions and outcomes.

Historically, BAME communities have not always been served fairly by public service organisations. In 2001, 42 per cent of BAME people felt that they would be treated worse than people of other races by public service organisations, compared with 22 per cent of white people. By 2009/10, this gap had disappeared, with 22 per cent of BAME people and 22 per cent of white people believing that they would be treated worse than people of other races.<sup>1</sup> The race equality duty on public sector bodies which the Race Relations Amendment Act introduced in 2000 has undoubtedly made a major difference for BAME communities.

But there is still more to be done. Opportunities and outcomes in education, training, employment and health remain poorer for some BAME groups. Local councils and other public authorities need to recognise how they can act to change this, prioritise these actions in their equality objectives, carry out these actions and report back on what difference they have made. Local BAME groups can use the Equality Act 2010 to make sure that this happens.

In this guide we focus on local councils although the equalities duties for local councils, and the questions which you may want to ask them, equally apply to other public authorities. Of all local public authorities, councils have the widest range of responsibilities, are often the largest local employer, and provide services used by virtually everyone in the local area. What councils do, or don't do, to promote equalities affects everyone who lives or works in the local area.

<sup>1</sup> Communities and Local Government, The Citizenship Survey, 2009/10 <http://www.communities.gov.uk/publications/corporate/statistics/citizenshipsurveyq4200910>

The public service organisations asked about were: Police, Prison service, Courts, Crown Prosecution Service, Probation service, Council housing, Local GP, Local school.





Some aspects of the Equality Act are complex and exact legal meanings are still being established. BTEG is not a legal authority and is not able to provide legal advice on this. The information in this guide should not be taken to represent a legal opinion on any aspect of the Equality Act.

This guide does not give details of the provisions in the Equality Act 2010. The Equality Act is available to read on the Government Equalities Office website <http://www.legislation.gov.uk/ukpga/2010/15/contents>.

## The Equality Act 2010

The Equality Act 2010 brings together all the protections against discrimination which were found in previous discrimination acts and regulations, including those in the Race Relations Act and the Race Relations Amendment Act. The Equality Act also extends those protections to cover more groups of people through what are termed “protected characteristics”. The protected characteristics are:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

## The Public Sector Equality Duty

The Equality Act includes the new Public Sector Equality Duty. The Public Sector Equality Duty applies to most public bodies including government departments and agencies, schools, colleges, hospitals, local councils, fire services and police authorities.

The Public Sector Equality Duty consists of a general equality duty, which came into force in April 2011, and specific duties which will come into force in December 2011 and April 2012.

The general equality duty means that public authorities must have due regard to the need to:

- Eliminate discrimination, harassment, victimisation and other conduct that is unlawful under the Act;
- Advance equality of opportunity between people who share a protected characteristic and those who do not;
- Foster good relations between persons who share a protected characteristic and those who do not.

The purpose of the general equality duty is to integrate consideration of equality and good relations into the day to day business of public authorities. The duty requires organisations to consider how they could positively contribute towards advancing equality and good relations.





To help public authorities comply with the general equality duty, they must also carry out the specific duties set out in the Act. At the time of writing this guide, the Government was consulting again on the specific duties which public authorities must carry out. Although this is subject to the Government's decision following the consultation process, it seems likely that the specific duties will consist of the following:

## Publishing information

Each public authority must publish information to demonstrate what it is doing to comply with the general equality duty. This information must be published by 31 December 2011 and then at least annually after that. The information must include what effect its policies and practices have had on people who share a relevant protected characteristic who are (a) employees of the organisation (for organisations with more than 150 employees), and (b) others persons affected by its policies and practices (e.g. service users).

## Setting equality objectives

Each public authority must prepare and publish one or more objectives it thinks it should achieve to comply with the general equality duty. The equality objectives must be specific and measurable. The objectives must be published by 6 April 2012 and then at least every four years after that.

Aside from the specific duties to set quality objectives and publish information, there are no particular ways in which public authorities must comply with the general equality duty. It is up to each public authority to decide how they will carry out the general equality duty. However, the Equality and Human Rights Commission advises that the principles which have been established in case law will apply to the new duty. These principles mean that public authorities must ensure that:

- Those who exercise its functions (e.g. staff and leadership) are aware of the duty's requirements;
- The duty is complied with before and at the time that a particular policy is under consideration and a decision is taken. A public authority cannot satisfy the duty by justifying a decision after it has been taken;
- Consideration of the need to advance equality forms an integral part of the decision-making process. The duty must be exercised in such a way that it influences the final decision;
- Any third parties exercising public functions on its behalf are required to comply with the duty, and that they do so in practice;
- Regard is given to the need to advance equality when a policy is implemented and reviewed.

The EHRC has provided guidance on compliance with the general equality duty which takes these principles into account. Some public authorities may adopt the EHRC's suggested approach but others may do it differently. As long as the specific duties are being met, each public authority can choose how they will comply with the general equality duty.

The EHRC guidance on the Public Sector Equality Duty is on their website:

<http://www.equalityhumanrights.com/advice-and-guidance/public-sector-duties/new-public-sector-equality-duty-guidance/>





## Holding your local council to account: Who should do this?

In 2008-09 local authorities in England employed 1.8 million full time employees. Their total expenditure was £160 billion.<sup>2</sup> They are often the largest employer in a local area. Their responsibilities include housing, community safety, planning, education, transport and environment.

How local councils employ staff and provide services have a direct impact on BAME communities. It is essential that BAME communities ensure that they are not disadvantaged or discriminated against in the provision of council services, and that they challenge any cases where this happens. The Equality Act provides a legal framework for doing this.

Increasingly, councils are contracting with companies to provide the services which, in the past, they employed their own staff to carry out. This means that various public services are now carried out by private sector companies or, sometimes, by voluntary organisations. The public sector equality duty applies to any public services which private or voluntary organisations are contracted to deliver. So, for example, if a local council has contracted with a private company to provide weekly recycling collections for every household in the borough, the private company must comply with the public sector equality duty in its delivery of this service.

The coalition government takes a very different view on accountability of public services from the previous Labour government. The previous government favoured external inspection by independent bodies such as the Audit Commission. The current government wants to see local people holding public bodies to account and has scrapped the Comprehensive Area Assessment process which monitored the performance of councils and other local public bodies. Now, more than ever before, it is up to local communities to monitor the way that councils and other public bodies provide local services, and to challenge any failures in performance or quality.

## Holding your local council to account: What can local BAME groups do?

Request that the council should carry out an equality impact assessment of any key decisions. Councils and other public bodies must consider the equality impacts of any new policy or of significant changes to an existing policy. Although this no longer needs to be done through a formal equality impact assessment, the council must be able to demonstrate that it has considered the equality impacts of all key decisions.

Ask the council if it has assessed the relevance of equalities in specific policy or service areas. In order to set equalities objectives, public bodies will need to carry out some process of considering what these objectives should be. The EHRC guidance suggests that this process should be a 'relevance assessment'

<sup>2</sup> Communities and Local Government (2010) Local Government Financial Statistics England No.20 2010





which considers whether and which equalities dimensions are relevant to each policy and service area, but public bodies are not obliged to follow this guidance. This consideration of relevance is critically important, as there are some services where the equalities issues are less obvious and so may be overlooked unless a detailed assessment of all service areas is carried out.

Ask the council to include specific issues within its equalities objectives. The Equality Act requires public bodies to publish one or more equality objectives by April 2012, and then at least every four years after that.

Review the information published by the council on what it is doing to comply with the general equality duty. Request that public bodies publish more detailed information if necessary. The Equality Act requires public bodies to publish this information by December 2011, and then at least annually after that.

Use the Freedom of Information Act to obtain information from your local council. If councils are reluctant to release information about how they have considered equalities impacts, or what actions they are taking to address inequalities, the Freedom of Information Act can be used to request this. NCVO has published a useful guide to using the Freedom of Information Act which includes tips on how to present your request for information. The NCVO guide is available as a free download from:

[http://www.ncvo-vol.org.uk/sites/default/files/your\\_right\\_to\\_know\\_-\\_freedom\\_of\\_information.pdf](http://www.ncvo-vol.org.uk/sites/default/files/your_right_to_know_-_freedom_of_information.pdf)

## Holding your local council to account: Questions to ask

### Questions you might want to ask about... **THE COUNCIL'S WORKFORCE**

Common race equality issues for council workforces

- BAME people are under-represented at senior management level.
  - BAME people are over-represented in temporary, part-time, lower paid jobs.
- 
- What proportion of all council employees are resident in this borough?
  - What proportion of the council's employees at senior management level (PO8 and above) are resident in this borough?
  - What proportion of all council employees are BAME?
  - What proportion of the council's employees at senior management level (PO8 and above) are BAME?
  - What proportion of applications for senior management posts (PO8 and above) are successful?
  - What proportion of applications from BAME candidates for senior management posts are successful?
  - What is the ethnic breakdown of staff employed on temporary contracts?





- How many times has the positive action measure within the Equality Act been used to appoint BAME people to senior management positions (PO8 and above)?<sup>3</sup>
- What measures is the council taking to support the promotion and progression of staff that are under-represented at senior management level? What difference have these measures made to the proportion of BAME staff in senior management positions?
- What is the ethnic breakdown of consultants employed by the council (a) ethnic breakdown of the consultancy company workforce (b) ethnic breakdown of the ownership and/or senior management of the consultancy company, (c) ethnic breakdown of the individual consultants providing services for the council?
- What is the ethnic breakdown of all staff that were made compulsorily or voluntarily redundant in the period xxxx to xxxx?

## Questions you might want to ask about... HOUSING

### Common race equality issues for housing

- The perception that BAME people are unfairly favoured in council housing allocations.
  - Some BAME groups are over-represented among Housing Benefit claimants and may be hit disproportionately hard by benefit cuts.
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- What is the ethnic breakdown of all those who are currently in temporary housing in the borough?
  - What is the average length of time spent on the council's housing waiting list (a) for all people on the list (b) broken down by ethnic group?
  - What is the ethnic breakdown of tenants by housing type i.e. ethnic breakdown of tenants in sheltered housing, ethnic breakdown of tenants in 1 bedroom flats, ethnic breakdown of tenants in 2 bedroom flats/houses etc?

## Questions you might want to ask about... EDUCATION

### Common race equality issues for education

- BAME children are sometimes over-represented in poorer performing schools.
- BAME children are more frequently excluded from school.
- Some groups of BAME children attain poorer results at GCSE.

<sup>3</sup> The positive action measure allows employers, in cases where two candidates in a recruitment process are of equal merit, to select the candidate with a characteristic which is under-represented or disadvantaged in the workforce.





- What are the criteria for admissions to maintained schools in the borough?
- What percentage of pupils are allocated their first choice of secondary school, broken down by ethnic group (i.e. how many white pupils are allocated their first choice, how many black Caribbean pupils are allocated their first choice etc.)?
- What is the ethnic breakdown of the head teachers of all maintained schools in the borough?
- What is the ethnic breakdown of the members of the governing bodies of all maintained schools in the borough?
- What is the ethnic breakdown of all children who were permanently excluded from maintained schools in the borough in 2009/10?
- What proportion of pupils in each ethnic group achieved 5 A\*-C grade GCSEs in 2010?
- What proportion of pupils in each ethnic group achieved the English Baccalaureate in 2010?

#### Common race equality issues for post-16 education

- A higher proportion of Black young people are not in education, employment or training (NEET).
  - A disproportionately low number of BAME young people are on Apprenticeships.
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- How many young people (aged 16-19) in the borough are NEET? What is this as a percentage of all young people (aged 16-19) who live in the borough?
  - How many BAME young people (aged 16-19) in the borough are NEET? What is this as a percentage of all BAME young people (aged 16-19) who live in the borough?
  - What careers advice services does the council provide for young people who are not in full time education?
  - How many apprentices does the council employ? What is the ethnic breakdown of council-employed apprentices?

### Questions you might want to ask about... **TRANSPORT AND ROAD SAFETY SERVICES**

#### Common race equality issues for transport and road safety services

- In some local areas, BAME children and young people are more likely than average to be killed or injured on the roads.
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- What is the ethnic breakdown of all pedestrians who were injured or killed in road traffic incidents in 2010?
  - What is the ethnic breakdown of all young pedestrians (aged 19 and under) who were killed in road traffic incidents in 2010?





## Questions you might want to ask about ... **SOCIAL CARE FOR CHILDREN**

Common race equality issues for social care for children

- A disproportionately high number of BAME children are in the care system.
  - BAME children wait longer for suitable foster and adoption placements.
  - BAME children stay in care for longer.
  - There is a shortage of BAME approved foster carers and prospective adopters.
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- What is the ethnic breakdown of all children who are currently looked after by the council?
  - What is the ethnic breakdown of all children who were placed in foster care in 2010?
  - What is the ethnic breakdown of all children who are currently awaiting adoption?
  - What percentage of those who apply to become foster parents are approved as foster parents, broken down by ethnic group?
  - What is the ethnic breakdown of all young people who are currently under the care of the Youth Offending Team?
  - How many unaccompanied asylum seeking children are currently under the care of the council?

## Questions you might want to ask about...**VOLUNTARY & COMMUNITY SECTOR SUPPORT**

Common race equality issues for voluntary & community sector support

- Some councils are failing to consider the equalities impacts when withdrawing funding from voluntary and community sector groups.
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- How much funding did the council give to voluntary and community sector organisations in 2009/10?
  - What is the profile of the voluntary and community sector organisations which received council funding in 2009/10 in terms of the ethnic breakdown of (a) staff (b) trustees (c) service users?
  - Has the council carried out an equalities impact assessment of the cuts to voluntary and community sector grants for 2010/11?





## Scenario One

The BAME Network in XYZ borough has reviewed the council's Race Equality Plan for 2010-11 (this may be the last Race Equality Plan the council produces, as this is no longer a requirement under the new Equality Act). The document shows that the proportion of BAME staff working for the council increased from 23 per cent of all staff in 2000/01 to 43 per cent of all staff in 2009/10, making it much more reflective of the local population, where 37 per cent are from BAME groups. However, there is no information in the Race Equality Plan about what grades BAME staff are employed on.

The BAME Network contacts the council's Head of Human Resources to request a breakdown of council employees at senior management level (grades PO8 and above), middle management level (grades PO1 to PO7) and lower levels (grades SO2 and below), by ethnicity and gender. The Head of Human Resources says that this information cannot be made publicly available. The BAME Forum insists that as an organisation which employs more than 150 people, the council has a specific duty to publish information about how its policies and practices affect employees with protected characteristics. After much internal debate, the council agrees to send the figures.

The figures show that BAME staff in general, and BAME women in particular, are greatly under-represented in senior and, to a lesser extent, middle management posts. Black women, for example, make up 12 per cent of the total workforce, but only have 5 per cent of the middle management posts, and 0.2 per cent of the senior management posts.

The BAME Network wants the council to adopt a positive action approach to increasing the proportion of BAME women in senior council positions. It lobbies the council to include this as an equality objective. The council agrees to consider this when it revises and updates its equality objectives in three years' time.<sup>4</sup> In the meantime, the BAME Network provides the council with information on positive action approaches which have successfully increased the number of BAME women in senior management posts, including mentoring and coaching programmes.

- Public authorities must set one or more equality objectives by 6 April 2012 and then at least every four years after that.





## Scenario Two

The BAME Forum in XYZ borough is concerned about a spate of road traffic accidents where BAME children have been injured while walking to or from school. The BAME Forum suspects that a disproportionately high number of BAME children are involved in road traffic accidents in the borough.

The BAME Forum's first step is to collect evidence. The Forum contacts the council's Road Safety team with a request for data on the ethnic breakdown of all young people who were injured or killed in road traffic incidents in the borough over the last 10 years. At first, the Road Safety team is reluctant to provide this information, arguing that the numbers are so small that they might be disclosive (that is, that the identity of the individuals involved might be revealed). The BAME Forum tries again, asking for the information broken down into 'white' and 'BAME' categories. The council provides this information which shows that 430 young people were killed or injured on the roads in the past 10 years. Of these, 310 were BAME. The BAME Forum now has evidence that, at 72 per cent, the percentage of BAME young people injured or killed on the roads is far higher than the proportion of BAME young people in the borough.

The BAME Forum has ideas for how to tackle this problem - a road safety awareness campaign aimed at BAME communities, reducing the speed limit in high risk areas, working with the Road Safety team to help them reach BAME young people - but needs support from the council to make a real difference.

The BAME Forum writes to the Mayor of the council, the Cabinet Members for Community Safety and Community Cohesion, the Chief Executive, and the lead officer for Equalities. The letter presents the evidence of racial disproportionality in road traffic deaths and injuries. It highlights that race equality is clearly relevant to the Council's responsibilities regarding road safety. The letter asks the council to include this issue as a specific equality objective for the next four years, suggesting that the objective would be 'to reduce the number of young people killed or injured in road traffic incidents in the borough and eliminate the disproportionality in the percentage of ethnic minority young people who are killed or injured'.

After a series of internal discussions, the council agrees to set a specific equality objective to eliminate the gap between ethnic minority and all young people who are killed or injured on the borough's roads, within the next four years. The council instructs the Road Safety team to work with the BAME Forum to achieve this objective.





## About BTEG

The Black Training and Enterprise Group (BTEG), is a national charity providing a voice to government for Black, Asian and Minority Ethnic (BAME) voluntary, community and social enterprise organisations. BTEG has a successful track record of advising government departments and non-departmental bodies and providing organisational support for local groups. BTEG is a member of several central government advisory groups including Department of Works Pension's (DWP) Ethnic Minority Advisory Group, the Department for Education's Third Sector Group and Communities and Local Government's Voluntary and Community Sector Board.

## We want to hear from you

BTEG welcomes feedback on all our publications. We would like to hear your views on '*Are they doing their duty?*'. We would welcome your ideas for future editions of this publication, particularly of any case studies from BAME Forums that have worked with their local councils within the framework of the Public Sector Equality Duty.

Please contact Jeremy Crook  
Tel: 0207 843 6110  
E-mail: [jeremy@bteg.co.uk](mailto:jeremy@bteg.co.uk)



### **Black Training and Enterprise Group**

**BLACK TRAINING AND ENTERPRISE GROUP**  
**Lancaster House, 31-33 Islington High Street, London N1 9LH**

**T: 020 7843 6110 F: 020 7833 1723**  
**E: [info@bteg.co.uk](mailto:info@bteg.co.uk) W: [www.bteg.co.uk](http://www.bteg.co.uk)**

