

Statutory

**CODE OF PRACTICE
ON RACIAL EQUALITY
IN HOUSING**

Scotland

COMMISSION FOR
RACIAL EQUALITY



IN SCOTLAND

Contents

FOREWORD	5
1. INTRODUCTION	9
Aims of the code	9
Status of the code	10
Application of the code	11
Public authorities	11
Benefits of the code	12
Other areas of equality	12
How to use the code	12
2. THE LEGAL CONTEXT	17
What is racial discrimination?	17
Direct discrimination	18
Indirect discrimination	21
Victimisation	24
Harassment	25
Pressure or instructions to discriminate	26
Discriminatory advertisements	27
Legal proceedings	28
Burden of proof	28
Charities	28
Positive action	28
Public authorities	29
Race equality scheme	30
Duties in employment	31

Enforcement	31
Procurement	31
Partnerships	33
Housing (Scotland) Act 2001	32
Local Government in Scotland Act 2003	32
Housing and the Race Relations Act 1976	33
Planning services and other functions of public authorities	33
Providing services	34
Management, lettings and sales	36
Estate Agents Act 1979	38
Consumer Credit Act 1974	39
3. HOUSING AND GOOD PRACTICE	43
Introduction	43
A. Governance and the role of governing bodies	45
B. New and improved housing	47
C. Sales and lettings	50
D. Mortgage lending and insurance	56
E. Homelessness and housing advice	58
F. Neighbourhood regeneration and integration	61
G. Tenancy and housing management	64
H. Racial harassment and anti-social behaviour	68
I. Contractors and procurement	71
J. Involvement of residents and tenants	73
4. TRAINING, MONITORING AND RACE EQUALITY IMPACT ASSESSMENT	79
Training	79
Monitoring	80
Race equality impact assessment	82
Types of race equality impact assessment	83

APPENDICES	87
1. Exceptions under the Race Relations Act 1976	87
2. Guidance and websites	89
3. Glossary	95

Foreword

I am pleased to have this opportunity of introducing the Commission for Racial Equality's *Statutory Code of Practice on Racial Equality in Housing in Scotland*. I am particularly pleased that the CRE have developed a separate code for Scotland. This serves to reflect the distinct Scottish dimension in housing, responsibility for which was devolved to the Scottish Parliament, while still retaining information pertinent to the UK as a whole. The Scottish Executive has been fully involved in the preparation of the code, together with key stakeholders, through representation on advisory groups and through the consultation on the code, which have all helped shape its content.

The Scottish Executive is committed to promoting racial equality and tackling racism and discrimination. We have made this a priority by including commitments on equal opportunities, and particularly on tackling racism, in the Partnership Agreement – the government's priority work programme. Our race equality scheme, which was published in November 2005, sets out our arrangements for meeting the statutory duty to promote race equality and highlights some of our achievements over the last few years, including our One Scotland campaign (www.infoscotland.com/noplace). We continue to work closely with the CRE on tackling racism and promoting racial equality, including, of course, in relation to housing.

I have no hesitation in recommending this code to housing organisations and agencies – and also individual landlords – to help them understand and meet their obligations under the amended Race Relations Act; and to those who use Scotland's housing services, so they are better aware of their rights in this area.

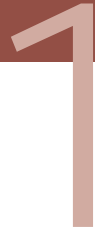
Malcolm Chisholm

Minister for Communities

Scottish Executive

1

Introduction



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 Scotland. Separate codes have been produced for Wales and England.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;
 - b. promote equality of opportunity and good relations between people from different racial groups; and
 - c. keep under review the way the RRA is working, and, if necessary, make proposals to the secretary of state for amending it.
- 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 Scotland, particularly as a result of devolution in 1999, when the Scottish Parliament and the Scottish Executive were created. Responsibility for housing is completely devolved to the Scottish Parliament. For example, new social landlords have come into existence; the private rented sector has grown; the housing association sector has grown to nearly 11 per cent of all households and the owner-occupied sector to 66 per cent; many more organisations and individuals are 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 forms of equality. Scotland's ethnic minority population is no longer the same, with the arrival of new migrants, including refugees. Integration and community cohesion have become increasingly important considerations for housing organisations and agencies.

1. The CRE has not produced a code for Northern Ireland, to which the Race Relations Act 1976 does not apply, and which is covered by separate legislation.

- 1.7 Lastly, while there have been improvements for some ethnic minority groups, significant differences still persist overall, in the type and quality of housing available to people from ethnic minorities who are more likely to live in inferior housing, be more dissatisfied with their homes, be more anxious to move and have fewer opportunities to do so than people from other groups. For example, overcrowding remains a serious issue for all ethnic minority groups in Scotland, with half of all Bangladeshi households, and a third of African and Pakistani households experiencing overcrowding.²
- 1.8 This code needs to reflect all these changes, and build on the experience and lessons acquired in the 15 years since the CRE's first codes in housing were published. The aims of the 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 Scottish housing organisations and agencies that have proved successful, and refers to various sources for further information and guidance. This code should therefore be seen as complementing work that has already been done.

Status of the code

- 1.10 This code is a statutory code; it has been approved by the secretary of state and laid before parliament. This means that the courts must take its recommendations into account in cases brought under the RRA, if the code is introduced into evidence, and the recommendations 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 followed the code's recommendations. The code is not an authoritative statement of the law; this can only be provided by the courts.
- 1.11 Apart from outlining the law as it applies to housing, and housing organisations' responsibilities under the law, the code makes recommendations on good practice

2. See *Analysis of Ethnicity in the 2001 Census - Summary Report*, Scottish Executive, 2004.

and on the outcomes that housing organisations should aim for. These should form the basis of any assessment of compliance with this code. Other regulatory and advisory guidelines, such as the guidelines developed by the Scottish Executive, Communities Scotland, and the National Association of Estate Agents, will also be relevant and should be seen as complementary to the code.

Application of the code

- 1.12 The code applies to all providers of housing and related services in Scotland, whether in the public, private, or community and voluntary sectors, including landlords, house builders, private sellers, and estate agents. It is also relevant to users of housing and services related to housing. This means the code will be useful to anyone involved in housing as well as to those who make decisions about providing housing, opportunities for housing and services related to housing, including developers, tenants and residents.
- 1.13 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. The code also covers housing provided as part of an employment contract, for example tied housing, or housing provided to nurses, police officers or prison officers by their employers.
- 1.14 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, including many small private landlords, 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

- 1.15 While the RRA applies to all organisations, section 71(1) gives public authorities additional statutory duties. The aim of these duties is to make the promotion of racial equality and good race relations central to their work. As a result, this code places greater responsibilities on public authorities than on other housing organisations. The text makes this clear.
- 1.16 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 has been produced.

Benefits of the code

- 1.17 This code should help housing organisations and agencies, including individual landlords, 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. improve satisfaction with the services they provide;
 - 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.
- 1.18 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

- 1.19 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. Housing organisations should be aware that these categories may intersect and reinforce each other, resulting in more acute needs.

How to use the code

- 1.20 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 10 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 race equality impact assessment, three activities that are key to meeting the code's recommendations.
-
- 1.21 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.
 - 1.22 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. When 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.
- 2.2 'Institutional racism' is the term used by Sir William Macpherson in his report of the inquiry into the murder 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 origins. 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 RRA, including the introduction of a duty for public authorities to promote race equality in all their functions (see paras 2.43 – 2.45). However, the concept itself has no legal force.

What is racial discrimination?

- 2.3 The RRA makes it unlawful to discriminate on racial grounds (see the glossary at Appendix 3). It defines four main forms of discrimination:
- direct discrimination;
 - indirect discrimination;
 - victimisation; and
 - harassment.
- 2.4 The RRA defines racial grounds as including race, colour, nationality (including citizenship) or ethnic or national origins. Racial groups (see the glossary at

Appendix 3) are groups defined by these grounds.³ All racial groups are protected from unlawful racial discrimination or harassment under the RRA.

- 2.5 To comply with the EU Race Directive (2000/43/EC), the government introduced the Race Relations Act (Amendment) Regulations 2003,⁴ 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.

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

- 2.6 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.
- 2.7 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 the same or not too dissimilar?'

Example 1

The Paisley Sheriff Court found that an estate agency had discriminated against the applicant on racial grounds when it had refused to arrange a property viewing. The applicant was suspicious of the reason given by the estate agency for refusing an appointment and arranged for four other people (two of Asian origin and two of a white Scottish background) to ask for appointments to see the property. The two Asians were refused appointments and the two white Scots were given appointments. An award of £2,000 for damages and expenses was made against the estate agency. [*Yousaf v The Robb Estate Agency and others*, Paisley Sheriff Court, 1997, unreported]

3. The courts have ruled that, for the purposes of the RRA, Romany Gypsies and Irish Travellers, as well as Sikhs and Jews, constitute racial groups. The legal status of Scottish Gypsies/Travellers under the RRA is currently unresolved; however, the CRE and the Scottish Parliament and Executive recommend that Scottish Gypsies/Travellers should be considered as racial groups for the purposes of the Act, until the issue is determined. This code refers throughout to 'Gypsies/Travellers'.

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

- 2.8 Apart from limited exceptions (see Appendix 1) to the general prohibition of discrimination in the RRA, direct discrimination is automatically unlawful, whatever the reason for it. There can be no justification for the difference in treatment.

Example 2

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

Example 3

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 could be found liable for direct racial discrimination, if it fails to take steps to deal with the finding.

- 2.9 Individuals are protected from discrimination, whatever their immigration status. However, some people from abroad are not eligible for local authority housing or assistance with homelessness.⁵ Accordingly, if a local housing authority decides that a person is ineligible for housing, this will not constitute unlawful discrimination.⁶ Local authorities must act in accordance with the law, and follow the recommendations of the Scottish Executive's Code of Guidance on how to carry out non-discriminatory checks.⁷
- 2.10 It would be unlawful discrimination if housing providers were to assume that all people from abroad or all people from a particular racial group were considered ineligible under the relevant legislation, or if they asked only people from particular racial groups to provide proof of their immigration status.

5. See The Persons Subject to Immigration Control (Housing Authority Accommodation and Homelessness) Order 2000 (SI 2000 No 706).

6. It should be noted that these rules on eligibility apply only to local housing authorities.

7. See *Code of Guidance on Homelessness: Guidance on legislation, policies and practices to prevent and resolve homelessness*, Scottish Executive, 2005.

Example 4

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

Segregation [Section 1(2) of the RRA]

- 2.11 Segregating (see 'segregation' in the glossary at Appendix 3) a person from others on racial grounds 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 accommodation and services of the same or similar quality. Congregation (see the glossary at Appendix 3) 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 for good race relations, such as racial hostility, which alienates or deters tenants from some racial groups from moving to the area in question, and the housing provider is a public authority, it will need to consider whether there are any steps it could take to discharge its duty to promote equality of opportunity and good race relations under section 71 of the RRA.⁸

Example 5

The Commission for Racial Equality (CRE) carried out a formal investigation into housing allocations in Oldham. The investigation focused on allocations to four estates. The CRE found that while the majority of tenants at Estate A were Asian, there were almost no Asian tenants at Estate B. Similarly, while there were a significant number of Asian tenants at Estate C, there were only two at nearby Estate D. These patterns could not be explained by non-racial factors and the CRE concluded that race was a reason and that the council had directly discriminated against Asians by segregating them from other applicants.⁹

- 2.12 Discrimination on racial grounds does not have to be related to the racial group of the person who has been discriminated against. See Example 6.

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'.

8. See also paras 3.43 and 3.51. For the duty to promote race equality see paras 2.43 – 2.59.

9. See *Housing Allocations in Oldham: Report of a formal investigation*, CRE, 1993.

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

- 2.13 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 (see paras 2.15 – 2.16).
- 2.14 The definition of indirect discrimination introduced under section 1(1A) of the RRA to comply with the EU 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.
- 2.15 **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:
- a. puts or would put people of a certain race or ethnic or national origin at a particular disadvantage when compared with others; and
 - b. puts a person of that race or ethnic or national origin at that disadvantage; and
 - c. cannot be shown to be a 'proportionate means of achieving a legitimate aim'.
- 2.16 **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:
- a. 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
 - b. puts a person from that group at a disadvantage because he or she cannot meet it; and
 - c. cannot be justified on non-racial grounds.
- 2.17 The concept of 'provision, criterion or practice', which was introduced to comply with the EU 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 would be very unlikely to 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.

- 2.18 Although the definition of indirect discrimination introduced to comply with the EU 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 on grounds of his or her race or ethnic or national origins.
- 2.19 The same argument applies to the grounds 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.
- 2.20 Both definitions of 'justification' for a discriminatory practice, namely, a 'proportionate means of achieving a legitimate aim' (see para 2.15) and 'justifiable on non-racial grounds' (see para 2.16), are based on drawing an objective balance between the discriminatory effects of the provision, criterion, practice, requirement or condition and the reasonableness of the steps taken to achieve a legitimate objective.
- 2.21 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?
 - 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?

Example 8

In developing its local housing strategy,¹⁰ working with local housing associations, a local authority assesses housing need among its constituent communities and discovers that the sizeable Pakistani community in the city are facing significantly higher levels of overcrowding than people from any other ethnic group. Research and consultation also strongly suggest that Pakistanis tend to live in low amenity private sector housing. Consultation further suggests a preference in the Pakistani community for larger apartment housing, typically three or four bedrooms. Currently, few Pakistanis are represented among applicants to the housing department, because the current stock is perceived as being too small for their needs. However, in developing its strategy, the authority concentrates its proposals on a scheme for mostly one-bedroom apartments, which are more economic to build, and better meet the needs of the majority of current housing applicants, who are white. To strike a balance between the legitimate aims of the policy and any discriminatory effects it might have, the authority 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 is the policy in denying access to the housing in question? The more restrictive it is (for example, in the length of residence required), the more likely it is to be unreasonable, and therefore to result in unlawful indirect discrimination.
- b. What other ways are there for the authority to meet the need for larger apartment housing? If other provisions can be developed alongside the proposed scheme, it is less likely the proposals will be indirectly discriminatory.

10. Under the Housing (Scotland) Act 2001, local authorities must conduct a comprehensive assessment of housing needs and conditions as part of their development of local housing strategies.

- 2.22 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 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 8.
- 2.23 The definition of indirect discrimination introduced to comply with the EU Race Directive (see paras 2.15 and 2.17) widened the scope of the protection against discrimination and applies to most of the activities carried out by housing organisations and related agencies, including lettings, sublettings and management of premises by landlords; and services provided by estate agents, mortgage lenders, accommodation agencies and insurance agencies.
- 2.24 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 2.16).
- 2.25 Housing organisations should follow the spirit of the EU Race Directive, aim for a high standard and examine all their practices to make sure they do not put anyone at a disadvantage on racial grounds.

Victimisation [Section 2 of the RRA]

- 2.26 It is unlawful to treat a person less favourably 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. 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.
- 2.27 For a claim of victimisation under the RRA to succeed, a complainant would also have to show that:
- a. he or she has been treated less favourably than others have been or would be treated in similar circumstances; and
 - b. the treatment was a result of his or her action in relation to allegations or proceedings under the RRA.

Example 9

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

Example 10

Mr Aziz 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. [*Aziz v Trinity Street Taxis Ltd*, 1988, ICR 534]

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

- 2.28 The definition of harassment introduced by the 2003 Race Regulations 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 2.6).
- 2.29 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.
- 2.30 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 2.29) if, after considering all the circumstances, including, especially, the perceptions of the person affected, it was reasonable to do so. Although a court could on that basis decide that a complainant had been oversensitive and had taken offence unreasonably, housing organisations should treat all allegations seriously. Conduct is very likely to constitute harassment if it is repeated, despite complaints by the person affected.

- 2.31 While the statutory definition of harassment in section 3A(1) only applies to grounds of race or ethnic or national origins, and not to those of colour or 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.

Example 1

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 12

A private landlord discovers that one of the tenants in his property is Polish. He voices his anti-Polish prejudice in a sustained campaign of abusive comments about Poland and the Polish, and encourages the other tenants to play along with this. His behaviour would amount to unlawful racial harassment.

- 2.32 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.¹¹

Pressure or instructions to discriminate

[Sections 30 and 31 of the RRA]

- 2.33 It is unlawful to instruct or induce or attempt to induce a person to discriminate against, or harass, a person, 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 13

A house owner who instructs a letting agency not to send Somali families to view his property acts unlawfully. If the agency acts on these instructions it also acts unlawfully.

11. Harassment by a landlord is also (in its broader sense) covered by the Housing (Scotland) Act 1988, which makes harassment a criminal offence, subject to severe penalties.

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 those activities. [*CRE v D Riley*, Manchester County Court, 1982, unreported]

Example 15

The Greater London Council received a petition from tenants on the Exmouth estate in Tower Hamlets, objecting on racial grounds 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.

Discriminatory advertisements

[Section 29 of the RRA]

- 2.34 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 (with limited exceptions, see Appendix 1 and paras 2.36 and 2.39 – 2.42).
- 2.35 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 noticeboards or shop windows, and pop-up windows and banners on websites.
- 2.36 The RRA allows a small number of limited exceptions (see Appendix 1), where the advertisement refers to a situation where discrimination is not unlawful; for example, a lawful positive action measure (see paras 2.40 – 2.42), or a relevant charitable instrument (see para 2.39). The advertisement should make it clear that the housing organisation or agency is making use of the exception.

Example 16

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.

Example 17

The CRE received information that a residential caravan site catering for a mixture of short- and long-term lets was displaying a 'No Travellers' sign on its gate. This would be an unlawful advertisement. When the CRE wrote asking for an explanation, the notice was removed.

Legal proceedings

- 2.37 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 a sheriff court.

Burden of proof

- 2.38 As a result of the amendments required by the EU Race Directive, the burden of proof used by tribunals and courts will vary according to the grounds of the discrimination.
- a. **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 court must find that unlawful discrimination or harassment has occurred.
 - b. **Grounds of colour or nationality**. If the alleged act of discrimination or harassment is on 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]

- 2.39 Housing organisations that 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 race or ethnic or national origin or nationality. Individuals should still be assessed according to their needs.

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

- 2.40 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), or to train or encourage people from a particular racial group that is under-represented in particular work (sections 37 and 38).¹²
- 2.41 Section 35 (see Appendix 1) 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. Individuals should still be assessed according to their needs.
- 2.42 To take advantage of this exception, the housing or service provider must have objective evidence of the special need they wish to meet and must demonstrate that the special provision is proportionate.

Public authorities [Section 71 of the RRA]

- 2.43 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.¹³
- 2.44 The aim of the duty is to make the promotion of racial equality central to the work of public authorities. The duty requires 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 developing policies, providing services, implementing employment practice and other functions.

12. PATH (Scotland), which is a registered charity, is an example of an organisation using section 37 to provide training for ethnic minorities in the field of housing.

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

- 2.45 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 2.47 – 2.50), which states how they will meet the 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 2.51).

The term ‘the duty to promote race equality’ covers both the general duty and any relevant specific duty.

- 2.46 ‘Listed’ public authorities responsible for housing, and services related to housing, that are required to prepare a race equality scheme include Scottish Ministers, Communities Scotland, Audit Scotland, local authorities, Scottish Enterprise, and Highlands and Islands Enterprise. Housing associations are not listed public authorities and are not directly bound by the duty to promote race equality. However, Communities Scotland, in its capacity as regulator, places specific obligations that in some respects mirror the duty to promote race equality.¹⁴ The CRE has issued a code of practice for public authorities on the duty, and has produced a range of accompanying guidance, which is available from the CRE website.¹⁵

Race equality scheme

- 2.47 A race equality scheme is a published document that sets out the arrangements a public authority has made to meet the duty to promote race equality.
- 2.48 The authority’s race equality scheme must include:
- 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 duty.

14. See Performance Standards on Allocations, Communities Scotland and Scottish Federation of Housing Associations, 2006.

15. See *Statutory Code of Practice on the Duty to Promote Race Equality in Scotland*, CRE, 2002.

- 2.49 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.
- 2.50 A race equality impact assessment¹⁶ challenges the assumption that policies affect everyone in the same way. It involves anticipating the likely effects of a proposed policy (for example, a transfer of housing stock) 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 racial 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

- 2.51 Listed public authorities have a specific duty to monitor all staff and applicants for employment, training and promotion, by racial group. Authorities with more than 150 full-time staff must also monitor, by racial group, the number of staff who receive training; benefit from, 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

- 2.52 The CRE has the power under section 71D of the RRA to enforce the 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

- 2.53 The procurement of goods, facilities and services from private, voluntary or other public sector contractors is a function of a listed public authority that is relevant to the duty to promote race equality.¹⁷ The public authority may contract out functions to the private sector; for example, the running of a prison or a leisure centre. Where it does so, it is still 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.

16. See *Race equality impact assessment: A step-by-step guide*, CRE, 2004.

17. See *Race Equality and Public Procurement: A guide for public authorities and contractors*, and *Race Equality and Procurement in Local Government: A guide for authorities and contractors*, both CRE, 2003.

- 2.54 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 selecting contractors 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, meeting any racial equality requirements. Communities Scotland's own regulatory code (see para 2.46) sets out guidance for housing associations on this matter.
- 2.55 Procurement by all public authorities in EU member states must follow the basic principles of competition, transparency, equal treatment and non-discrimination (between providers in different member states). To ensure transparency, formal invitations to tender by public authorities should usually list the specific criteria by which tenderers will be selected and tenders evaluated, including any criteria relating to the promotion of racial equality, where it is relevant to the subject matter of the contract. Racial equality considerations, such as how the contractor is proposing to provide suitable services to people from all racial groups, and whether the workforce is equipped to do this, are valid considerations in selecting a contractor, where the duty to promote race equality applies to the contract in question.
- 2.56 The EU public procurement 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. Failure to comply with legal obligations in respect of racial equality may give grounds to exclude a potential contractor from tendering. Where a company has been convicted of an offence it is usually good practice to allow them the opportunity to demonstrate that they have remedied the problem.¹⁸

Housing (Scotland) Act 2001

- 2.57 The Housing (Scotland) Act 2001 gives Scottish Ministers, local authorities and registered social landlords a duty to encourage equal opportunities, and meet equal opportunities requirements when carrying out their housing functions. 'Equal opportunity requirements' has the same meaning as in the Scotland Act, and refers to all areas of equality.¹⁹

18. EU procurement law is complex and specialist procurement or legal advice should be sought on its application in particular cases.

19. Section L2, Part II, schedule 5, Scotland Act 1998. 'Equal opportunity requirements' are legal requirements concerning equal opportunities; 'equal opportunities' means the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, on grounds of disability, age, sexual orientation, language or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions.

Local Government in Scotland Act 2003

- 2.58 In Scotland, the duty to promote race equality is supplemented by the Local Government in Scotland Act, which makes equal opportunities part of local authorities' 'best value' (see the glossary at Appendix 3) duty, and their procurement function. It does this in the following ways.
- a. 'The need to meet the equal opportunity requirements' (see para 2.57) is added to 'efficiency, effectiveness and economy' as guidelines for best value (section 1).
 - b. As well as the duty to secure best value, Scottish ministers, local authorities and other organisations have a duty to encourage equal opportunities, and, in particular, to meet the equal opportunity requirements, in carrying out any functions under the Act (section 59), including those of community planning and the power to advance wellbeing.
 - c. Public service organisations in the wider public sector are also required to secure best value in the performance of their functions, under the Accountable Officer Memoranda issued from the Public Finance & Accountability (Scotland) Act 2000. These memoranda place the same duty on other public service organisations as on local authorities, including Communities Scotland in its responsibilities for regulation of housing associations.
 - d. The restriction (under the Local Government Act 1988) on taking workforce matters into consideration will not apply when a local authority needs to ensure a contractor is able to meet contractual obligations regarding the promotion of race equality when a function of the authority is being contracted out (section 7).
 - e. Local authorities entering into a contract must take account of any guidance issued by Scottish ministers, who, like local authorities, are bound by the duty to encourage equal opportunities (section 59).

Partnerships

- 2.59 Housing, and services related to housing, are often provided through partnerships. These may consist of housing organisations that are public authorities bound by the duty to promote race equality, or they may be a mixture of public authorities and other organisations. In this case, the public authorities should make arrangements to meet the duty through the partnership, for example, by developing a joint racial equality strategy.²⁰

20. See *Public Authorities and Partnerships: A guide to the duty to promote race equality*, CRE, 2004.

Housing and the Race Relations Act 1976

Planning services and other functions of public authorities

- 2.60 Sections 19A (which refers to planning authorities and land use) and 19B of the RRA prohibit discrimination on racial grounds in the way public authorities carry out their functions. For example, if a planning authority refuses planning permission on racial grounds, this would be unlawful direct discrimination.

Example 18

A planning authority responds to pressure from residents objecting to an application for a Gypsy/Traveller caravan site, because they do not want Gypsies/Travellers living in the neighbourhood. Gypsies/Travellers are taken to be a racial group under the RRA and the planning authority would be acting unlawfully if it succumbed to pressure and treated racist objections 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 because local residents' objections that they do not want social housing in the area. If people from a particular racial group are disproportionately represented among people on the council's priority list for housing, the committee's decision could be construed as a breach of the RRA's planning provisions, as well as other provisions of the RRA.

Example 20

A planning authority fails to take account of the needs of residents from a particular racial group in drawing up regeneration plans for the area. This could be construed as a breach of the RRA's planning provisions as well as other provisions of the RRA.

Providing services

- 2.61 Section 20 of the RRA makes it unlawful for a person (including a public authority) 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, facilities or services of similar quality, or in a similar way, or on similar terms as are common with other members of the public or sections of the public.

- 2.62 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, factors and solicitors, and others.

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,²¹ based on a programme of testing for discrimination by accommodation agencies, landlords, and small hotels found that four out of 20 of the accommodation agencies tested in Edinburgh consistently discriminated on racial grounds. One agency had included a nationality question on the application form to help staff comply with discriminatory instructions from private landlords.

Example 23

A council discriminated directly when it refused to accept a booking for a wedding reception from a Romany Gypsy, on the assumption that the family and guests would cause trouble. [*Smith and Smith v Cheltenham Borough Council, Avery, Lambert and Hogg*, Bristol County Court, 1999, unreported]

Example 24

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

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

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.

Example 27

A valuer knowingly undervalues a 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.

Management, lettings and sales

Landlords

- 2.63 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 where the premises are small and, even then, only in very limited circumstances.²² As well as ordinary rented accommodation, 'premises' include hostels, bed and breakfast outlets, student accommodation and temporary accommodation secured for people who have a right to be housed by the local authority under the homelessness legislation.
- 2.64 Landlords must not discriminate against, or harass, an applicant or tenant, on racial grounds:

22. The Race Relations Act (Amendment) Regulations 2003 partly abolished the exceptions which permitted landlords and sellers to discriminate when letting or selling premises where they lived themselves, and if the premises counted as a 'small dwelling' (see the glossary at Appendix 3). 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 letting agent or estate agent to discriminate on his or her behalf, nor place a discriminatory advertisement.

- a. by refusing to rent premises;
- b. in the terms, including the proposed rent, on which they offer premises;
- c. in the way they treat someone, compared with others who need such premises;
- d. in the way they make benefits or facilities available to tenants or by refusing to provide those benefits and facilities (including 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 (other detriments may include requiring entry to the premises to inspect the accommodation).

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 council generally allocates the worst properties to homeless applicants (see the glossary at Appendix 3), whereas tenants transferring to housing association accommodation receive better properties. Ethnic minority households are disproportionately represented among those whom the council has a duty to house because they are homeless. This policy would be unlawful direct discrimination, unless the council could show it to be a proportionate means of achieving a legitimate aim. It may also be unlawful under the Housing Act 1996.

Sellers, including house builders and developers

- 2.65 Section 21 of the RRA makes it unlawful for owners of all types of property, including house builders and developers, to discriminate against, or harass, a person, on racial grounds:
- a. in the terms on which they offer the premises;
 - b. by refusing the person's application for those premises; and
 - c. in the way they treat that person, compared with others who need the same or similar premises.
- 2.66 Discrimination on grounds of colour or nationality (but not race or ethnic or national origin) when disposing of premises is not unlawful when the person owns the premises or has an interest in them, and if he or she wholly occupies

them. However, discrimination would be unlawful if the person uses an estate agent to dispose of the property, or publishes an advertisement. Discrimination is also not unlawful on grounds of colour or nationality if the premises count as a 'small dwelling' (see footnote 22, p 36, and the glossary at Appendix 3).

Example 31

A house builder refuses to sell properties at the entrance to a new building scheme to black buyers. The developer believes that white buyers will be deterred by the presence of black residents. This is direct discrimination.

Subletting

- 2.67 Section 24 of the RRA makes it unlawful for landlords (and others whose consent is required) to discriminate on racial grounds against a person who applies to sublet or be assigned a tenancy, by withholding consent to sublet or assign premises or harassing them in respect of them. There is an exception in relation to 'small dwellings' for discrimination on grounds of colour or nationality (see para 2.66 and footnote 22, p 36).

Example 32

If a tenant wants to sublet her flat to a Somali family, and needs her landlord's agreement, the landlord would be discriminating directly if he withheld that consent on racial grounds, and this would be unlawful unless the exemption applied (see para 2.66).

Estate Agents Act 1979

- 2.68 This Act gives the Office of Fair Trading (OFT) the power to prohibit any person from working as an estate agent, if the OFT is satisfied that that person has unlawfully discriminated against, or harassed, someone on racial grounds in the course of their work.²³
- 2.69 The CRE has a duty to give the OFT any information about:
- a finding of racial discrimination or harassment in an individual case;
 - a non-discrimination notice it has issued; or
 - an order or injunction restraining an estate agent from discriminating.

23. Section 3(1)(b) and schedule 1, para 2, Estate Agents Act 1979.

Consumer Credit Act 1974

- 2.70 Under this Act, estate agents or house builders and 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 10 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. mortgage lending and insurance;
 - e. homelessness and housing advice;
 - f. neighbourhood regeneration and integration;
 - g. tenancy and housing management;
 - h. racial harassment and anti-social behaviour;
 - i. contractors and procurement; and
 - j. involvement of residents and tenants.
- 3.2 Because of the nature of the legislation, especially the Race Relations Act 1976 (RRA) as it applies to public authorities (and indirectly to other social housing agencies such as housing associations), the emphasis of this 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 is 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 and draws on guidance and examples of good practice, not only in Scotland but from other parts of Great Britain, too. It also builds on the equality requirements that are now part of Scottish law, including the Scotland Act 1998 the Housing (Scotland) Act 2001 and the Local Government in Scotland Act 2003. 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 underlying principles should continue to have resonance and relevance for the foreseeable future.

- 3.4 The code suggests how housing organisations and agencies might build on the concepts of community cohesion and integration (see the glossary at Appendix 3) to develop better relations between local communities and certain groups, such as asylum seekers, refugees and Gypsies/Travellers.
- 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. 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. However, where relevant, racial equality should be seen as a corporate issue. There should be clear and demonstrable links between the centre and the housing service provider in determining how equality policies, as they relate to housing, are formulated. A strategy for working towards racial equality should be an essential part of the organisation's planning framework. Organisations that are public authorities bound by the duty to promote race equality should routinely carry out race equality impact assessments on new housing policies. Other organisations should do so as a matter of good practice. For the latter, the scope and nature of their racial equality strategy will depend on the housing organisation, and its size, and should take account of any codes of practice and regulatory arrangements the organisation is bound by, such as the guidance on equalities, best value, community planning and the power of wellbeing.²⁴
- 3.7 Housing organisations should consider the following guidelines when putting their race equality policy or strategy 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. 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.
 - c. The organisation should consult staff and local communities, including recent arrivals and traditionally excluded groups, such as Gypsies/Travellers, in developing its racial equality strategy and action plan.
 - d. 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.

24. See *Guidance on Equalities, Best Value, Community Planning and Power of Well-being*, Convention of Scottish Local Authorities, 2003.

- e. The organisation's housing plans and arrangements should be based on up-to-date information about the housing needs and requirements of people from all backgrounds in the community it serves.
 - f. The organisation should make sure information about its services and its racial equality strategy reaches people from all racial groups.
 - 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 needed.
 - 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 10 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 Commission for Racial Equality's (CRE) *Statutory Code of Practice on Racial Equality in Employment* 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 complies with the RRA and promotes racial equality and 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 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 that ensure equality of opportunity, 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, paras 2.40 – 2.42 and para 4.9f). 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 Board members, or councillors and staff, should make sure the organisation's commitment to racial equality is mainstreamed; that its strategies are monitored, reviewed and amended, as needed; and that projects and initiatives are given proper support, and regularly monitored, to achieve their aims. Equality should be seen as the responsibility of all, although the leaders of the organisation have a decisive role here and should be clearly identified.

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, including new and emerging communities.
- 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 where the organisation's leaders stand 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 Progress reports on racial equality are presented to the leaders of the organisation in sufficient detail and with sufficient frequency for them to monitor progress against the strategy and set new directions when needed.

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, 2.14 and 2.15). 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/Travellers. Public authorities must also consult people who are likely to be affected by their policies, and take account of any particular needs (see paras 2.48b and 2.50; see paras 4.10 – 4.15 for further guidance on carrying out race equality impact assessments; see also Example 8).

Areas of potential discrimination and disadvantage

- 3.25 **Funding and grants.** Are funding decisions about grants made fairly and equitably? Does the organisation take steps to make sure its assessment process does not disadvantage ethnic minority applicants for grants, and make efforts, for example, to promote home improvement grants among minority 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?
- 3.27 **Improvement programmes and temporary accommodation.** Have all arrangements to re-house tenants or residents as part of an improvement or decanting programme, including the use of temporary accommodation, 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 racial groups, including recent arrivals, in the area? Are these reflected in its strategic plans? Failure to do this could amount to indirect discrimination (see paras 2.13 – 2.16).
- 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 2.48b), if the housing organisation is bound by the duty to promote race equality. The projects should then be monitored regularly for their actual effects on different racial groups (see para 2.48c).
- 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 similar to that required of local authorities under the Housing (Scotland) Act 2001. This is also required of listed public authorities under the RRA, and under some regulatory approaches. The strategy, which should reflect any contributions from partners, local stakeholders, staff and

members of the public during consultation, should inform all stages of the planning and development process. The following factors should form part of any assessment of housing needs:

- a. information provided by different racial groups, including Gypsies/Travellers;
 - b. preferences for certain areas;
 - c. special considerations, including, for example, the number of bedrooms, or any design modifications needed to meet religious or cultural requirements; and
 - d. 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 proposals for partnerships.
- 3.34 Housing organisations should consider whether the most effective way to meet some needs is by using the positive action provisions of the RRA (see Appendix 1 and paras 2.40 – 2.42).
- 3.35 Any temporary re-housing arrangements (for example, decanting programmes) should be monitored, by racial group, and evaluated in the light of reactions from residents or tenants.
- 3.36 Housing organisations should conduct satisfaction surveys, among other methods, to learn what residents, tenants, applicants for housing and related services, and others in the community think of their policies and services, and use the responses to evaluate their strategy for promoting racial equality. If the results show that people from particular racial groups are less satisfied with their services, the organisation should explore the reasons and take appropriate action.

Key outcomes

- 3.37 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 lead to 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.
- 3.38 The housing organisation has a good understanding of the needs of all the communities it serves.

- 3.39 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 groups.
- 3.40 The housing organisation can give examples of good practice, which it shares with other agencies.
- 3.41 Customer surveys, and other information, show that people are equally satisfied with the housing organisation's services, regardless of racial group.

C. SALES AND LETTINGS

Background and legal requirements

- 3.42 It is unlawful to discriminate directly on racial grounds (but see also paras 2.63, 2.66 and 2.67, and footnote 22, p 36) or to have policies or procedures, including those 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 33

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 not advertising the service in outlets which it knows are preferred by ethnic minority residents. This could amount to indirect discrimination.

Example 34

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

Example 35

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

Example 36

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

Example 37

A CRE inquiry into a major Scottish public sector landlord's 'choice-based' lettings scheme (see the glossary at Appendix 3) found that:

- the city council had not done a race equality impact assessment of the scheme;
- it had not consulted affected groups and agencies in the community adequately;
- ethnic monitoring of applications and allocations was poor; and
- information about the new scheme was not available in relevant languages.

The CRE concluded that there had been contraventions of the duty to promote race equality and that these failings should be rectified.

- 3.43 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 as a consequence of individuals' and households' mobility or congregation over time would not be unlawful (see para 2.11).
- 3.44 The RRA also gives public authorities specific duties to promote race equality (see paras 2.43 – 2.59).

Areas of potential discrimination and disadvantage

- 3.45 **Information about services.** Are all applicants, regardless of racial group but taking account of individual circumstances, given access to the same information about sales and lettings?
- 3.46 **Valuations and surveys.** Are these carried out in the same way, and on the same terms, for all racial groups? Have staff been trained on their responsibilities under the RRA?
- 3.47 **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?

- 3.48 **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 (see Example 7)? Social landlords should monitor the geographical distribution of different racial groups across their stock to ensure that choice does not lead to segregation.
- 3.49 **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; for example, by disproportionately transferring applicants from a particular racial group to housing association properties, which are perceived to be 'better'? Are housing applicants from all racial groups fairly represented among the organisation's nominations?
- 3.50 **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?
- 3.51 **Segregation** (see the glossary at Appendix 3). Has the housing organisation taken steps to make sure its allocation policies and practices do not amount to segregation? However, taking account of applicants' preferences for particular areas (for example, because they want to be near family or friends, or religious or cultural services and facilities, or because they want to avoid areas where they consider they might be at risk of racial harassment) is not likely to amount to racial discrimination.
- 3.52 **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 requirement of some racial groups?
- 3.53 **Advice services.** Have the organisation's housing advisers been trained to understand the circumstances and housing needs of particular racial groups, and to deal sympathetically with them?²⁵ Are the staff who give advice on the organisation's housing services representative of, or knowledgeable about, the different people it serves?

25. For detailed guidance on the needs of asylum seekers and refugees, see Perry, J, *Housing and Support Services for Asylum Seekers and Refugees: A good practice guide*, Chartered Institute of Housing in association with Joseph Rowntree Trust, 2005.

Recommendations on good practice

- 3.54 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 any requirements or advice relevant to, or having any implications for, racial equality, issued by regulatory bodies such as Communities Scotland, and any associated codes of practice, regulatory arrangements and responsibilities.
- 3.55 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 race equality, monitor their impact, and assess the likely impact of any new relevant policy proposals on racial equality.
- 3.56 Nomination arrangements (generally between local authorities and housing associations) and any arrangements to receive referrals from other organisations, should be assessed to make sure they do not discriminate against housing applicants from a particular racial group (or groups).
- 3.57 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 groups, especially people with learning difficulties or medical conditions, ethnic minority elders, people with disability, and Gypsies/Travellers.
- 3.58 Housing organisations (especially those providing social housing) should make sure all their information and communication systems – telephone, written, web-based or face-to-face – are accessible to people from all racial groups in the communities they serve.
- 3.59 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 are satisfied that they are receiving a fair and equitable service.
- 3.60 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.
- 3.61 Housing organisations should make sure their policies do not lead to segregation. Working closely with other local organisations, including ethnic minority 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 make all neighbourhoods desirable places to live for all racial groups.²⁶

26. See *How Housing Management Can Contribute to Community Cohesion*; and R Blackaby, *Community Cohesion and Housing: A good practice guide*, both CIH, 2004.

Example 38

A large scale voluntary transfer organisation operated a 'choice-based' lettings scheme (see the glossary at Appendix 3) on behalf of the local housing authority. Ethnic minority applicants had been under-represented on the housing register. More people joined the scheme than had been on the housing register, and the proportion from ethnic minorities increased six-fold. This was reflected in a substantial and sustained increase in lettings to ethnic minority housing applicants. The organisation took a number of steps to help the authority minimise any adverse impact, and to meet the duty to promote race equality.

- It recruited marketing officers with relevant language skills and knowledge of different ethnic minority groups, to explain how the scheme works and the opportunities it offers.
- It helped those with little English to make bids through a bilingual helpline service.
- It encouraged those without internet access to use the helpline and local offices to make bids.
- It monitored bidding patterns, by racial group, to identify groups, such as recent migrants, with unusually low bidding profiles, and produced better literature about the scheme.
- It monitored the pattern of lettings to ethnic minority households and offered them a tenancy support service, so that they would feel more confident about bidding for areas where they might otherwise feel isolated or fear racial harassment.
- It ran the scheme in partnership with housing associations in the area, to find larger homes for ethnic minority families, which were disproportionately in need of these.

3.62 Housing organisations (especially public authorities, see para 2.48c) should make sure they have effective systems for monitoring, by racial group, the way their policies are working in the following areas:

- a. nomination and referral systems;
- b. 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 systems (see the glossary at Appendix 3);
- c. lettings (including 'choice-based' lettings), analysed by time spent waiting for an offer, number of offers made, acceptances, refusals, preferences (for location and type of accommodation) and quality;

- d. sales; and
 - e. complaints and their outcomes.
- 3.63 More complex analysis may be needed to understand how a housing organisation's policies and procedures are operating in practice. If the organisation is working in partnership with other organisations, such as local authorities and housing associations, it should make sure the different monitoring systems they use are compatible.
- 3.64 Housing organisations should consider setting targets, based on any significant racial disparities revealed through monitoring (see para 4.9f).

Key outcomes

- 3.65 Applicants from all racial groups are offered lettings in proportion to each group's representation among all applicants, taking into account different preferences and needs.
- 3.66 The housing organisation communicates effectively with all groups. Information about housing services is available, on request, in the languages used in the housing organisation's catchment area.
- 3.67 The housing organisation has good links with local people from all racial groups, and uses these to improve its services.
- 3.68 The housing organisation can show that its housing systems work fairly and equitably for people from all racial groups.
- 3.69 The housing organisation's staff have received training on racial equality generally, as well as on the duty to promote race equality and other responsibilities under the RRA.
- 3.70 The housing organisation's monitoring systems work well, providing reliable information about local housing needs, and how these are met.
- 3.71 People from all racial groups are treated fairly, and to high standards, at all stages of the housing and re-housing process.
- 3.72 Ethnic minority households are proportionately represented on housing lists, based on census and other data. If they are not, and there are significant disparities, the housing provider can explain the reasons for this.
- 3.73 Feedback shows that people are equally satisfied with the services they receive, regardless of racial group.

D. MORTGAGE LENDING AND INSURANCE

Background and legal requirements

- 3.74 It is unlawful for financial institutions or agents acting on their behalf to discriminate against, or harass, a person on racial grounds, directly or indirectly, 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 for housing.

Example 39

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

Example 40

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 this, it could be found liable for indirect discrimination.

Example 41

A bank only lends to applicants who have lived in the UK for a minimum period. This rule may disproportionately affect people from racial groups that have 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

- 3.75 **Lending and insurance criteria.** Have steps been taken to make sure the criteria for loans and insurance do not discriminate on racial grounds?
- 3.76 **Training.** Have staff (particularly staff in public organisations, see para 2.48f) been trained on their responsibilities under the RRA?
- 3.77 **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

- 3.78 Professional or accrediting bodies that publish codes of practice or standards for lenders and insurers, should make clear that lenders or insurers, or their representatives, must not discriminate unlawfully in the way services are provided, or harass anyone, on racial grounds.
- 3.79 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.
- 3.80 Lenders and insurers should give consideration to whether the criteria they use to offer loans and insurance, even for shared ownership, are not indirectly discriminatory, and do not disproportionately disadvantage a particular racial group (or groups).
- 3.81 It is recommended that lenders consider developing house purchase products that avoid any potential indirect discrimination against members of racial groups who are likely to have religious or other moral objections to interest-based financial transactions.
- 3.82 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.
- 3.83 It is recommended that lenders and insurers make their publicity material accessible to customers, and potential customers, from all racial groups.

Key outcomes

- 3.84 The lender or insurer does not use any criteria or practices that could disproportionately disadvantage people from a particular racial group (or groups).
- 3.85 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 anyone on racial grounds, or harass them, or act on racially discriminatory instructions.
- 3.86 The lender or insurer has an increasing number of customers from any racial group that is underrepresented.

E. HOMELESSNESS AND HOUSING ADVICE

Background and legal requirements

- 3.87 It is unlawful for a local authority, and, where relevant, other housing organisations to discriminate against, directly or indirectly, or harass, a person on racial grounds, when providing housing information and advice; assessing whether someone is statutorily homeless; or securing accommodation for, or providing advice and assistance to, people accepted as being homeless or threatened with homelessness (unless the act of discrimination is done under the statutory authority exception in the RRA – see exceptions under the Race Relations Act 1976 at Appendix 1). Housing organisations that are public authorities must also actively promote racial equality, including good race relations, in carrying out their housing advice and homelessness functions.
- 3.88 Local authorities have a duty to promote race equality when exercising their responsibilities under the Housing (Scotland) Act 1987 to applicants who they have reason to believe may be homeless or threatened with homelessness. Local authorities also have a duty under the Housing (Scotland) Act 2001 to publish a homelessness strategy.
- 3.89 At the time of this code's publication, people from ethnic minorities have been persistently over-represented as clients in homelessness services. Research has shown that they report poor experience of these services, including insensitivity to special needs and communication difficulties, and fear of discrimination.²⁷

Areas of potential discrimination and disadvantage

- 3.90 **Assessment.** Are non-discriminatory criteria used to assess whether applicants are actually homeless, threatened with homelessness or statutorily homeless (see 'homeless' in the glossary at Appendix 3)? Have staff been trained to work with people from all backgrounds and to identify and take account of any special needs they might have which would be relevant to the assessment of their case?
- 3.91 **Advice services.** Is the advice given to ethnic minority applicants, tenants and residents consistent in quality and substance with the advice given to applicants from other racial groups?
- 3.92 **Communication.** Is information about the organisation's homelessness services easily accessible to ethnic minority applicants, with translations available on request in languages other than English? Are the organisation's communication methods effective in reaching people from all racial groups?

27. See *Causes of Homelessness in Ethnic Minority Communities*, ODPM, 2005.

- 3.93 **Prevention.** Does the housing organisation have reliable and up-to-date information on the likely numbers of people from different racial groups who may be at risk of homelessness, including Gypsies/Travellers, new arrivals in the area, and asylum seekers and refugees? Are the organisation's strategies and policies for tackling racial harassment robust enough to protect tenants and residents from avoidable homelessness?
- 3.94 **Securing accommodation.** Are non-discriminatory criteria and procedures used to decide what types of temporary accommodation would be suitable for people accepted as homeless? Do the criteria and procedures take into account the needs of applicants from all racial groups? Are staff trained to understand and deal with linguistic and cultural differences among applicants? Does the housing organisation make sure that the systems and procedures by which homeless households can apply for settled accommodation are non-discriminatory?

Recommendations on good practice

- 3.95 Housing organisations should make sure that, where relevant, their racial equality strategies cover issues concerning homelessness, and that the needs of people from all racial groups, including Gypsies/Travellers and new migrants, who are homeless, or may be at risk of being homeless, are taken into account. Local authorities, too, should make sure their homelessness strategies cover racial equality issues, and may wish to consider developing a separate strategy to cover both ethnicity and homelessness.
- 3.96 Housing organisations should review the communication needs of people from ethnic minorities who are homeless or may be at risk of homelessness, assess whether their current arrangements are effective, and consider how to fill any gaps. They should make sure all groups are covered by the review.
- 3.97 Housing organisations should review their arrangements for assessing eligibility for homelessness assistance and for deciding whether temporary accommodation is suitable for particular applicants, to ensure that they are lawful and non-discriminatory.
- 3.98 Housing organisations responsible for providing advice or assistance to people accepted as homeless should make arrangements to monitor, by racial group, the way their policies are working. Public authorities must make these arrangements (see para 2.48c), and local authorities in particular should make sure their arrangements cover:
- a. decisions on eligibility, priority need, intentionality, local connection, and reviews of these decisions;
 - b. the suitability of any temporary accommodation secured and the length of stay pending the availability of suitable settled accommodation;

- c. advice and information; and
 - d. satisfaction with the local authority's homelessness service, complaints procedure and outcomes.
- 3.99 Housing organisations should take steps to deal with any significant racial disparities revealed by monitoring; for example, by supporting measures to increase the supply of suitable housing and to reduce overcrowding.

Key outcomes

- 3.100 The housing organisation has a sound homelessness strategy, which takes account of racial equality issues and which has been prepared in consultation with all sections of the community, including Gypsies/Travellers, is well coordinated with other plans and strategies, and contains targets and arrangements for monitoring and review.
- 3.101 People from all racial groups are well informed about the homelessness services available locally. Applicants from ethnic minorities are more confident that service providers will work positively to meet their needs, and users of the services are more satisfied with the way these are provided.
- 3.102 There are year-on-year reductions in any significant over-representation of particular racial groups among those accepted as homeless or those threatened with homelessness.

F. NEIGHBOURHOOD REGENERATION AND INTEGRATION

Background and legal requirements

- 3.103 It is unlawful to discriminate on racial grounds, directly or indirectly, in the way decisions are made on development initiatives for 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 – 2.59). The third part of the duty, which involves promoting good race relations, is especially relevant to neighbourhood development and integration.
- 3.104 Integration is achieved when the following essential requirements of an integrated society are met:
- a. equality – where every member of society has an equal opportunity to access jobs and services without risk of discrimination;

- b. participation – where each individual can engage in making the decisions that directly affect them, and in shaping policies and services; and
 - c. interaction – where different racial groups have positive contact with one another, building bridges across communities to develop mutual understanding.
- 3.105 Integration is part of a process that leads to better community cohesion (see the glossary at Appendix 3). Housing organisations which consider questions of integration as part of any action they take to develop neighbourhoods and communities are more likely to be able to avoid segregation; support Gypsies/Travellers, asylum seekers, refugees and other new migrants; encourage residents to get involved; and deal with tensions between sections of the community or neighbourhoods, including anti-social behaviour.

Areas of potential discrimination and disadvantage

- 3.106 **Consultation.** Are people from all groups, including people from ethnic minority groups and the voluntary organisations that provide services for them, consulted about neighbourhood or renewal initiatives, and invited to get involved?
- 3.107 **Analysis of needs.** Are all needs, including needs among ethnic minority groups, considered as part of the assessment and planning process? Are the needs of new migrants (for example, from central and eastern Europe) assessed and planned for?
- 3.108 **Integration.** Have the issues of integration and community cohesion, and the guidance available in this area,²⁸ been taken into account; for example, when carrying out race equality impact assessments, or developing and reviewing strategies or policies?
- 3.109 **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?
- 3.110 **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?

28. See *Community Cohesion: An action guide for local authorities*, Local Government Association, 2004; *Community Cohesion: Advice for those designing, developing and delivering area-based initiatives (ABIs)*, ODPM, 2003; and footnote 26, p 53.

Recommendations on good practice

- 3.111 The discipline of carrying out race equality impact assessments should be an essential part of the process of developing new public 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.
- 3.112 Race equality impact assessments of proposals for neighbourhood renewal programmes should consider:
- segregation and integration;
 - faith groups;
 - asylum seekers and refugees;
 - vulnerable people from ethnic minorities, such as older people and people with disabilities;
 - Gypsies/Travellers;
 - the role of local residents; and
 - how to deal with possible tensions between communities or neighbourhoods, including anti-social behaviour.
- 3.113 Housing organisations should make arrangements for consulting people from all racial groups in the area they serve. They should also make sure representatives from these groups are included in steering groups or partnerships.
- 3.114 Housing organisations should take steps to get people from all racial groups involved; for example, in outreach work with other local organisations and agencies, or by distributing information about vacancies for specialist staff. They should seek to increase interaction between different groups, and liaise on ways of achieving greater integration.
- 3.115 The assessment of housing need in all sections of the community the organisation serves, including people from ethnic minorities, should be an essential part of the review and planning stages of any initiatives developed and funded in this area.
- 3.116 Housing organisations should have a communication strategy, particularly for large developments. The strategy should include provision of accurate, accessible and comprehensive information about how the development will affect local communities, including the opportunities it will hold for them.

- 3.117 Training on racial equality, especially for staff involved in development and neighbourhood renewal work, should cover the question of integration (see paras 3.103 – 3.105).
- 3.118 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

- 3.119 The needs of people from all racial groups in the areas served by the housing organisation have been considered at the earliest stages of developing new housing or housing renewal programmes.
- 3.120 People from all racial groups have been consulted, and encouraged to get involved in renewal and regeneration initiatives.
- 3.121 Staff have received training on racial equality, and understand their responsibilities under the RRA.
- 3.122 Integration and community cohesion are seen as essential aspects of renewal and regeneration initiatives, and projects are monitored, by racial group, and evaluated.
- 3.123 Satisfaction surveys and feedback from those who use the organisation's services show similar levels of satisfaction among residents from all racial groups.
- 3.124 The housing organisation has effective monitoring and evaluation systems.

G. TENANCY AND HOUSING MANAGEMENT

Background and legal requirements

- 3.125 It is unlawful for a housing organisation to discriminate against a person, 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 the services it provides, such as care services and supported housing.

Example 42

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

Example 43

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

Example 44

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

Example 45

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

Example 46

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

- 3.126 The RRA gives public authorities specific duties to promote race equality (see paras 2.43 – 2.59).

Areas of potential discrimination and disadvantage

- 3.127 **Repairs and maintenance services.** Are these made available without unlawful racial discrimination or harassment, whether the services are provided directly or through a contractor?
- 3.128 **Caretaking.** Have caretaker staff been trained to deal with racist incidents? Are racist incidents recorded, and information about them, and about any action taken, held centrally?
- 3.129 **Graffiti.** What action does the organisation take to remove racist or offensive graffiti, and how quickly is this done?
- 3.130 **Planning services.** Are people from ethnic minorities given the same opportunities as others to get involved in planning and designing services?

- 3.131 **Rent arrears.** Are rent arrears and rent collection dealt with on the basis of individuals' needs, regardless of racial group?
- 3.132 **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?
- 3.133 **Consultation and involvement.** Are all residents and tenants, including those from often overlooked groups, such as Gypsies/Travellers, consulted about the housing organisation's proposals? Are they represented in forums or in arrangements for participation?
- 3.134 **Advice services.** Is consistent advice given to all tenants and residents, regardless of racial group? Is this available in the relevant languages? Have staff been trained to work with people from all backgrounds, and to take account of any specific needs they might have?
- 3.135 **Supported housing and care services.** Have housing initiatives and programmes taken full account of the needs and preferences of people from all racial groups? Are programmes being developed fairly and equitably?

Recommendations on good practice

- 3.136 Housing organisations should make sure they are able to communicate effectively with their tenants and residents, and should make arrangements to translate material, if needed.

Example 47

A housing association is able to provide information to residents in languages other than English, and in different print formats, according to preferences they have expressed, which have been keyed into the association's database. The IT system flags up this preference whenever an officer accesses an individual resident's file. The association is able to produce a report of all residents who have requested communication in a non-standard format.

- 3.137 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.

Example 48

'Supporting People' is a programme of grants, administered by local authorities, to support vulnerable people so that they can live independently in their own homes. Various 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, refugees, 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 groups.

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.
- Providers of services must have arrangements for collecting and analysing data on racial groups, and using the information to tackle any shortfalls in services.
- Providers of services should consider how they might use section 35 of the RRA (see paras 2.40 – 2.42 and Appendix 1) to provide supported housing for people from ethnic minorities.

- 3.138 Housing organisations should make sure the contractors they use for repairs or maintenance have racial equality policies that complement those of the organisation (see paras 3.160 – 3.177), and understand that discriminatory behaviour or harassment of tenants is unlawful and will not be tolerated.
- 3.139 Repairs needed as a result of harassment or anti-social behaviour should be given a priority commensurate with their seriousness.
- 3.140 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.

- 3.141 Housing organisations should consider using campaigns, possibly directed at individual groups, to make sure tenants and residents are aware of their rights, including any benefit entitlements.
- 3.142 Housing organisations should monitor their principal housing services, 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.
- 3.143 Smaller housing organisations, which do not find it practical to monitor in detail or intensively, 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 should take steps to deal with any significant disparities between racial groups. The surveys should also measure satisfaction with the services they provide.

Key outcomes

- 3.144 All tenants and residents receive parity of service.
- 3.145 Satisfaction with services is similar across all racial groups.
- 3.146 Contractors' approaches to racial equality are consistent with those the housing organisation takes.
- 3.147 Tenants and residents from all racial groups are aware of, and take up, benefit entitlements. Complaints do not reveal any significant disparities between racial groups.
- 3.148 The needs of people from different racial groups for supported housing and related care services are systematically considered, and projects developed specifically to meet those needs.
- 3.149 The housing organisation monitors its services, by racial group, and deals with any shortfalls or gaps revealed by the data.
- 3.150 Tenants and residents from all racial groups are able to access supported housing and repair services.

H. RACIAL HARASSMENT AND ANTI-SOCIAL BEHAVIOUR

Background and legal requirements

- 3.151 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 (see paras 2.28 – 2.32) would constitute direct discrimination. 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 (see para 2.30).
- 3.152 A number of legal avenues are open to local authorities, housing associations and private landlords, to protect their tenants and residents from anti-social behaviour, which includes behaviour that causes or is likely to cause alarm or distress.
- a. Under the Housing (Scotland) Act 1988 and the Housing (Scotland) Act 2001, tenants in the private and public sectors, respectively, can be evicted for anti-social behaviour towards their neighbours.
 - b. Under the Antisocial Behaviour etc (Scotland) Act 2004, a local authority may seek an anti-social behaviour order from the sheriff, in relation to any person in their area. A registered social landlord may seek an anti-social behaviour order in relation to any person in or in the vicinity of that landlord's property.
 - c. When the relevant parts of the Antisocial Behaviour etc (Scotland) Act 2004 are brought into effect, local authorities will have the power to serve an anti-social behaviour notice on a private landlord specifying the action he or she must take to address anti-social behaviour in the locality of a property by a tenant, occupant or visitor to a property. If the landlord does not take the required action, that would be a criminal offence. The local authority can also apply to the sheriff to suspend the tenant's liability for rent until the landlord takes the required action, or to transfer management control of the property to the council, so that it can resolve the problems of anti-social behaviour.
 - d. To be allowed on the register a landlord will have to be judged by the local authority as a person who is 'fit and proper' to be letting houses, in light of any relevant material available to the local authority. A landlord who is found to have been engaged in unlawful discrimination may fail this test. It will be a criminal offence to let properties without being registered (except where a valid application has been made and is being processed) and local authorities will be able to suspend liability for rent as a penalty.

- e. The Antisocial Behaviour etc (Scotland) Act 2004 also requires local authorities and relevant chief constables to prepare a strategy for dealing with anti-social behaviour in their area. Local authorities must consult victims of anti-social behaviour, including victims from ethnic minorities, and set out in their plan the services they have made available for victims and witnesses of anti-social behaviour.

Areas of potential discrimination and disadvantage

- 3.153 **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 enforcement action, including possible 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

- 3.154 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.
- 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 enforcement action including possible eviction – tenants and residents should

be in 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 in 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, discussion of the findings with other agencies and reports back to the wider community (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.
- 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

- 3.155 The housing organisation has a comprehensive anti-harassment policy,²⁹ 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.
- 3.156 Staff have been trained, and are clear about what is expected of them when dealing with a complaint of racial harassment.
- 3.157 Monitoring reports show that racial harassment complaints have been responded to quickly and effectively, at every stage.
- 3.158 Feedback from all concerned shows general satisfaction with the way cases have been handled by the housing organisation.

29. Under the Antisocial Behaviour etc (Scotland) Act 2004, local authorities and chief constables must prepare an anti-social behaviour strategy. That function (and any other function under the Act) must be discharged in a way that encourages equal opportunities and, in particular, observance of equal opportunity requirements.

- 3.159 In areas where harassment is a particular problem, there is evidence that the organisation has taken positive steps to deal with it.

I. CONTRACTORS AND PROCUREMENT

Background and legal requirements

- 3.160 The duty to promote race equality applies to procurement by listed public authorities (see para 2.53 – 2.58). 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. Major procurement exercises that are relevant to racial equality should be subject to a race equality impact assessment.
- 3.161 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.
- 3.162 Housing associations are ‘bodies covered by the public law’ for the purposes of EC procurement rules. They must therefore comply with the requirements of the EC directives on public procurement, and EC Treaty-based principles of non-discrimination and equal treatment will apply.
- 3.163 Communities Scotland is a listed public authority and in that capacity places specific obligations on housing associations in regard to racial equality. Its guidance suggests that associations should pass on racial equality requirements in respect of staffing, customer satisfaction and dealing with racial harassment to their consultants, contractors and suppliers.

Areas of potential discrimination and disadvantage

- 3.164 **Tendering.** Are racial equality considerations built into the housing organisation’s tendering processes?
- 3.165 **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?

- 3.166 **Monitoring and evaluation.** What has the contractor achieved in respect of racial equality, as required under the contract? How does this compare with the housing organisation's achievements?
- 3.167 **Ethnic minority businesses.** What steps does the housing organisation take to change practices that hamper or prevent businesses run by people from ethnic minorities from winning contracts, and to make sure they are aware of opportunities, both directly, as contractors, and indirectly, as subcontractors?

Recommendations on good practice

- 3.168 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 requirements, and that their own tendering processes are fair and transparent; for example, have ethnic minority businesses been given the opportunity to apply to be placed on any tendering lists?
- 3.169 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. Racial equality should be integral to corporate objectives, planning and provision of services.
- 3.170 Housing organisations should try to reach an agreement with their contractors as to how any racial equality requirements will be met by their subcontractors.
- 3.171 Housing organisations should monitor the way their contractors are meeting any racial equality requirements, both in providing services and employment,³⁰ and take steps to encourage improvement, or enforce compliance if their performance falls short.
- 3.172 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

- 3.173 Tenders and contracts include references to racial equality (where considered relevant), and make clear what is required of the contractor and any subcontractors.

30. See *Statutory Code of Practice on Racial Equality in Employment*, CRE, 2005.

- 3.174 Racial equality is assessed as part of the overall arrangements for supervising the contract.
- 3.175 Contractors are able to give concrete examples of promoting racial equality, in the way they provide services and, where relevant, in employment practices.
- 3.176 The housing organisation can point to contracts won by ethnic minority businesses, or steps taken to encourage them to tender.
- 3.177 Ethnic minority businesses are as satisfied as others that the housing organisation's procurement policies and practices offer equal opportunities.

J. INVOLVEMENT OF RESIDENTS AND TENANTS

Background and legal requirements

- 3.178 It is unlawful to discriminate against, or harass, tenants or residents, on racial grounds, when consulting them, or involving them in managing 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 2.48b and c). The statutory duty to promote race equality is complemented by the provisions of the Housing (Scotland) Act 2001, which require all local authorities and registered social landlords, in consultation with its tenants, to publish and implement a strategy for tenant participation. The strategy should set out how tenants and tenant organisations, will be consulted and involved in decision making. Landlords also have a specific duty to consider the needs of groups protected by equalities legislation, in their strategy. The Act also introduced the concept of Registered Tenant Organisations and tenant and resident groups who register with their landlord and have a right to be consulted on housing and related matters which affect them. Groups must meet set criteria for registration and to become registered, groups must have a written constitution that sets out the organisation's commitment to the promotion of equal opportunities, and a committee for that purpose.³¹
- 3.179 Questions of integration and community cohesion are also likely to be important (see paras 3.103 – 3.109).

31. The Housing (Scotland) Act 2001 (Registration of Tenant Organisations) Order 2002.

Areas of potential discrimination and disadvantage

- 3.180 **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? Has the organisation taken account of research findings that certain hard to reach groups would rather be involved in other way than by joining a tenant group?³²
- 3.181 **Recognition of tenants' and residents' organisations.** Have criteria for recognising tenants' and residents' organisations been drawn up and agreed between landlords and tenants and residents? Have steps been taken to ensure that residents' and tenants' organisations have clear equal opportunities policies and practices, and are open to the involvement of all residents and tenants, including those from ethnic minorities?
- 3.182 **Training.** Have tenants' and residents' representatives, and all staff concerned, been given racial equality training, including training on the RRA?
- 3.183 **Monitoring and evaluation.** Have arrangements been made to monitor and evaluate involvement and participation, including time in office, in tenants' and residents' organisations, by racial group? What steps have been taken to deal with any significant disparities between racial groups?

Recommendations on good practice

- 3.184 Housing organisations should, and where required to, must, draw up a strategy for involving tenants and residents, including those from ethnic minorities, in their decision-making processes.³³ The strategy should include arrangements for providing information, consultation, involvement, feedback and participation.
- 3.185 Housing organisations should take steps to encourage people from all racial groups to get involved; for example, by making positive moves to identify them, translating material, working with individual groups, and appointing specialist staff to work with them. They should be flexible and willing to explore non-traditional forms of involvement.

32. See Evaluating Tenant Participation in Housing Management and Design, Welsh Assembly Government, 2005. For information on the WAG's Tenant Empowerment Grant programme, see www.housing.wales.gov.uk.

33. Under the Housing (Scotland) Act 2001, local authorities and housing associations must have a tenant participation strategy.

- 3.186 Housing organisations should include among the criteria for granting recognition to tenants' and residents' organisations, a requirement that they are truly open to all racial groups. Where necessary, housing organisations should help tenants' and residents' organisations to meet the criteria.
- 3.187 Housing organisations should provide training for tenants' and residents' representatives (and any staff working for them). The training should cover their legal responsibilities under the RRA, and racial equality matters more generally.
- 3.188 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.
- 3.189 Housing organisations should be able to show what they have done to encourage ethnic minority involvement and to publicise and promote good practice.
- 3.190 Housing organisations' strategies and policies should show an awareness of any barriers ethnic minority residents and tenants might face in getting involved in initiatives, and include ways of overcoming them.
- 3.191 Housing organisations should monitor involvement, by racial group, for example by conducting surveys, and deal with any significant disparities between racial groups.
- 3.192 Housing organisations should use their relationships with tenants' and residents' organisations to collect information about any racial tension or harassment.

Key outcomes

- 3.193 Ethnic minority representation in tenants' and residents' organisations is an explicit aim of the housing organisation's strategy for increasing tenants' and residents' involvement.
- 3.194 Tenants and residents 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.
- 3.195 Tenants' and residents' representatives, and staff involved in policy and decision-making, have been trained on the RRA, and on racial equality more generally.
- 3.196 All tenants and residents, including those from ethnic minorities, are satisfied with the organisation's arrangements to get them involved and there are arrangements in place for monitoring their effectiveness.

4

*Training, monitoring and
race equality impact
assessment*

4

Training, monitoring and race equality impact assessment

- 4.1 Training, monitoring and race equality impact assessment are essential to meeting the recommendations of this code. While this chapter focuses on racial equality, it will often be beneficial for housing organisations to include other equality areas in their arrangements for training, monitoring and impact assessment.

Training

- 4.2 Training has an important role in ensuring that residents, tenants, the housing organisation's staff, board or executive members, 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 implementing it. Employment tribunals and courts will take account of the steps an organisation has taken to train its staff on the Race Relations Act 1976 (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 can be a waste of resources; worse, it can 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 do people need to know, and why?
 - What do people know already, and what more do they need to know?
 - Is the training concerned with providing a general understanding of racial equality issues and the RRA?

- d. Should it be provided as a stand-alone course or as part of other specialist training, such as training on monitoring or race equality impact assessment, or in conjunction with training on other equality issues?
- 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; and
- 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,³⁴ in order to provide a fair and equitable service to all. Incorporating ethnicity into monitoring is an essential tool for achieving racial equality. Without this, it would be difficult to establish the nature or extent of inequalities, the areas where action is most needed, and whether the measures aimed at reducing inequality are succeeding.

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;

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

- c. analysing the data; and
- d. acting on the findings.

4.9 The Commission for Racial Equality (CRE) has published detailed advice on monitoring by racial group.³⁵ 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 analyse the information quickly, and to compare it with information selected as a benchmark for comparison, such as the 2001 census,³⁶ or data from other similar local or national sources.
- b. Housing organisations should use the ethnic categories set out in the 2001 census. They should consider introducing extra categories for specific groups that have a substantial local presence, perhaps due to recent migration (for example, people of central or east European origin) so that they can monitor the full effects of their services on all groups. If there is little useful information about particular groups, such as Gypsies/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 groups, 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 of 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

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

36. See the General Register Office for Scotland website (www.gro-scotland.gov.uk) and *Housing and Black and Minority Ethnic Communities: Review of the evidence base*, ODPM, 2003.

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 may 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.

Race equality impact assessment

- 4.10 The RRA gives listed public authorities a specific duty to assess the impact a proposed policy is likely to have on promoting racial equality, and to consult those who are likely to be affected by the policy, before it is formally introduced. The aim is to make sure public services are genuinely public, and that public authorities work towards this in their decision-making processes.
- 4.11 Race equality impact assessments are best done systematically. The aim is to find out if a proposed policy could have an adverse impact (see the glossary at Appendix 3) 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 50). The duty covers policies on employment and services.

Example 50

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 a race equality impact assessment of its new policy proposal, to see if the closures could affect people from a particular racial group (or groups) adversely. 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 race equality impact assessment for public authorities.³⁷ Its aim is to help authorities to:
- a. take account of the needs, circumstances and experiences of those likely to be affected by a proposed policy;
 - b. identify any actual or potential inequalities, as well as possible unlawful discrimination, between different racial groups; and
 - c. 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. Such a policy would be intended to 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.
- 4.14 A race equality 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 race equality impact assessment

- 4.15 A race equality 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.

37. See *Race equality impact assessment: A step-by-step guide*, CRE, 2004.

- b. **Full impact assessment.** A full impact assessment will require more detailed examination of the likely impact of a proposed policy, usually including consultation with those affected. The organisation should bear in mind the following.
- i. For public authorities, carrying out a race equality impact assessment is a specific duty under the RRA (see para 2.48b), and the CRE has the power to enforce it (see para 2.52).
 - ii. Race equality 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 50) should be treated as a new policy proposal.

Appendices

Appendix 1

Exceptions under the Race Relations Act 1976

Positive action [Sections 35, 37 and 38]

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 2.40 – 2.42).

Charities [Section 34]

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]

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 Great Britain [Section 6]

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 Great Britain, in order to train him or her in skills that will only be used outside Great Britain.

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

Discrimination on racial grounds is allowed in employment in certain limited circumstances, where being from a particular racial group is 'a genuine occupational requirement' (GOR) or a 'genuine occupational qualification' (GOQ) for doing the job. 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 under statutory authority [Section 41]

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 to meet 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: Delivering improved services to local communities*. (http://www.audit-commission.gov.uk/Products/NATIONAL-REPORT/EA59CF1B-0157-4cdb-BCA5-D9579C4DBFE5/RaceEquality_briefing.pdf)

Blackaby, B. 2004. *Community Cohesion and Housing: A good practice guide*. Coventry: Chartered Institute of Housing (CIH)

Blackaby, B and Chahal, K. 2000. *Black and Minority Ethnic Housing Strategies: A good practice guide*. Coventry: CIH

CIH. 2003. *Good Practice Briefing 26 – Equality and diversity*

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

Chartered Institute of Housing in Scotland. 2002. *Experience of Black and Minority Ethnic Housing Staff*. Edinburgh: Chartered Institute for Housing in Scotland and PATH (Scotland)

Commission for Racial Equality (CRE). 1990. *Sorry, It's Gone: Testing for racial discrimination in the private rented housing sector*. London

1993. *Housing Allocations in Oldham: Report of a formal investigation*

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

2002a. *Performance Guidelines for Local Authorities in Scotland*

2002b. *Statutory Code of Practice on the Duty to Promote Race Equality in Scotland*

2002c. *Towards Race Equality in Scotland*

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

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

2003b. *Race Equality and Public Procurement: A guide for public authorities and contractors*

2004a. *Public Authorities and Partnerships: A guide to the duty to promote race equality*

2004b. *Race Equality Impact Assessment: A step-by-step guide*. (<http://www.cre.gov.uk/duty/reia/index.html>)

2005. *Scottish Gypsy/Traveller Strategy: CRE Scotland, 2006 – 2007*

2005a. *Statutory Code of Practice on Racial Equality in Employment*

CRE and Association of Scottish Community Councils. 2003. *Guidance for Community Councils in Scotland*. (http://www.cre.gov.uk/downloads/scot_commcouncils.pdf)

Communities Scotland. 2002. *Services for Gypsies and Travellers: Thematic studies*. (<http://www.communitiesscotland.gov.uk/web/FILES/gypsiestravellers.pdf>)

2002a. *Equalities in Practice: Thematic Regulation Study*. (http://www.communitiesscotland.gov.uk/stellent/groups/public/documents/webpages/cs_006151.pdf)

2005. *Learning Point: Equalities in Community Regeneration: Making it mainstream*. (http://www.communitiesscotland.gov.uk/stellent/groups/public/documents/webpages/otcs_008879.pdf)

2005a. *Providing Information to Refugees: A good practice checklist*. (http://www.communitiesscotland.gov.uk/stellent/groups/public/documents/webpages/cs_009129.pdf)

Communities Scotland and Scottish Federation of Housing Associations. 2006. *Performance Standards on Allocations*

Communities Scotland, Convention of Scottish Local Authorities (COSLA) and Scottish Federation of Housing Associations (SFHA). 2001. *Performance Standards for Social Landlords and Homelessness Functions*. (http://www.communitiesscotland.gov.uk/stellent/groups/public/documents/webpages/cs_006882.pdf)

Convention of Scottish Local Authorities (COSLA). *Guidance on Equalities, Best Value, Community Planning and Power of Well-being*. (<http://www.cosla.gov.uk/attachments/publications/bvequalitiesguidance.pdf>)

Department of the Environment, Transport and the Regions (DETR). 2001. *Tackling Racial Harassment: A code of practice for social landlords*. London

Gravell, C. 2003. *Alternatives for Eviction for Perpetrators of Racial Harassment*. (www.community-safety.net/images/archive/conf03/carwyn%20gravel.pdf)

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

2002. *Race Equality and Diversity: Regulatory code*. Good Practice Note 4. (<http://www.housingcorp.gov.uk/upload/pdf/gpn4.pdf>)

Jeffery, J and Seager, R. 2006. *Equality and Diversity: A framework for review and action*. London: National Housing Federation

Lemos and Crane. 2004. *Implementing the Code of Practice for Social Landlords on Tackling Racial Harassment: Guidance and examples*. (<http://www.raceactionnet.co.uk>)

Local Government Association (LGA), Home Office, Office of the Deputy Prime Minister (ODPM), CRE and the Inter-Faith Network. 2003. *Building a Picture of*

Community Cohesion. (http://communities.homeoffice.gov.uk/raceandfaith/reports_pubs/publications/race_faith/build-pict-com-cohesion.pdf)

LGA, Audit Commission, CRE, Home Office, Improvement & Development Agency, the Inter-Faith Network and the ODPM. 2004. *Community Cohesion: An action guide for local authorities*. (<http://www.lga.gov.uk/download.asp?path=/Documents/Publication/communitycohesionactionguide.pdf>)

Mackay, F and Bilton, K. 2001. *Equality Proofing Procedures in Drafting Legislation*. Edinburgh: Scottish Executive

National Housing Federation (FNHF). 2004. *Community Cohesion: in business for neighbourhoods*. (<http://www.housing.org.uk/library/index.asp?Submit=1&KeywordsType=AND&Doc=33&Reg=all&Grp=1&Ord=1>)

2004a. *Housing and Support Options for Refugees and Asylum Seekers*. (<http://www.housing.org.uk/library/viewfile.asp?fid=2704>)

NHF, CRE, the Federation of Black Housing Organisations and the Housing Corporation. 2002. *Race Equality Code of Practice for Housing Associations*

Netto, G, Fancy, C, Pawson, H, Lomax, D, Singh, S and Power, S. *Black and Minority Ethnic Communities and Homelessness in Scotland*. Edinburgh: The Scottish Executive

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

2003a. *Housing and Black and Minority Ethnic Communities: Review of the evidence base*

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

2004a. *Ethnicity Monitoring: Benefit. Guidance for partnerships on monitoring benefit*

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

2004c. *Piloting Choice-Based Lettings and Evaluation*

2005. *Causes of Homelessness in Ethnic Minority Communities*

2005a. *Tackling Homelessness amongst Ethnic Minority Households: a development guide*

Penoyre and Prasad. 1998. *Accommodating Diversity: Housing design in a multi-cultural society*. London: NHF

Perry, J. 2005. *Housing and Support Services for Asylum Seekers and Refugees: A good practice guide*. Coventry: CIH in association with Joseph Rowntree Foundation

Scottish Executive. 2004. *Analysis of Ethnicity in the 2001 Census - Summary Report*. Edinburgh.

2005. *Code of Guidance on Homelessness: Guidance on legislation, policies and practices to prevent and resolve homelessness.*

2005a. *National Care Standards: Housing support services.* Edinburgh

2005b. *Race Equality Review Outline Paper.* (<http://www.onescotland.com/onescotland/files/RER%20Summary%20101105.pdf>)

Scottish Homes. 2001. *Housing Scotland's Black and Ethnic Minorities*

Websites

Acas

www.acas.org.uk

Association of Residential Letting Agents (ARLA)

www.arla.co.uk

Better Renting Scotland

www.betterrentingscotland.com

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

www.bmespark.org.uk

Chartered Institute of Housing in Scotland

www.cih.org/scotland

Chartered Institute of Personnel and Development

www.cipd.co.uk

Commission for Racial Equality

www.cre.gov.uk

Community Planning Taskforce (National Association of Planning Councils)

www.communityplanning.org

Communities Scotland

www.communitiesscotland.gov.uk

Convention of Scottish Local Authorities

www.cosla.gov.uk

De Montfort University Race Toolkit

www.dmuracetoolkit.com

Disability Rights Commission

www.drc-gb.org

Equal Opportunities Commission

www.eoc.org.uk

General Register Office for Scotland

www.gro-scotland.gov.uk

Homes for Scotland

www.homesforscotland.co.uk

Housemark

www.housemark.co.uk

Housing Corporation

www.housingcorp.gov.uk

Local Government Ombudsman
www.lgo.org.uk

National Association of Estate Agents
www.naea.co.uk

National Housing Federation
www.housing.org.uk

Positive Action in Housing
www.paih.org

Race Action Net
www.raceactionnet.co.uk

Scottish Council for Single Homeless
www.scsch.co.uk

Scottish Executive
www.scotland.gov.uk

Scottish Federation of Housing Associations
www.sfha.co.uk

Scottish Federation of Housing Associations
www.homesforscotland.co.uk

Scottish Parliament
www.scottish.parliament.uk

Scottish Public Services Ombudsman
www.scottishombudsman.org.uk

Scottish Refugee Council
www.scottishrefugeecouncil.org.uk

Shelter Scotland
www.shelterscotland.org.uk

Tenant Participation Advisory Service
www.tpas.org.uk

TOGETHER: Tackling anti-social behaviour
www.together.gov.uk

Victim Support Scotland
www.victimsupportsco.demon.co.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 must make arrangements to secure continuous improvement in performance (while maintaining an appropriate balance between quality and cost); and in making those arrangements and securing that balance, must have regard to a combination of economy, efficiency, effectiveness and the equal opportunity requirements, and to contribute to the achievement of sustainable development.

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 (CRE)

A non-departmental public body set up under the **Race Relations Act 1976** (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

Community cohesion describes the ability of communities to function and grow in harmony together rather than in conflict. It has strong links to concepts of equality and diversity given that community cohesion can only grow when society as a whole recognises that individuals have the right to equality (of treatment, access to services and so on) and respects and appreciates the diverse nature of our communities.

Congregation

The circumstance in which members of a **racial group**, by choice, live near others of the same group.

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.

Duty to promote race equality

- **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**.
- **Specific duties:** duties placed on selected public authorities bound by the statutory general duty 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 **CRE** website. The duties include the production and publication of a **race equality scheme** and the monitoring, by racial group, of specified aspects of employment.

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** for five years.

Functions

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

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**.

Homeless

In law, homeless means having no available accommodation that can be lawfully occupied, or parked (for example, a caravan), or moored (for example, a houseboat). Anyone who has accommodation but is unable to enter it may also be homeless. Anyone likely to become homeless within 28 days is said to be 'threatened with homelessness'. Anyone who satisfies statutory criteria that make them eligible for housing assistance by a local authority is said to be 'statutorily homeless'.

Housing association

A non-profit making housing organisation registered with Communities Scotland, as a 'registered social landlord'. Housing associations provide affordable homes and related services to people unable to, or who choose not to, buy or rent on the open market.

Indicators

Measures set by agencies such as Audit Scotland and Communities Scotland to assess the performance of **local authorities** and **housing associations** respectively.

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.
- **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 people from ethnic minorities. The concept has no legal force.

Integration

Integration is achieved when the following essential requirements of an integrated society are met:

- equality – where every member of society has an equal opportunity to access jobs and services without risk of discrimination;
- participation – where each individual can engage in making the decisions that directly affect them, and in shaping policies and services; and
- interaction – where different **racial groups** have positive contact with one another, building bridges across communities to develop mutual understanding.

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** to which people say they belong.

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**, if the CRE finds evidence of unlawful racial discrimination or **harassment**, and which requires the person to stop the unlawful discrimination.

Positive action

Measures which 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 of acquiring goods, works and services from outside suppliers. Procurement spans the process from identification of needs, through to the end of services or the end of the useful life of an asset. It is often involved in decisions about the services that will be delivered to **public authorities** and the communities they serve, including the design and delivery of those services, the assessment of their quality, and the evaluations and reviews that may lead to further procurement. The term encompasses the full range of contracts, including private finance initiative projects and public private partnerships. It is not used here to 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 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.

Race equality scheme

A timetabled plan setting out how a **public authority** intends to meet the **duty to promote race equality**. 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 1976 (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 groups

- Racial groups are defined by 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 origins’, 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

For the purposes of the **RRA**, segregation means that one or more persons are kept apart from others on **racial grounds**. Segregation 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 spouse or civil partner, 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 la

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**.

Supporting People

This programme provides support in the area of housing to vulnerable people, to prevent problems that might lead to hospitalisation, institutionalised care or **homelessness**, and to help smooth the transition to independent living for those living in an institutionalised environment. The main objectives are to improve quality of life and encourage independence through quality services that are strategically planned and cost-effective, and that complement existing care services. The planning and development of services is based on need.

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.