

DRAFT FINAL OPEN RESTRICTED CONFIDENTIAL

COMMISSION FOR RACIAL EQUALITY

COMMISSION MEETING

Monday 10th September 2007

Agenda Item:

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HEADING **CRE Monitoring and Enforcement Plan – Final Report**

ISSUE **The report summarises the findings of PPS's comprehensive
plan to assess the performance of the public sector against
their race relations obligations.**

DECISION INFORMATION DISCUSSION

RECOMMENDATIONS

That Commissioners note the conclusions of the plan and endorse the priorities for action to be communicated to CEHR.

RELEVANCE TO KEY BUSINESS PRIORITIES

The Policy and Public Sector Directorate is responsible for the strategic development and delivery of the CRE's programme of work to ensure that race equality is central to the delivery of public services.

LEGAL CONSIDERATIONS

The work and proposals set out in this report support the Commission's statutory responsibilities under the Race Relations Act and, in particular, the delivery of the race equality duty and the Commission's public policy agenda.

FINANCIAL CONSIDERATIONS

All expenditure for the Directorate is contained within the Budget.

INTRODUCTION

1. In June 2005, Commissioners formally approved the P&PS monitoring plan. The attached report provides a final update on the progress made in implementing the plan. The plan included a series of projects, which were designed to enable the Commission to measure the progress of a range of public authorities in implementing the Race Equality Duty (RED).

THE MONITORING PLAN 2005-07

2. As previously agreed, the plan was divided into six key areas:
 - Strategic projects: high priority
 - Sector-specific projects – high priority
 - Indicative evidence projects: medium priority
 - Monitoring implementation of the employment duty: high priority
 - Monitoring activity requiring bids to research committee: high priority
 - Existing projects & core work that contributes to wider monitoring activity – high priority
3. The Monitoring and Enforcement Plan 2005-07 included bespoke projects which would measure the compliance of key parts of the public sector. These include:
 - Whitehall Departments – Race Equality Schemes (RES) & Race Equality Impact Assessments (REIA)
 - Whitehall – Employment duty
 - Local government
 - Regional Development Agencies
 - Fire authorities (Legal committee papers)
 - Police authorities
 - FE colleges
 - NHS Trusts
 - Olympics
 - Probation Boards
 - Regulation and Inspection bodies
4. A number of additional projects were also included in the original plan, however, the decision for the Commission to enter CEHR in 2007, rather than 2009, meant that it was necessary to prioritise the most strategic projects in order to meet the new deadline and to take account of the resulting resource implications. These projects include:
 - Drug and Alcohol Action Teams
 - Funding bodies
 - Those bodies only covered by the General Duty
5. It is important that CEHR monitors the RED progress of these particular bodies as it develops its own approach to monitoring and enforcement.

6. This report outlines key findings of each of the individual monitoring project. Individual project will be made available; however this report seeks to provide an overview of findings as well as providing an indication of Commission's immediate actions and an identification of priorities for CEHR.
7. Where appropriate the report also identifies examples of good practice.

CONCLUSIONS

8. The Commission has undertaken significant monitoring activity during the course of 2005-07. This enables the Commission to determine the performance of key parts of the public sector. Overall, the findings have been disappointing. However, the reality is that in a number of sectors there are excellent performing authorities who are leading the way in terms of implementing the duty. This provides a rubric for others to follow, but also serves to undermine suggestions that particular aspects of the duty are difficult to implement or mainstream. Analysis of the overall findings shows that we have small local authorities (with their relatively limited budgets) meeting their legal responsibilities in respect of the duty, whilst at the same time, some of the biggest spending Whitehall departments are failing to achieve even basic compliance.
9. On the basis of the findings of our monitoring, the Commission has attempted to rank the performance of all public authorities by organisational type. This ranking reflects a combination of the scale of compliance or non-compliance, relevance to race equality and potential scale of impact in terms of public service delivery. It should be noted that in some instances there will be examples of authorities which either under or over perform in comparison to their sector; however the following is intended to be indicative. This does not mean that all authorities within the sector are compliant, but reflects the wider trend. The Commission has identified two broad categories:

Category One: Those authorities making good progress or which have significantly improved performance over the last three years

- i. 1. Local Government (with the exception of District Councils)
- ii. 2. Inspection and Regulatory (with the exception of OFSTED)
- iii. 3. Criminal Justice Agencies (aided by the focus of a number of recent Formal Investigations)

Category Two: Those authorities making poor progress in respect of RED compliance

- i. Whitehall Departments
- ii. NHS Trusts
- iii. FE Institutions
- iv. District Councils
- v. Olympic Delivery Agencies
- vi. Fire Authorities

10. The Commission will undertake appropriate media work to promote the findings and wider learning from these projects.

LESSONS FOR THE FUTURE

'Carrot and Stick' Approaches

11. As a consequence of completing the various projects which form part of the Monitoring and Enforcement Plan 2005-07 the Commission has learnt a great deal about the progress of public authorities and the techniques and approaches which work best.
12. The Commission has consciously adopted different approaches in different sectors. The rationale for this being that different parts of public sector service delivery have a greater potential impact upon ethnic communities, have a history of inequitable delivery or are at different stages in the process of mainstreaming race equality into everyday practices and processes.
13. As a result, in the criminal justice sector it has been necessary to use the Commission's enforcement powers in relation to the Crown Prosecution Service, Policing and Prisons to address specific concerns in relation to incidences of discrimination. Such formal approaches, whilst initially painful for the authorities concerned, have led to the development of detailed action plans, which sought to ensure compliance across the sector. In order to realise the full implementation of these plans, the Commission has worked with Whitehall departments, inspection bodies and other strategic authorities to embed the findings of the respective investigations.
14. By way of comparison, the Commission has adopted a more softly, softly approach to compliance across Whitehall departments and agencies. This approach has been driven by politics and the positive messages which have periodically emanated from departments and specifically those parts of the Whitehall machinery which have responsibility for implementation of the duty across all government bodies.
15. The Commission has preferred to work with senior managers across Whitehall in order to achieve full implementation of the duty. In some instances this has led the Commission to drop or delay pending legal enforcement action.
16. In hindsight, this approach has not delivered as much progress as the Commission would have expected. Specifically, the failure of DCLG to produce the promised RED toolkit has underlined the degree to which Whitehall has failed to realise the urgency of the current situation. It is extremely disappointing that, in response to overwhelming evidence of poor compliance across Whitehall departments and agencies, and with the backing of the Cabinet Office, that DCLG has failed to deliver, and as a result to address poor practice and inadequate policy making across Whitehall.
17. In recent months, the Commission has felt it necessary to initiate enforcement action against seven different Whitehall departments and agencies in respect of the non-compliance of Race Equality, Employment Duty returns, and in the case of the Department of Health, the failure to systematically carry out REIAs of new and proposed policies. It is likely that this number could rise in the weeks prior to the closure of the Commission. This should be seen as a sign of the Commission's frustration at the poor progress to date.

Helper or Regulator?

18. The Commission believes that all public authorities have now had in excess of five years in which to put in place arrangements to enable them to deliver on all aspects of the duty. Now it is time to deliver and there can be no excuses for continued non-compliance.
19. For the first few years of the Duty, the Commission saw its role as a facilitator and ensured it had robust guidance produced for all public authorities. In addition, it did much individual advice and support work. This was very much seen as the Commission's role and encouraged by Government.
20. This should be contrasted with the approaches taken by both the EOC and DRC in recent years. Learning from the CRE's experiences, they have moved more quickly to the regulatory stage. In the DRC's case, this was conspicuously helped by the robust and proactive attitude taken by the Office of Disability Issues (ODI) which has spelt out requirements to all public authorities. The approach of the ODI is in marked contrast to the CRE's experience with the Race Equality Unit (REU).
21. In 2004, the Commission moved on to a different phase in relation to the RED performance of public authorities, so the commencement of the CEHR should see a further step-change in the way in which the RED is monitored and enforced.
22. The decision was taken in 2004 that the CRE needed to move into primarily regulation mode. While ensuring guidance was available on the website and continually updated (for instance, the publication of Good Race Relations guidance in 2005 and the revised House Code in 2006), the Commission's role was to oversee implementation of the legal requirements.
23. As a result of this change in approach, this monitoring plan was developed. While the progress evidenced is in a number of areas patchy and slower than would have been ideal, much of the emphasis on this work in public authorities in recent years has come from the CRE's taking a tougher stance. All anecdotal feedback has suggested that it has only been since the CRE started taking robust action against non-compliance, and using the press and public statements to advertise this, that public authorities have made this work a priority.
24. While pressure has come for the CRE to maintain its assistance role, Commissioners and officers have largely resisted this and rigorously adopted the new approach. This has been crucial in delivering progress in the past 2 years.

The Role of Government

25. The CRE's work has not been supported well by Government. Historically the REU has seen its role as an overseer of the CRE rather than a helper. In particular, its interventions with regard to Government departments have largely been unhelpful. Where the CRE has found evidence of non-compliance, the REU's approach has been to try to prevent us taking action and to attempt to smooth over the situation rather than address the problems we have identified.

26. Their loyalty has been clearly with Whitehall departments and officers have often expressed a lack of knowledge of the legal requirements themselves. In their defence, they have been under-resourced and have not been able to take on a more proactive role in Government because of this.
27. Given the poor performance across central Government, the creation of the new Equalities Office should provide an opportunity to review both the role and capacity of the units within Government to undertake work on this area. From our experience, this should take the lessons from the ODI rather than the REU.
28. The CEHR should also establish the nature of its relationship with its sponsor unit as an independent regulator very early on.

A Modern Regulator

29. The past few years have seen major changes to regulation of the public sector.
30. The emphasis is moving from inspection and audit against a range of process indicators to looking in more depth at the social outcomes. In the fields of equality and cohesion, this is particularly important and has informed the CRE's own monitoring work to some extent.
31. Clearly the regulatory function of the CRE and the CEHR has been and will be limited in part by the legal framework that exists. As such, the separate discussions about a Single Equality Act will be crucial to influencing the regulatory work of the CEHR.
32. However, the CRE has deliberately taken a strategic approach to its monitoring work. Some of the underlying principles have been:
 - that performance on race equality should be part of wider inspection regimes
 - to look at the social outcomes of a sector alongside technical compliance
 - to focus on the actions not statements of public authorities (hence the focus on REIAs)
 - to work with strategic agencies to drive up performance in their sectors
 - to develop examples of good practice rather than rely on programmatic advice
 - to use the full extent of its enforcement powers

Messages for the CEHR

33. CEHR should re-prioritise those parts of the public sector which are crucial to policy development and public service delivery. The CEHR should note the progress as outlined in this report, but also very firmly move on to a new stage in regulation of the Race Relations Act 1976, As Amended. This would specifically involve:
 - No further toleration of non-compliance in respect of Whitehall departments and agencies
 - Initiation of compliance action in relation to Whitehall departments arising from any failure to ensure compliance across those parts of the public sector for which they have responsibility

- Initiation and /or continuation of enforcement action in relation to outstanding cases identified by the Commission for Racial Equality's 2005-07 monitoring projects
 - No further toleration of organisations which fail to implement changes requested as a result of previous monitoring activities
 - Early utilisation of its new powers of inquiry in respect of evidence of individual or sector wide non-compliance
 - An end to all one to one working with public authorities
 - A continued commitment to updating RED guidance
 - Preparatory and post enforcement follow-up activity to undertaken via strategic partners (as in the case of the various Criminal Justice investigations and)
 - A move away from traditional approaches to RED monitoring, in which Commission staff audit the performance of numerous authorities to a situation in which the CEHR sport checks external audit undertaken by strategic partners
 - Strategic partners being held to account for widespread compliance issues within individual sectors.
 - Routinely 'name and shame' public authorities which are subject to even the most basic levels of compliance action.
34. CEHR is inheriting both a clear picture of RED compliance across key parts of the public sector and a clear vision of where this work should go in the coming months.
35. This work will be further facilitated by the excellent relationships which the Commission has developed with key strategic partners, particularly inspection and regulatory bodies and the positive collaboration between duty- focused colleagues within the CRE, DRC and EOC which have sought to ensure consistency of approach.
36. The Commission's approach to partnership working places the CEHR in a strong position, but it will be important that the CEHR learns from the experience to date and takes firm action from day one. A full and early utilisation of the CEHR's full legal powers will send a clear message regarding its intent.
37. Failure to act will result in further complacency, on-going non-compliance and resign CEHR to unnecessary monitoring activities in the future. Wholesale compliance is within reach, but only by using the full range of powers and tools at the CEHR's disposal. For those authorities who are making good progress the CEHR should provide encouragement and advice. For those who continue to fail, it should use its compliance powers and proactively publicise its action.

REPORT NUMBER ONE

WHITEHALL DEPARTMENTS - RACE EQUALITY SCHEMES AND RACE EQUALITY IMPACT ASSESSMENTS

INTRODUCTION

1. In the period since the introduction of the Race Equality Duty, the Commission for Racial Equality has undertaken a number of activities designed to measure the progress of central government departments in meeting their legal obligations. In particular, it has undertaken:
 - A review of Whitehall Race Equality Scheme (RES) – April 2005
 - A second review of Whitehall Race Equality Scheme (RES) – January 2006
 - An audit of Race equality impact assessment (REIA) of new and proposed policies – August 2005 - Present
 - Collection, analysis and publication of employment data – June 2007 (Please note this forms part of a separate project report)
2. This report provides a brief overview of the findings of each of these audits. It should be noted that fuller accounts have been provided via earlier Commission and Committee reports.

METHODOLOGY

Race Equality Schemes

3. In April 2005 - all 15 departmental RES (2002-05) 8 non-ministerial department and agency schemes were found to be non-compliant. Just one (Crown Prosecution Service) had only minor areas of non-compliance. The Commission wrote to each body providing detailed comments regarding individual areas of non-compliance and requiring departments to publish revised schemes within an appropriate period.
4. In January 2006, the Commission revisited the project in order to determine progress. A second audit found that 8 of the 15 original, ministerial departments had published revised RES in response to the earlier finding of non-compliance. 6 of the 7 remaining departments were referred to CRE Legal directorate for consideration of enforcement action. As a result compliance action was initiated in relation to:
 - Cabinet Office
 - Department for International Development
 - Department of Trade & Industry
 - Department for Culture, Media and Sport
5. Following the Commission's intervention all four departments have now produced compliant Race Equality Schemes.
6. The Commission also assessed the remaining 8 departmental RES (2005-08) for compliance. None were found to be fully compliant. The Commission has sought to address these wider issues of non-compliance via the Cabinet Office (see below).

Race Equality Impact Assessments

7. In August 2005, the Commission began systematically requesting copies of Race Equality Impact Assessments of named policies or legislation from individual Whitehall Departments.
8. The results of this audit, which included requests to all major, ministerial departments, demonstrated the clear absence of a systematic approach to REIAs across Whitehall. This includes stark evidence of the failure to carry out assessments of relevant policies and the inherent lack of coverage of race equality in the Regulatory Impact Assessment process.¹
9. The findings were reinforced by the departmental responses to a parliamentary question by Keith Vaz, MP which asked how many REIAs individual departments had carried out during the years 2004–2005 and 2005-06. 4 departments reported that they had not carried out a single race equality impact assessment during the course of 2004-05 and that 3 of these similarly failed to carry out any REIAs to date in 2005-06.
10. The Commission's audit of Whitehall REIAs ultimately resulted in the initiation of a named Formal Investigation (FI) of the Department of Health, arising from its failure to carry any REIAs in the period 2004-05 and its subsequent failure to carry any compliant REIAs. The final report of the investigation will be published prior to the closure of the Commission.

CRE ACTION

11. Having completed audits of both RES and REIA and faced with the possibility of having to initiate compliance action against almost all ministerial departments, the Commission decided to initiate legal action in respect of the four, previously identified, departments that had failed to publish RES for the period 2005-08 and to write directly to Sir Gus O'Donnell, Cabinet Secretary to notify him of the scale of non-compliance across Whitehall.
12. On 15th February 2006, the Director of Policy and Public Sector wrote to the Cabinet Secretary outlining the Commission's primary concerns and supplying him with a detailed dossier listing extensive evidence of Whitehall's non-compliance with the RED. In response, the Cabinet Secretary invited the Commission's then Chair to meet in June 2006 to discuss possible ways forward.
13. The outcome of the meeting appeared positive; the Cabinet Secretary asked Peter Housden and DCLG to lead on the development of a toolkit which would ensure the wholesale RED compliance of all Whitehall departments. The Cabinet Secretary proposed that the toolkit would be launched in November 2006. At this stage, the Commission proposed that it would hold in abeyance any further legal action in respect of individual departmental RES.

¹ In 2003, the Commission worked the Home Office to ensure the Regulatory Impact Assessment process included consideration of race equality (potentially incorporating the REIA process in the RIA. The reality is that, in the majority of cases, this has resulted in little more than a cursory consideration of race equality.

14. In October 2006, the Commission requested a progress report on development of the toolkit. After a delay, DCLG sent a draft copy of the toolkit, which the Commission reviewed. The Commission concluded that the content of the document was poor and would not ensure compliance across Whitehall. The Commission gave DCLG detailed comments regarding potential improvements to the document.
15. The November 2006 launch date passed and the Commission asked for a further update in January 2007. After a further considerable delay, DCLG provided a second draft of the toolkit. Again the document was reviewed and again it was found to be of an extremely poor standard and was not something the Commission could endorse. The Commission again provided detailed comments and communicated its disappointment at the progress to date. The Commission will address the outstanding issues prior to its closure.
16. The reality is that as a result of DCLG's failure, over more than a twelve month period, to produce a toolkit which would ensure the duty compliance of Whitehall departments, there remain up to 6 Ministerial departments which do not have compliant Race Equality Schemes.

PRIORITIES FOR CEHR

17. The CEHR should ensure that Whitehall departments and agencies:
 - Address the outstanding issue of detailed (Whitehall produced) RED toolkit
 - Ensure compliance in terms of outstanding departmental RES, this may require further legal activity
 - Are systematically carrying out REIAs
 - Undertake further RED compliance monitoring in order to ensure future implementation of the duty
 - Take responsibility for wider compliance issues within the relevant sectors for which they have responsibility
 - Build on work between the existing Commissions to provide detailed guidance in respect of generic systems, in order that these fully take account of race equality and the other public duties.

REPORT NUMBER TWO

WHITEHALL – MINISTERIAL AND NON-MINISTERIAL DEPARTMENTS – EMPLOYMENT DUTY

INTRODUCTION

1. The project sought to measure ministerial and non-ministerial departments' implementation and compliance with the Employment Duty. The Commission was also very keen to identify examples of good practice initiatives that could be shared amongst other public authorities.

METHODOLOGY

2. On 15 August 2006, the Commission wrote to the Permanent Secretaries and Directors of 24 ministerial and non ministerial departments requesting employment related monitoring data, evaluation reports and any action plans that emerged as a result of their analysis². In addition, non-ministerial departments/agencies were asked to provide a copy of their updated Race Equality Schemes for assessment to gain a clearer picture of where these 9 bodies were in relation to both employment and their Schemes.
3. The Employment Duty clearly sets out what employment-related data public authorities must collect and analyse by ethnic group in respect of:
 - Staff in post
 - Applications for employment
 - Applications for training
 - Applications for promotions
 - Those receiving training
 - Those who benefit or suffer detriment through performance assessment procedures
 - Grievance procedures
 - Disciplinary procedures
 - Those who cease employment
4. It should be noted that this project has delayed considerably by the failure of two bodies (Cabinet Office and Forestry Commission) to respond to the Commission's request. This unsatisfactory situation led to the project being delayed by approximately 4 months.

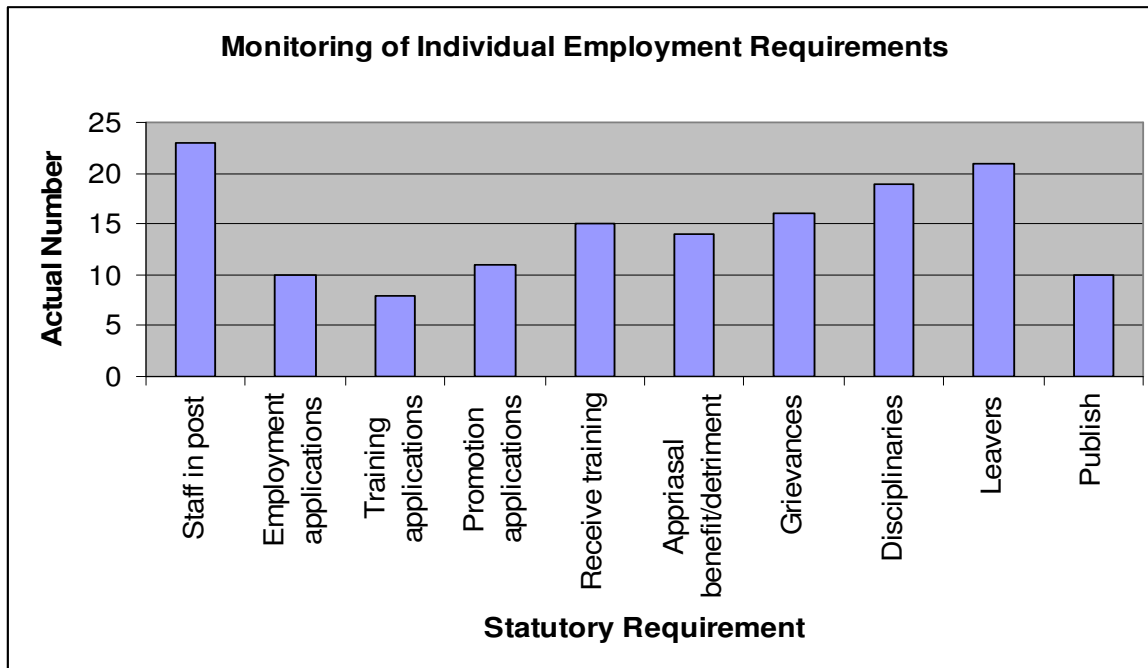
FINDINGS

4. The Commission received responses from 23 of the 24 ministerial and non-ministerial departments. The quality and length of responses varied considerably from just three pages of data to vast submissions.
5. The first conclusion to be drawn is that it is clear that no consistent approach has been adopted across Whitehall in order to ensure that it meets the Employment Duty. This is

² Letter to authorities provided in Appendix 1 and 2. List of ministerial and non-ministerial departments in appendix 3.

reflected in the radically different approaches to data collection, the myriad of ethnic monitoring categories used, the way that data is presented, the levels of analysis and actions arising from this activity.

6. Ministerial departments were no more likely to be compliant than non-ministerial bodies. In fact, no department was completely compliant in meeting the Employment Duty. Just two, a ministerial and non ministerial body (HMRC and HM Treasury) were collecting and publishing data in all the required areas, although even in these cases there were significant concerns about the way in which data was collected or presented and specifically the numbers of staff whose ethnicity was not known.
7. Each department and non ministerial body failed to fully examine monitoring data and take the required actions in respect of each of the requirements. The overall performance was undermined by the quality of the data collected and the level of analysis undertaken. Without proper analysis and resulting actions, the purpose behind the whole monitoring system becomes redundant.
8. Overall, the main areas of concern were:
 - Failure to collect data for all of the required areas.
 - Failure to collect data using appropriate ethnic monitoring categories.
 - Failure to adequately define what and who were included in the data collection for each requirement.
 - Large numbers of data whereby the ethnicity of staff was not known.
 - Failure for some data to be collected and analysed in a meaningful way.
 - Failure to analyse the reasons behind any data disparities.
 - Failure to consistently provide actions that relate to the information that monitoring data has highlighted.
 - Failure of most authorities to publish all employment data.
9. In addition, the Commission was concerned about:
 - The worrying discrepancies contained with some of the data
 - The inconsistency in some data produced
 - The unclear way that some data was displayed.
10. The chart below indicates how many of the 23 departments are monitoring the specific areas of the Employment Duty. It should be noted that these departments are not all monitoring to the expected standards. It includes those who are collecting ethnicity data on a fairly basic level. The chart simply denotes some form of activity in the specified area, for example, it does not show whether departments are analysing or have developed action plans in these individual areas.



11. At a basic level, the Commission welcomes the fact that those bodies that responded were collecting data on most requirements and, for the most part, monitoring went beyond the basic level. For example, most authorities chose to monitor the staff in their organisation by the grades they occupied; applications for employment usually included those who had been successful and sometimes included the sifting and interview stages in between. Some also showed that they monitored by the length of service, gender and geographic location. This all helped us to gain a fuller understanding of staff in the workforce and undercover areas of concern that might not otherwise be noticed.
12. The Commission was also encouraged by examples of good practice. Some departments had clearly thought about what the individual requirements meant; how best they could collect the data, interpret it and the type of actions they could take as a result of their findings. This crossed all areas of the specific requirements. For example, a number of departments introduced specific training programmes as a way of improving the chances of different groups to fulfil their potential in their current role as well as enabling them to rise up the ranks in the organisation.
13. Although there was evidence of good practice, there clearly remains a great deal of work to do, a number of departments have demonstrated some good work and initiatives in implementing not just the statutory requirements but the fuller spirit of the Duty too.

SUPPLEMENTARY FINDINGS

14. As a result of carrying out this project the Commission has identified two additional principle concerns which it believes undermines the ability of Whitehall bodies to meet not only the Employment Duty but affect the wider ability of these bodies to deliver equitable public services.
15. First, there is the lack of a standardised approach to ethnic monitoring data collection, analysis and reporting and specifically, the failure to use a standard set of agreed ethnic monitoring categories, both within individual departments and across Whitehall as a whole.
16. It is telling that the Commission has discovered that the Office of National Statistics (ONS) does not use its own Census 2001 categories for employment duty purposes. The failure of ONS to set an example has implications for data collection across Whitehall. It is of particular concern that 11 authorities utilised just two or three categories, usually “ethnic minority”, “white” and “unknown”. In some cases there is not even consistency of approach within individual departments. For example, DWP switched from presenting data using 6 categories to two depending on the data that was being collected (again unknown numbers were not included in these figures)
17. Secondly, the incredibly high number of staff within Whitehall departments for whom their ethnicity is unknown. For example, DCLG does not have records for the ethnicity of 58% of its staff.
18. Both issues profoundly undermine attempts by these public authorities to meet the requirements of the Race Equality Duty. It also undermines their statements to ensure representative workforces and, if replicated in other areas, the ability to deliver equitable and accessible public services.

CRE FOLLOW-UP ACTIVITY

19. As previously indicated, those authorities which were found to be not meeting the legal criteria sufficiently, and therefore not adequately implementing their responsibilities under the Duty, have been referred to the Commission’s Legal Directorate to commence legal action. These departments are:
 - Cabinet Office
 - Department for Communities and Local Government (DCLG)
 - Department for Culture, Media and Sport (DCMS)
 - Department for Education and Skills (DFES)*
 - Department for Environment, Food & Rural Affairs (DEFRA)
 - Department of Health (DH)
 - Department of Trade and Industry (DTI)*
 - Department for Transport (DfT)
 - Foreign and Commonwealth Office (FCO)
 - Home Office (HO)
 - Ministry of Defence (MoD)
 - HM Revenue & Customs (HMRC)
 - Office of Fair Trading (OFT)
 - Office for National Statistics (ONS)

- Forestry Commission (FC)
20. Those authorities that required some guidance but did not raise the same level of concerns have been contacted by the Policy and Public Sector directorate to make recommendations accordingly. These are:
- Department for Constitutional Affairs (DCA)*
 - Department for International Development (DFID)
 - HM Treasury (HMT)
 - Charity Commission
 - Crown Prosecution Service (CPS)
 - Serious Fraud Office (SFO)
 - Assets Recovery Agency (ARA)³
 - Department for Work and Pensions (DWP)
21. PPS has now received formal responses from a significant number of the above bodies. It has also made clear to Departments that the Commission expects CEHR to monitor any follow-up activity as a matter of priority.
22. Colleagues in the Enforcement and Public Duty team are currently reviewing individual cases. To date two 'minded letters' have been issued. These were for the Office of National Statistics and the Forestry Commission, both arise from the stark inadequacies of its submission (once, in the case of the Forestry Commission, it finally arrived). PPS understands that formal responses have been received from the remaining thirteen. Each is now tied into a series of immediate remedial actions. Failure to meet these requirements will lead to further legal action.
23. The Director of Policy and Public Sector will also be writing to the Cabinet Office and the new Government Equalities Office as a matter of urgency to outline deep concerns about the widespread non-compliance and specific concerns regarding the absence of robust data collection and analysis systems across Whitehall. This will make clear that the Commission expects the CEHR to hold both bodies responsible for any continued compliance issues across Whitehall and that appropriate legal action should be initiated should this arise.

PRIORITIES FOR CEHR

24. CEHR should ensure that:

- The responses of those Departments and agencies contacted by PPS are monitored for future compliance, referring any that are not compliant for initiation of legal action
- Any compliance action initiated as a result of this project is followed through

³ In January 2007, it was announced that the government proposed to merge the Assets Recovery Agency with the Serious Organised Crime Agency, and the Agency's training and accreditation functions with the National Policing Improvement Agency.

* These departments have recently been affected by the machinery of government changes. The Commission will follow up work around the Duty with these reconfigured bodies.

- Ensure that the Cabinet Office and Government Equalities Office take full responsibility for ensuring the future compliance of all government bodies and that it undertakes the necessary monitoring activity to ensure that this happens.
- Further monitoring of compliance is undertaken in 2007-08.

REPORT NUMBER THREE

LOCAL GOVERNMENT (BVPI) PROJECT

INTRODUCTION

1. Local Government has traditionally been seen as the part of the public sector which has made most progress in implementing the Race Equality Duty. In order to test this hypothesis, decided to determine the degree to which those authorities which were deemed to be better and poorer performers (according to Best Value Performance Indicators) were meeting their legal obligations.
2. The project sought to:
 - Establish how effectively local authorities have implemented the specific requirements of the race equality duty.
 - Provide a baseline assessment of compliance within the local government sector
 - Determine the degree to which accreditation or validation schemes such as the Comprehensive Performance Assessment (Audit Commission) Beacon Scheme (IDeA) and Local Authority Equality Standard (IDeA) could be used as a barometer of compliance.
3. It was anticipated that in turn the project would inform the monitoring & legal enforcement work of the CEHR.

METHODOLOGY

4. Best Value Performance Indicators (BVPIs) are an integral part of local government's performance management framework; the overall purpose of which is to contribute to and facilitate the continuous improvement in efficiency and effectiveness of services. Performance is independently monitored to ensure robustness and transparency. The analysis and comparison serves three main purposes: a) to enable central government to monitor progress over a period of time b) to allow authorities to compare their performance against that of their peers c) to provide residents with information about the performance of their local authority. The BVPI 2b specifically measures 'The Duty to Promote Race Equality'.
5. For this project we used the BVPI 2b as a criterion for targeting local authorities. We selected a sample of local authorities which featured in the top 10% of the 2005 BVPI 2b and in the bottom 10% of the 2005 BVPI 2b.
6. From each of the sample groups we further selected an evenly distributed group of Local Authorities across geographical size and area – 22 Local Authorities from the top 10% set and 25 Local Authorities from the bottom 10% set.⁴ These included a cross section of unitary, city, county, metropolitan and district councils.

⁴ A total of 50 local authorities were originally targeted, however three were subsequently removed from the project due to existing or recent legal action by the Commission.

		EM	EE	L	NE	NW	SE	SW	WM	Y&H	All
District	Rural	5	4	-	3	-	3	1	2	1	19
	Urban	-	1	-	-	1	5	-	-	-	7
Unitary	Rural	-	-	-	-	-	-	-	1	1	2
	Urban	1	1	5	-	1	4	1	-	-	13
County		3	2	-	-	-	-	-	1	-	6
All		9	8	5	3	2	12	2	4	2	47

7. Letters were sent to all 47 authorities in August 2006 requesting, within 28 days:
 - A copy of its most recent Race Equality Scheme (RES)
 - A sample of completed Race Equality Impact Assessments (REIA)
 - Details of where they publish ethnic monitoring of their service delivery functions
 - Any good practice examples.
8. Not all the targeted authorities responded by the deadline date and a number of follow-up letters were sent. This delayed the project significantly.
9. Members of the Public Service Delivery (PSD) team trained colleagues from across the Commission to assess RES and REIA using existing RED auditing tools, in order to ensure consistency across the project. Once the 47 authorities had been assessed, all of the data was reassessed and moderated by the PSD team.

FINDINGS – COMPLIANCE

10. The quality and quantity of information and data provided for us by the targeted local authorities varied considerably. Some authorities provided us with all the information requested, including comprehensive 'outcome based' action plans with clearly defined timescales. Others provided us with weak race equality schemes with no additional data.
11. Overall, 30 of the 47 authorities were deemed to be non-compliant by the public service delivery team. It should be noted that 14 of these authorities were District Councils. No single District Council was found to be even approaching compliance. The responses of these 14 authorities were very noticeably poorer than any other authority in the audit. It has therefore been concluded that there is a particular problem in terms of the compliance of District councils and that the findings are likely to be replicated across all other such authorities.
12. Consequently, a decision was taken that, rather than potentially tie up the Commission's legal processes with a welter of such cases, that the PSD team would liaise directly with the Department for Communities and Local Government. Audit Commission and Local Government Association (LGA) in order to ensure that these and other strategic bodies can develop appropriate remedial action.
13. The remaining 16 non compliant authorities were referred to the Legal Affairs Directorate for consideration of legal action. Colleagues in legal Directorate have subsequently decided to concentrate on the 10 least compliant authorities. These

authorities include a cross section of urban/rural and unitary and non-unitary local authorities. These authorities are being processed by the Legal Affairs Directorate.

14. There were just 2 local authorities that were judged as totally compliant, however an additional 15 were considered to be largely compliant. The 15 partially compliant authorities were sent letters from the public service delivery team. These letters systematically addressed the areas of weakness each of the authorities demonstrated in their race equality schemes and other data. The letters also requested an update report by August 2007.
15. There were 11 non compliant authorities in the top BVPI 10% category and 19 non compliant authorities in the bottom BVPI 10%.
16. In terms of the compliance of authorities with particular parts of the specific duties, the picture was again mixed.

Race Equality Schemes

17. Key findings

- Many authorities assessed failed to incorporate an action plan into their RES. Action plans are the most significant part of the scheme as they identify accountability, timescales and resources for specific actions. Absence of an action plan mean that RES are little more than 'statements of intent'
 - 5 authorities which had action plans as annex's to their race equality schemes, however these action plans focused solely on equality impact assessments. There was no information regarding any other policies or functions.
 - At least 15 schemes did little more than reiterate the wording of the RED as it appears in the code of practice.
 - Some of the race equality schemes and supporting documentation did not have any dates attached or they were presented in draft format.
 - 3 RES appeared to be little more than a reiteration of their original 2002-05 schemes, with only a change in relevant dates.
 - At least 3 of the race equality schemes could not be described as race equality schemes, but instead as progress reports, which were meant to be read in conjunction with the 2002-2005 race equality schemes. These proved to be difficult to assess and evaluate.
 - A number of RES suggest that particular authorities place a greater emphasis on meeting the Local Authority Equality Standard (a voluntary scheme) rather than the requirements of the duty.
18. About 20% of local authorities audited had produced single equality schemes, incorporating all the equality strands: race, disability, gender, age, sexual orientation, religion/belief. For the purposes of this project, our focus was primarily on the content and quality of the race elements of the schemes, therefore little time was spent on assessing how effective single equality schemes were. Key observations include:
- In their attempts to cover all equalities strands many authorities overlook basic aspects of the RED requirements
 - Few Equality Schemes use the opportunity to explore cross-strand issues

- The Commission is yet to see a generic Equality Scheme that is fully compliant.

Race Equality Impact Assessments & toolkits:

19. Findings

- Approximately 40% of all authorities (and 60% of those other than District Councils) provided completed race equality impact assessment, and the majority of these were 'equality impact assessments' – incorporating all six of the equality strands.
- Only two of the authorities produced equality impact assessments which were considered as sufficiently robust enough to be compliant with the race equality duty. However a number of others were largely or partially compliant
- Almost all of the 40% of authorities had produced toolkits and guidance which were tailored to their specific, which was very encouraging. However, the quality and information of the toolkits varied hugely
- There was some confusion about what constituted the 'screening' stage of an impact assessment and what comprised a 'full impact assessment'. A number of authorities had created a tripartite process including screening, partial, and full impact assessments.
- Some sections of the bespoke guidance, particularly, consultation and adverse impact were not as comprehensive as we would have expected.
- The concept of 'adverse impact' and how to mitigate it appeared problematic for a number of authorities. In such cases there is a need to strengthen the guidance.

GOOD PRACTICE EXAMPLES

20. The project identified a number of examples of good practice. A number of these are cited here for illustrative purposes. This should not be seen as an endorsement of the individual authorities overall performance or an indicator of overall compliance.

- *Leicestershire County Council* has produced an Equality impact assessment on 'Supporting People – 5 year strategy – offering housing support to vulnerable people, which includes a consideration of impact in terms of the local Gypsy and Irish Traveller community.
- *Luton Borough Council's* REIA guidance includes a good section on what this authority will do if they identify adverse impact of a policy or function. The guidance also highlights the fact that impact assessments are not just about 'adverse impacts' but also recognises the importance of the positive parts of a policy or function.
- *South Cambridgeshire County Council* separates out each of the three duty strands within its action plan. Therefore there is a lot of work being done under the 'promoting good race relations' section with regards to the Gypsy & Irish Traveller communities in particular. Elsewhere it has been difficult to find examples of what promoting good race relations means and many listed public authorities often fall short on this third element of the 'General Duty'.

- *St Alban's District Council* appears to have developed some good practice initiatives regarding good community relations e.g. the council facilitating meetings between local police, Muslim community representatives. These help to generate reciprocal confidence and trust between the Police and Muslim communities within St Albans.

21. Before any of the good practice examples can be shared on the Commission's website, the respective council's will be contacted and the examples will be subject to the Commission's own verification process. All the good practice examples that have been posted on to the website have undergone a rigorous verification process. To ensure that the Commission does not compromise its enforcement powers a disclaimer has been published on this part of the website. This will now be a matter for the CEHR.

ADDITIONAL FINDINGS

22. This project also found that there were specific issues regarding the collection, analysis and interpretation of ethnicity data.

23. Many of the authorities assessed claimed to be using the census 2001 categories; however categories are often collapsed when ethnic monitoring information is published. For instance many of the authorities will publish information under the five broad categories: Black, White, Asian, Mixed, Chinese/Other and a final 'Don't know' category. Our guidance recommends that ethnic monitoring details should be published using all the census categories, so that differentials can be visibly identified and changes can be made. In some instances there are obviously data protection issues to consider, however we recommend that public authorities are transparent with their findings and when appropriate explain why some categories have been omitted.

24. In addition to this, there is little evidence from many of the authorities that ethnic monitoring information is linked into the organisation's overall policy development process.

25. Another general observation is that whilst many of the authorities have ethnic monitoring systems in place for employment duty purposes, there are many gaps in data collection in respect of service delivery. For example, in some cases there is no ethnic monitoring data for service user uptake and in other instances ethnic monitoring data is available for some provisions and services by not for others.

26. The quality of ethnicity data collection has obvious implications for the authority's wider ability to meet the requirements of the duty.

27. The findings of the project seriously call into question the workings of a number of inspection and accreditation schemes. These include, the Audit Commission's Comprehensive Performance Assessment Framework and IDeA's Beacon Scheme and Local Authorities Equality Standard. In all three cases the audit found a significant number of examples of authorities which had scored and/or were deemed to be successful in terms of delivering race equality, which were not meeting even the most basic requirements of the RED. The Commission and CEHR will have to address with those strategic bodies responsible.

CONCLUSION

28. It is clear that there is still some way to go in ensuring wholesale compliance across all parts of local government. There is a clear delineation to be made between larger, London and metropolitan authorities and district councils. There are encouraging signs in relation to the London, Metropolitan and other unitary authorities. There are a number of examples of good Race Equality Schemes, a bigger number which limited remedial action, positive signs in respect of race equality impact assessment, most notably the proportion of authorities which have bespoke REIA templates and toolkits. In addition, authorities have been able to identify a significant number of examples of good practice, both in terms of RED compliance and wider service delivery. The clear evidence appears to be that those authorities which have put a great deal of effort into this area of work are reaping the benefits of improved systems and relationships with communities, those that are failing to even achieve the basic elements of compliance are not.

29. It is clear that there remains significant work to be done to ensure that all types of local authorities are delivering in terms of race equality. This will require specific action by the CEHR and strategic partners. It is important that those authorities which are meeting their legal duties are utilised in order to sell the benefits of compliance to other, poorer performing authorities.

PRIORITIES FOR CEHR

30. The CEHR should:

- Undertake follow-up activities in relation to those authorities which have been subject to compliance action and those which are required to make lesser amendments to RES and REIAs.
- Oversee work with strategic partners to ensure compliance of District councils
- Undertake further monitoring of RED compliance in the future
- Where appropriate undertake further work with Audit Commission and IDeA to address issues relating to discrepancies in accreditation systems.

REPORT NUMBER FOUR

CRIMINAL JUSTICE AGENCIES

INTRODUCTION

1. Historically the Commission has taken a specific interest in the progress of criminal justice agencies. This interest specifically arises because the Commission has undertaken formal investigation into the activity of three key agencies or parts of the criminal justice sector. These are specifically the Crown Prosecution Service, Prison Service and Police Forces.
2. Much of the work of the Commission's work in terms of these bodies in respect of the monitoring and enforcement plan have been undertaken as a result of the implementation plans arising from the various investigations. In addition, the Commission has also developed specific monitoring activity in relation to Probation Boards. It should be noted that this particular report focuses on monitoring of performance in respect of Policing, Probation and Prisons. This is in recognition of the improved performance of the Crown Prosecution Service (CPS) in the period since the investigation in 2002. The CPS' performance is now audited as part of wider monitoring of Whitehall departments and agencies.

(1) POLICING

METHODOLOGY

3. The Commission's major focus has been on ensuring that the 122 'accepted' recommendations arising from the formal investigation into employment issues in the police service have been implemented.⁵ The Commission has worked proactively with the Home Office, Association of Chief Police Officers (ACPO), the Association of Police Authorities (APA), Her Majesty's Inspectorate of Constabulary (HMIC), and the Central Police Training and Development Authority (Centrex) and its recent successor the National Policing Improvement Agency (NPIA) to ensure implementation.
4. The formal investigation has ensured a fundamental shift in relation to race equality in both employment and wider policing structures. Key achievements include:
 - The development of improved National Occupational Standards on 'respect for race and diversity' (on which recruitment and training are grounded)
 - A centrally co-ordinated strategy on race training which incorporates the recommendations
 - Analysis which identified why ethnic minority applicants for constable had lower than average success rates and resulting dramatic narrowing of the gap between ethnic minority and White success rates
 - Development of Commission advice regarding 'positive action' steps to

⁵ The report made 125 recommendations of which the Home Secretary accepted 122 of these.

- Monitoring of all force Race Equality Schemes has ensured that all are legally compliant
- A new draft code of conduct and misconduct procedure
- An inspection of delivery of the duty, whose report is due imminently.
- An evaluation of the new model of police race training, which has been well received.
- An HMIC inspection report on the delivery of the race equality duty by six police forces which is due to be published in September 2007
- Work with the NPIA to ensure that the HMIC inspection recommendations are implemented by police forces".

CONCLUSION

5. The formal investigation and the Commission's intensive follow-up activity, aided by the co-operation of key strategic agencies, have produced fundamental changes in relation to employment practices across the police service. A focus on employment has further encouraged individual police forces and associated authorities to ensure that they meeting their legal requirements in respect of Race Equality Schemes, Race Equality Impact Assessments and, of course, the Employment Duty. This has inevitably delivered further changes to the way in which police forces operate on a wider level. There is however still a need for further monitoring to ensure the full legal compliance of RES and REIAs across all forces.

PRIORITIES FOR CEHR

6. The Commission believes that the CEHR should retain a significant focus on policing. In particular the Commission should:
 - Ensure that a strategic partner undertakes an audit of force RES and REIAs for legal compliance
 - Build on the Commission's work in respect of 'Stop and Search' by continuing to press for a change to the Statutory Code in order to remove race as a factor and to audit of the responses of the six forces with the highest rates of disproportionately in terms of 'Stop and search'
 - Undertake further monitoring to ensure that recent progress in respect of increased recruitment from ethnic minorities continues
 - Focus on the progress of individual forces in relation to racial harassment and racist incidents and the dissemination of existing good practice
 - Continue monitoring activity to ensure that the recent reduction in the proportion of ethnic minority deaths in police custody continues to fall
 - Continue to challenge the over-representation of people from ethnic minority communities on the Police National DNA database (NDNAD).

(2) PROBATION

7. In the period since 2005, the Commission has worked with the National Probation Directorate (NPD) to ensure it meets requirements in respect of the race equality duty by ensuring the legal compliance of the 42 local probation boards' race equality schemes.
8. The NPD engaged consultants to systematically review all 42 schemes. An initial audit identified that just three schemes were compliant and the remaining 39 boards were provided with detailed advice and required to revise their schemes. A further assessment in 2006 found 15 fully compliant, 24 mostly compliant and 3 non-compliant. The Commission successfully pressed the NPD to write to boards in the latter two categories requiring full adoption of all recommended changes by 31 March 2007.
9. In early April we wrote to NPD's successor body, the National Offender Management Service, urging them to assess progress. NOMS replied in May 2007 advising that all recommended changes had been adopted by all probation boards, and that they (NOMS) now assessed all 42 race equality schemes as fully compliant.
10. The Commission has recently conducted a 'dip' sample of eight Probation Board schemes three, randomly selected Schemes, assessing these schemes for legal compliance. All eight were found to have differing degrees of non-compliance, these ranged from minor to major areas of concern. The Commission has now written to the National Offender Management Service (NOMS), which assumed responsibility for Probation Boards in April 2007, to outline our concerns, request appropriate remedial action and warning of potential compliance action.

CONCLUSION

11. The Commission has attempted to work with the relevant strategic bodies to ensure legal compliance of all 42 Probation Boards, whilst the relevant bodies have been responsive; there remain questions about the compliance of each of the Boards. It is important that these concerns are addressed by CEHR in to ensure compliance. It should be noted that the Commission has expressed wider concerns regarding the RED

PRIORITIES FOR CEHR

12. The CEHR should focus on:
 - Assessing the NOMS' response and taking appropriate follow-up action, including any appropriate legal action
 - Ensuring that NOMS undertake on-going assessment of future RED compliance, including RES, REIA and the Employment Duty.

(3) PRISONS

INTRODUCTION

13. In November 2000, the CRE decided to conduct a formal investigation (FI) into the Prison Service, arising from the racially motivated murder of Zahid Mubarek Feltham Young Offenders Institute in March 2000. The investigation focussed on the circumstances surrounding the death and wider practices with Feltham and two further prisons (Brixton and Parc).
14. The investigation report was published in December 2003 and made three general findings of unlawful racial discrimination contrary to the Race Relations Act 1976. These specifically related covered:
 - the events leading to the murder of Zahid Mubarek;
 - the failure to provide ethnic minority prisoners with equivalent protection from racial violence; and
 - the failure to provide race equality in its employment or custodial practices.
15. Following the investigation, the Prison Service committed itself to implementing a detailed action plan designed to address the concerns identified by the investigation.
16. During the intervening period the Commission has sought to hold the Prison Service to account and to measure its progress in implementing the report's recommendations.

METHODOLOGY

17. After a period of difficult and negotiations, the Home Office has agreed to a way forward. A roundtable meeting with key stakeholders was held in March 2006 to discuss our concerns and to try to agree a way forward. It was agreed to establish a Prison Service Race Scrutiny Panel to hold both public and private sector prisons to account for delivery on race equality. The panel, comprising the Prisons Minister — the Chair of the Panel — and a CRE commissioner, meets three times per year for two hours, with the scope for ad hoc meetings if members feel that there are urgent or pressing issues. Officials from Home Office and CRE meet between meetings to ensure that progress is made on key issues.
18. The Director of Commissioning at the National Offender Management Service (NOMS) attends to account for progress in private sector establishments and the Director General of the public sector Prison Service presents a regular update on progress in public sector prisons. The Panel may also call witnesses to give evidence before them on issues of particular interest or concern.
19. The Panel met in February and June 2007 and is due to meet again in October.

CONCLUSION

20. The Commission remains deeply unhappy at the rate of progress made by the Prison Service. Should this continue the Commission would clearly recommend that the

CEHR take appropriate compliance action in relation to those responsible for the delivery of Prison services.

21. As noted above, the Commission has expressed wider concerns regarding the progress of the National Offender Management Service (NOMS) and its sponsoring body in meeting its legal responsibilities in respect of race equality. Specific concerns relate to a failure to promote race equality in private sector prisons and the failure to carry out adequate race equality impact assessments. Concerns about such progress may still lead to compliance action prior to the closure of the Commission.

PRIORITIES FOR CEHR

22. The Commission is of the view that the performance of the Prison Service and NOMS should be a major focus of CEHR's approach to RED monitoring. It should ensure that:

- It continues the partnership agreement with the Prison Service, established following the conclusion of the formal investigation in 2003 (this agreement will conclude in December 2008)
- The Prison Service Race Scrutiny Panel ensures that both the Prison Service and NOMS implement the recommendations of the CRE formal investigation; the independent public inquiry into the death of Zahid Mubarek; and Her Majesty's Inspectorate of Prisons thematic report on race ("Parallel Worlds")
- IT builds on the CRE's strong working relationship with Her Majesty's Inspectorate of Prisons in order to ensure robust monitoring and assessment is an integral part of the inspection regime
- NOMS meets all of its requirements in relation to the RED, in respect of both public and private sector prisons.

REPORT NUMBER FIVE

NHS TRUSTS

INTRODUCTION

1. In 2006, the Commission worked with the Healthcare Commission to design a web-based audit of RED performance across all 570 NHS Trusts. The audit arose as a result of the very strong, collaborative relationship which has been developed between officers and Commissioners within the two organisations.

METHODOLOGY

2. The Healthcare Commission conducted a web-based audit of NHS performance in relation to the requirement to publish RES, REIAs and Employment Duty data. Healthcare Commission staff trawled NHS Trust' websites to determine whether bodies had published the required RED documentation. An initial review was followed up with spot checks and contact with individual organisations to determine whether the material was available in other formats.
3. The audit has now been carried out in two successive years. The findings of the 2006 audit are reproduced below. The data from the latest audit is currently being collated and will be forwarded to the Commission in mid-September 2007.

FINDINGS

4. The audit in 2006 found:
 - 31% of Trusts have not published evidence of RES/REIA/Employment Duty Data
 - Only 60% of Trusts have an updated race equality scheme
 - Only 6% have employment monitoring statistics on their website
 - Only 2% had come of race equality impact assessments on two percent of trusts website.
5. The Healthcare Commission handed over its findings and related data to the CRE. And colleagues within PPS have reviewed the data before forwarding a sample of cases to the Legal Affairs Directorate.
6. Action is currently being initiated in respect of a number of NHS Trusts. It is likely that further compliance action will follow in relation to the 2007 audit.

CONCLUSION

7. The Commission welcomes the Healthcare Commission's work in this area and believes that it provides an important indication of potential compliance across the NHS.
8. The findings of the audit to date are extremely disappointing and indicate the need for CEHR and the Department Health concentrate significant resources in order to ensure future RED compliance across all Trusts. The scale of non-compliance and the

relevance of so much of the health service for race equality makes the current position even more profoundly disappointing.

PRIORITIES FOR CEHR

9. CEHR should ensure that:

- Compliance action is completed in relation to remaining authorities from the 2006 audit.
- Review data from the 2007 audit and take appropriate legal action
- It reviews the technical compliance of a sample of NHS RES, REIA and Employment duty performance
- The Department of Health is held responsible for any continued non-compliance of NHS Trusts
- It encourages the Healthcare Commission to continue undertaking the audit on an annual basis.

REPORT NUMBER SIX

FIRE AUTHORITIES

INTRODUCTION

1. In January 2006, the Black & Ethnic Minority Members Section (BEMM) of the Fire Brigade's Union (FBU) approached the Commission to raise concerns regarding the perceived failure of a significant number of Fire Authorities to comply with the Race Equality Duty (RED). In order to address these concerns, the Commission agreed that it would undertake a joint project with BEMMS to assess the RED compliance of a sample number of Fire Authorities.

METHODOLOGY

2. Commission staff within the Policy and Public Sector and Legal Affairs Directorate trained BEMMS colleagues to assess RES and REIAs. This involved detailed guidance in the use of internal RED auditing tools.
3. BEMMS colleagues then assessed the RED performance of a sample of seven Fire Authorities, reflecting location, size and local ethnic minority population. The BEMMS' audit was then counter-checked by officers with the Legal Affairs Directorate.

FINDINGS

4. The Commission's counter assessments concurred with those of BEMMS colleagues and all seven authorities were found to be non-compliant. The Commission then initiated compliance action against all seven authorities. The response to this action has been positive and all have now produced compliant RES and acceptable proposed approaches to REIAs and the Employment Duty. The Commission also wrote to the remaining fire authorities advising them of the project findings and requesting they revise their RES and their approaches to REIAs and the employment duty.

CONCLUSION

5. The Commission is disappointed at the scale of non-compliance across all of the authorities surveyed. The Commission concludes that these authorities have previously made little effort to ensure compliance and had assumed that the Commission would not monitor its activities. The Commission has been encouraged by the responses of those authorities which have been subject to enforcement action; however there remains a need to focus on the remaining authorities which are likely to have been similarly non-compliant.
6. The Commission's approach to this project provides a useful template for future collaborative work with Trade Unions and also potentially 'third sector' agencies. This would ensure that CEHR will be able to ensure that it fully monitors the effectiveness of public authorities in meeting the requirements of the duty.

PRIORITIES FOR CEHR

7. The CEHR should ensure that:

- It monitors the longer term compliance of those Fire Authorities which were subject to compliance action
- Undertakes follow-up monitoring of the remaining
- It builds on the positive relationship with the BEMMS of the FBU in order to undertake further joint monitoring activity in the future
- It explores the potential for further collaborative approaches to monitoring activity.

REPORT NUMBER SEVEN

FURTHER EDUCATION INSTITUTIONS

INTRODUCTION

1. Building on the work with the Fire Brigades Union, the Commission sought to extend its collaborative approach to RED monitoring by developing a joint project with the Universities and Colleges Union (UCU). The project arose from a series of complaints by UCU officials regarding the RED performance of a significant number of Further Education Institutions (FEIs), specifically the non-compliance of Race Equality Policies, REIAs and Employment Duty returns.

METHODOLOGY

2. Colleagues within the Policy and Public Sector and Legal Affairs Directorates trained a number of colleagues from the Universities and Colleges Union. This included training in the use of internal auditing tools for REP, REIA and Employment Duty.
3. The joint project team devised a project plan, which focused on auditing the RED performance of a total of 50 FEIs. These bodies reflected size, geographical and demographic spread of such institutions. The 50 FEIs were asked to supply a copy of its Race Equality Policy, sample copies of Race Equality Impact Assessments and Employment Duty specific data.

FINDINGS

4. All 50 FEIs responded, although did so after a significant delay. Assessments by the joint project team identified universal non-compliance. No single body was fully, legally compliant in respect of REP, REIAs or the Employment Duty. The actual performance of individual bodies was amongst the poorest the Commission has seen. Specific concerns included:
 - Seven bodies supplied Employment Duty data which contravened the Data Protection Act
 - Most REPs were little more than two pages or basic principles
 - Most REPs simply reproduced the wording of the Order
 - A significant number of bodies had REPs which were based on the same document and contained no institution-specific information
 - Organisations did not include even the most basic arrangements for compliance with the duty

5. All 50 FEIs audited were found to be totally non-compliant. The Commission considered taking compliance action against a sample of the worst performing authorities, however, the overall scale of non-compliance exhibited and the likelihood that this picture was being replicated across the whole of the Further Education Sector meant that the Commission has determined that it should seek an alternative approach.
6. The Commission has determined that it will write to all of the institutions involved to inform them of the dire findings and to the new Department for Innovation, Universities and Skills (DIUS) demanding that it take urgent remedial action to address compliance issues across the FE sector. The Commission will make clear that it expects DIUS to pull together those bodies with responsibility for delivery and inspection in respect of FE in order to achieve compliance. The Commission will clearly underline the fact that CEHR should hold DIUS and other strategic partners responsible for any continued non-compliance and that this could lead to compliance action against these authorities themselves.

PRIORITIES FOR CEHR

7. The CEHR should ensure that:
 - DIUS co-ordinates a sectoral response to the findings of this project, that it takes action to ensure compliance and to proactively monitor future performance
 - It takes any necessary legal action in relation to DIUS and individual bodies arising from future non-compliance.

REPORT NUMBER EIGHT

OLYMPICS REIA MONITORING PROJECT

INTRODUCTION

1. The Olympics Games has a unique opportunity to massively impact upon some of the most deprived areas and disadvantaged communities in London. The CRE monitoring project objective is to use its powers to monitor the listed operating bodies involved in the delivery of the Olympic Games and to make them aware of their obligation to be compliant with the Duty when developing their strategic delivery plans. This objective will ensure that ethnic minority communities are not overlooked in the planning stages of this unique opportunity.
2. The Department of Culture Media and Sport (DCMS) is the sponsor department and the central government coordinator for the Olympic Games. The Department of Communities and Local Government (DCLG) are the lead department on the diversity objectives. The Olympic and Paralympic Games has a complex set of governance arrangements run by an Olympic Board. Membership of the Olympic Board includes the Secretary of State, Chair of the ODA, Mayor of London, Chair of the British Olympic Authority (BOA) and the Chair of the London Organising Committee of the Olympic Games (LOCOG). The Board is supported by a Steering Group which has representatives from all the above bodies and central government.
3. The intention of the project was to send a signal to all of the bodies with responsibility for delivery of the Olympic project that the Commission expected them to meet all of their legal requirements and to deliver real outcomes for all ethnic communities. It was never the Commission's intention that this particular project would lead to compliance action, it was always intended to signal the interest of the Commission and subsequently the CEHR in Olympic delivery.

METHODOLOGY

4. The Commission sent letters to a total of 17 public bodies asking them to identify the extent to which they were implementing the Race Equality Duty in respect of the development of their Olympic delivery plans. Specifically, bodies were asked to provide:
 - A list of the Olympic policies and strategic delivery plans, both current and pending, for which the body was responsible
 - Details of its race equality impact assessment process
 - Details of who is responsible for overseeing this process
 - A copy of the Race Equality Impact Assessment of the delivery plan
 - Information on what if any measures were taken to alleviate any adverse or negative impact that the policy might have on race equality
 - Details of when and where the results of these assessments and related consultations will be made available.

FINDINGS

5. The Commission analysed the responses and found the following:

- Letters, strategic plans and templates were received from the ODA and 13 of the 15 central government departments
- To date the ODA, the chief Olympic operating body, and the main central government departments have not completed any Olympic-related REIAs.
- Only the London Delivery Agency was able to supply two Equality Impact Assessments (EIA). The Commission's assessment found that both were non-compliant with specific concerns regarding the coverage of the various strands of the duty. The Commission questioned the decision to delegate responsibility for the REIAs to consultants, raising questions about the degree to which its findings would be owned by the LDA.

CRE ACTION

6. The Commission has written to the LDA to request further details regarding areas of responsibility, timetable for actions/recommendations and arrange a meeting to discuss the Race Equality Impact Assessment process and the requirements under the Duty. The Commission has specifically highlighted the need for BME businesses to be able to access support and assistance as part of the CPO process.
7. The Commission has written to each of the remaining 16 bodies to reiterate the legal requirements of the duty to each of the bodies, with specific follow-up activities proposed.

PRIORITIES FOR THE CEHR

8. The Commission believes that the delivery of the Olympic and Para-Olympic games in 2012 should be amongst the CEHR's major priorities. Specifically CEHR should ensure that:
 - All public bodies with responsibility for the games carry out Race Equality Impact Assessments of key policy and delivery arrangements
 - Olympic related employment opportunities are open to all ethnic communities
 - Olympic procurement arrangements meet the standard set by the Commission's procurement guidance
 - Any necessary enforcement action is taken to ensure that delivery of the games lives up to the significance which was placed on London's diversity

REPORT NUMBER NINE

REGIONAL DEVELOPMENT AGENCIES

INTRODUCTION

1. The Monitoring and Enforcement Plan set out the Commission's intention to carry out a monitoring project to assess the compliance of Regional Development Agencies (RDA).
2. The Commission's interest arose as a result of the central role RDAs play in the regeneration and a spot check of RDA RES in June 2006. The latter found that just one RDA (London Development Agency) had published a Race Equality.
3. Following the announcement of the Commission's general investigation of regeneration it was decided that the proposed RED monitoring project should be undertaken as part of the investigation. It was determined that the review would form part of a MORI survey, which included specific questions relating to RED compliance. The findings of the survey will be published alongside the wider investigation report in late September 2007.

PRIORITIES FOR CEHR

4. CEHR should:
 - Undertake any appropriate follow-up activity in respect RDA compliance, including any potential enforcement action

REPORT NUMBER TEN

INSPECTION AND REGULATION BODIES

INTRODUCTION

1. The Commission has undertaken proactive to ensure that it has built strong and positive relationships with each of the major public sector inspection and regulatory bodies. The Commission has specifically focused on the work of:
 - Audit Commission
 - OFSTED
 - Healthcare Commission
 - Commission for Social Care Inspection
 - HMI Constabulary
 - HMI Prisons
 - HMI Probation
 - HMI Probation
 - HMI Courts Administration
 - Benefits Fraud Inspectorate

METHODOLOGY

2. The Commission's work has had a twin focus. Firstly, the Commission has recently begun to undertake follow-up assessment of monitoring for the compliance of individual inspection and regulatory bodies. Secondly, ensuring that these bodies monitor the wider compliance of those public authorities which they have responsibility for inspection/regulating. The latter has formed the greater part of the Commission's focus.
3. The Commission has sought to strengthen its relationships with key bodies by building alliances with individual Chief Inspectors and those who are responsible for ensuring compliance within their respective organisations.

FINDINGS

4. In April 2005, the Commission found that the RES of all major public sector inspection bodies were wholly non-compliant. The relevant bodies were provided with bespoke feedback and advice and required to incorporate this as part of the new RES 2005-08.

5. The following provides an overview of the compliance status of the first three bodies audited as part of a follow-up project.

Authority	Assessment	Action
Audit Commission	Has made slow progress. Its latest RES is an improvement on previous, however it still lacks some details in terms of action planning. It now has an approach to REIA, however it is yet to complete any assessments. It has however committed to completing a REIA of its CAA proposals.	Continue monitoring and if RED performance does not continue to improve initiate enforcement action.
Healthcare Commission	Latest RES is now compliant and is undertaking REIA, however there remains a need to monitor quality of REIAs produced.	Continue monitoring
OFSTED	Latest RES is still non-compliant, the case has been referred to the Legal Affairs Directorate and action is pending. OFSTED does not currently have a REIA approach and its interpretation of its responsibilities in respect of the duty varies considerably from that of the Commission.	Legal compliance action recommended

Ensuring Sectoral Compliance

6. The bulk of the Commission's work with Inspection and Regulatory bodies has been proactive work to ensure that the public authorities for which they have responsibility are compliant with the RED. This has required tailored approaches with individual bodies. The following offers a summary of the key areas of progress, activity and/or successes in relation to each organisation.

Audit Commission

- Ensured that the Comprehensive Performance Assessment included a clear consideration of RED performance as part of the assessment of wider local authority performance
- Undertaking follow-up work to ensure CAA proposals are properly impact assessed.

Healthcare Commission

- Undertaken an annual web-based audit of RED compliance amongst NHS Trusts (2006 and 2007) – see separate project report
- Committed to undertaking a Race Equality Service Review

HMI probation

- Improved coverage of race equality in inspection methodology for OMI and YOT inspections

- All inspectors have received tailored RED training

HMI Constabulary

- Published recent thematic inspection of 6 forces on race equality compliance and outcomes
- Conducted further thematic inspection of police custody – included CRE involvement in its stakeholder advisory group
- Inspection methodology has a good coverage of race equality

Ofsted

- Has the poorest record of any inspection or regulatory body. It does not accept that it has a responsibility to monitor RED performance of public authorities within its arena of responsibility. It is arguably the most uncooperative public authority the Commission has had to deal with over the last two years.

HMI Prisons

- Heavily involved in police custody thematic
- Continue to improve methodology
- Coverage of race equality in inspection methodology is consistently good with clear reference to race equality outcomes in all reports is consistently good.

Commission for Social Care Inspection (CSCI)

- Coverage of race equality in its inspection methodology is good
- The Commission has concerns that this coverage in children's social care inspection will be diluted once OFSTED assumes responsibility.

Benefits Fraud Inspectorate (BFI) – Now part of the Audit Commission

- The Commission has undertaken a RED monitoring project to follow-up the findings of inspection reports for individual local authorities. These effectively add to the Commission's understanding of RED performance in respect of local authorities

HMICA

- Good coverage of race equality inspection framework
- Good coverage of race equality in thematic inspections
- Still requires a focus on particular areas, including monitoring sentencing patterns.

PRIORITIES FOR CEHR

7. CEHR should ensure that:

- It continues to nurture positive relationships with key inspection and regulatory bodies and continue the Commission's drive to improve the coverage of race equality in key activities
- It specifically monitors the individual RED compliance of key inspection and regulatory bodies and complete the remaining parts of the Commission's current RED audit

- It is conscious of the need to support those responsible for equality within inspection and regulatory bodies to ensure continued progress
- Consider holding inspection and regulatory bodies legally responsible for widespread non-compliance with their respective sectors
- That it takes advantage of the goodwill which has been built up between the Commission and the vast majority of Chief Inspectors