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get to this letter.*

RECC

v/r

24 February 1988

The Rt Hon Douglas Hurd CBE MP
Secretary of State for the Home Department
Home Office
Queen Anne's Gate
LONDON
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Keith Hampson

Keith Hampson has tabled an amendment to the Education Reform Bill which would give the Commission for Racial Equality (CRE) the same code-making power in education as they already have in employment. A similar amendment has been tabled to the Housing Bill. I believe I should resist this amendment and would be grateful to know that you are content with the line I plan to take.

The new provision proposed by the CRE would allow them to issue a code of practice giving practical guidance for the purpose of eliminating discrimination and promoting equality of opportunity in education. The CRE would be required to consult such organisations as they thought appropriate before transmitting their code to me; I would be required either to approve it and lay it before Parliament, or to publish my reasons for not doing so. Provided neither House of Parliament resolved that the code should not be proceeded with, it would then come into effect. Once in effect, it would be admissible in evidence in proceedings in the county court or sheriff court under the Act, and if the court held that a provision in the code was relevant to any question in the proceedings the code could be taken into account in determining that question.

The CRE are free to issue non-statutory guidelines on education already, although they have not done so. They argue that guidelines would have more force if they have been laid before Parliament and can be taken into account in court proceedings. They say that the code on employment has been successful in changing employers' practices. They believe there is considerable discrimination in education, for example as regards withdrawal of pupils from mainstream classrooms for teaching in English as a second language, and in admission to further and higher education. A statutory code would make it easier to persuade local education authorities and others to comply with the law.

The main case for a statutory code rests on the guidance it provides in court or tribunal proceedings. This is clearly relevant in employment, where many cases are decided by industrial tribunals. However, very few education cases are brought before the courts. No proceedings may be instituted under Section 17,

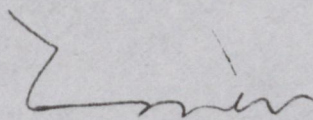
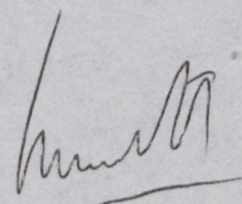
18 or 19(1) of the 1976 Act unless I have first been notified and a period of two months has elapsed. I have power under Sections 68 and 99 of the Education Act 1944 to require a local education authority to discharge its duties and to act reasonably in so doing. This power is available to require local education authorities to comply with Sections 17, 18 and 19(1) of the 1976 Act. Given that most complaints are handled in this way by my Department rather than the courts, the need for a statutory code is not strong.

--- I am moreover concerned about the contents of the draft code/Handbook which the CRE have produced. I enclose a copy, from which you will see that in addition to giving guidance on illegal discrimination the code deals with the promotion of equality of opportunity. In education the issues are considerably more complex than in employment, or even housing, and there can be no single "right" way forward. Genuine and sincerely held differences of opinion exist about the most appropriate educational responses to the needs of our multi-ethnic society. A number of the recommendations in the code cause difficulty. The recommendation on teaching through the medium of the mother tongue (paragraph 6.6) is contrary to declared Government policy. Nor am I happy with the recommendation that an anti-racist curriculum should be taught in schools (paragraph 6.9). This could open the way to courses which have ideological rather than educational purposes. The recommendation that teaching and examination courses should be provided as far as possible in ethnic minority languages (paragraph 6.9) goes further than I would wish. Other recommendations, for instance on the disciplining of staff found guilty of racial harassment (paragraph 9.3) seems inappropriate in a code of this kind.

While the CRE might be prepared to amend some of the provisions in the draft I very much doubt whether the code presented to me would be acceptable. I understand that the Department of Employment found the CRE reluctant to make many changes to the employment code. Under the terms of the new clause which the CRE have prepared, corresponding to Section 47 of the 1976 Act, I would have no powers to amend the code but would have to lay it before Parliament or publish my reasons for not doing so. A public debate about my refusal to accept the code would be highly charged and likely to be damaging to our efforts to promote good race relations in schools.

I therefore think I should resist the amendment. In opposing it, I would point out that few cases are brought before the courts and that the CRE remain free to issue a non-statutory code. I would suggest that the sort of sensitive provisions I have described are best settled by those responsible for the delivery of education in their area rather than in a general code. I would also draw the Committee's attention to the many initiatives we are taking to promote equality of opportunity in schools.

I am copying this letter to Peter Walker, Norman Fowler, Nicholas Ridley and Malcolm Rifkind, since all their departments have an interest in this proposed extension to the CRE's code making powers. I should welcome an early indication that you, and they, are content for me to oppose Keith Hampson's amendment.

EDUCATION AND RACE RELATIONS
HANDBOOK OF GOOD PRACTICE

The Commission for Racial Equality was set up under the Race Relations Act with the duties of:

- a) working towards the elimination of discrimination;
- b) promoting equality of opportunity and good relations between persons of different racial groups generally; and
- c) keeping under review the working of the Act, and, when required by the Secretary of State or when it otherwise thinks necessary, to draw up and submit to the Secretary of State proposals for amending it.

INTRODUCTION

1. The Purpose and Status of the Handbook

1.1 The purpose of this Handbook is to give practical guidance to those with a responsibility for education which will help them to eliminate racial discrimination and to promote equal opportunity and good race relations. In particular it is designed to help local authorities to carry out their statutory duty under Section 71 of the Race Relations Act 1976

1.2 The Handbook sets out the implications of the Act for education, but it does not impose any legal obligations itself, nor is it an authoritative statement of the law - this can only be provided by the courts. References to the appropriate Sections of the Act are given in the margins to the Handbook.

2. Employment

2.1 Many of those responsible for education are employers as well as service providers, and equal opportunity in education cannot be separated from equal opportunity in employment. An employer who racially discriminates in the selection and promotion of teachers and other staff, for example is as much at fault as one failing to provide equal opportunity in education. This Handbook should therefore be read in conjunction with the Commission's Code of Practice in employment, which was approved by Parliament in 1983 and came into force in the following year.

3 The Nature and Organisation of the Handbook

3.1 The premises that underline this Handbook are the need to eliminate racial discrimination, to make provision for particular needs, to acknowledge and respect cultural diversity, and to educate for a multi-cultural society. They apply to all educational establishments, not just those attended by children or students from ethnic minorities. They fall within three principles of general application:

- (a) Education should enable children and students, as far as possible without exception, to develop their potential to the full. Racial discrimination can check this development, and so too can the failure to meet particular needs or to acknowledge and respect cultural diversity.
- (b) Education is a matter of transmitting the knowledge, skills and understanding that will enable all people to cope confidently and effectively in the society in which they live. This should include knowledge and understanding of different ethnic groups, of the laws affecting relations between them, and of the multi-cultural society that Britain has now become.
- (c) Education is a matter of transmitting values. This must include the values of fairness and justice and the right of each person to equal opportunity. Under these values racial prejudice and discrimination must be condemned and eliminated.

3.2 The three main stages of educational provision are pre-school, school and further and higher education. There are many differences of practice and procedure both between and within them, but for the purposes of this Handbook we consider them together. Many of the factors that we consider are common to all three of them: others relate only to one or two, and where this is so it is indicated.

1. The Concept of Racial Discrimination

1.1 The Race Relations Act 1976 makes it unlawful to discriminate against a person, directly or indirectly, in the field of education. A detailed statement of the Act as it affects education is given as an Appendix to this Handbook. What follows is an explanation of the concept of racial discrimination.

1.2 Direct racial discrimination consists of treating
S.1(1)(a)

a person, on racial grounds, less favourably than others are or would be treated in the same or similar circumstances. (Racial grounds are the grounds of race, colour, nationality - including citizenship - or ethnic or national origins, and groups defined by reference to these grounds are referred to as racial groups).

1.3 Direct discrimination takes many forms. In the treatment for pupils, for example, it may vary from crude racist remarks to subtle differences in assessment, expectation, provision and treatment. It may be unconscious or even well intentioned, but nonetheless damaging in effect.

1.4 Indirect racial discrimination is a more complex S.1.(1)(b)

concept. It consists of applying, in the circumstances covered by the Act, a requirement or condition which, although applied equally to persons of all racial groups, is such that a considerably smaller proportion of a particular racial group can comply with it and it cannot be shown to be justifiable on other than racial grounds.

1.5 Justifiable means objectively justifiable. In the context of education this means that it must be justifiable on educational grounds and this educational justification must not be outweighed by any disadvantage that the requirement or condition entails. It is a question of fact in each case.

1.6 Several examples of indirect discrimination are given below, but one of the clearest examples, based on a case that went to the House of Lords,*

* Mandla v Dowell Lee (House of Lords, 1983)

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is the requirement to wear a cap as part of a school uniform. Although this requirement was applied equally to all children, it had the effect of excluding Sikh boys, whose religion required them to wear a turban and it could not to be justified on educational grounds.

2. Equal Opportunity Policies

- 2.1 Good intentions are not sufficient to get rid of racial discrimination and other causes of disadvantage. They have to be translated into an equal opportunity policy which is properly implemented and monitored.
- 2.2 It is recommended that each educational establishment should either have an equal opportunity policy of its own or follow that laid down by a higher authority. Frequently, for example, it will be the LEA which formulates the policy and the LEA's schools which are largely responsible for carrying it out. In the case of Grant maintained Schools, Polytechnics, Universities and Colleges independent of LEA control: it will be up to the governing bodies of those institutions to adopt such policies.
- 2.3 It is recommended that in each establishment there should be a senior employee who is responsible for promoting equal opportunity policies.

3. Equal Opportunity Policies in Employment

3.1 Equal opportunity policies in employment are covered by the Commission's Code of Practice in employment, and they are not discussed in any detail in this Handbook. Such policies are particularly important for education, however, since ethnic minorities are significantly under-represented in the teaching profession and among students in institutions providing teacher education and in associated professions such as nursery nursing.*

3.2 Not only should every effort be made to identify S.5(2)(d), and eliminate any discrimination that is occur-

S.37 & ring, but full use should be made of the positive S.33

action provisions of the Race Relations Act to encourage and train members of ethnic minorities to enter the teaching profession. (See Appendix, paragraph 12.5 below). This may be done through access courses for members of ethnic minorities, for example, and through

* A CRE survey of eight LEAs discovered that only 2% of school teachers were of ethnic minority origin. Of these a disproportionately high number were concentrated in the lower scales (73% on scales 1 and 2 compared with 57% of white teachers). [Details to be added on students in teacher training colleges]. A survey carried out by the National Association of Teachers in further and higher education in 1935 revealed that only 1.3% of it's membership was black.

advertisements in the ethnic minority press. It is possible to appoint ethnic minority staff to provide personal welfare services to ethnic minority pupils and parents. (See paragraph 10.3 below).

3.3 Since teachers will be required to teach a multi-cultural curriculum and to challenge racism their awareness of these factors should be taken into account when appointments are made. (See paragraphs 6.6 - 6.10 below).

4. Allocation and admission

4.1 LEAs and the Governors of educational establishments adopt a wide variety of administrative arrangements to determine the allocation and admission of pupils. It is unlawful to discriminate in admission, whether directly or indirectly. (See Appendix, paragraph 3.1 below).

Apart from the obvious illegality S.1(1)(a) of rejecting an applicant on racial grounds, the + S.17 implications of this are as follows:-

4.2 Open Admissions. The abolition of planned admissions levels (PALs) under the Education Reform Bill 1987 may result in some schools becoming heavily oversubscribed. If admission to such schools were determined on racial grounds (eg to achieve a "racial balance") this would constitute S1(1)(a) unlawful direct discrimination. If parents attempted to S.31 persuade LEAs or schools to determine admission on a racial basis unlawful pressure to discriminate would have occurred.

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If LEAs or schools complied with such pressure they would
S.18 or themselves be in breach of law.

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4.3 Quotas. It is unlawful to impose a racial quota, either
to create a racial balance within an
S.1(1)(a)

educational establishment or to preserve its
+ S.17

ethnic identity.

4.4 Siblings, sons and daughters. Reserving places for students
who have, or have had, brothers or sisters at the
educational establishment concerned, or are the children of
former students or of current or former members of staff,
may have the effect of excluding a considerably higher
proportion of members of a particular racial group of
comparatively recent settlement. This can almost certainly
be justified on educational grounds in the case of siblings
at pre-school groups, primary or secondary schools.
S.1(1)(b) Otherwise it is indirectly discriminatory if
+ S.17 cannot be justified on educational grounds.

4.5 Word of mouth selection. In some educational
establishments, particularly in pre-school provision,
children may be chosen through word-of-mouth, ie when
vacancies arise they may be filled by the children of
friends and relatives of parents and staff. If the
S1(1)(b) parents and staff belong exclusively, or almost

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+ S.17 exclusively, to one particular racial group, t. . .
this method of selection may have the effect of
completely excluding members of other racial groups, or
excluding a considerably higher proportion of them, and,
unless it can be justified, it will be
indirectly discriminatory.

4.6 Dress and uniform. Uniform and dress regulations that
result in the rejection of a pupil who cannot comply with
them for cultural or religious reasons are indirectly
discriminatory. For example, a rule that girls must wear
skirts will exclude a considerably higher proportion of
Muslims who are required by their religion to wear
turbans shalwar Kameez. Additionally, if
S.1(1)(b) schools have rigid requirements for the wearing
+ S.17 of certain types of clothing for P.E. (or
showering afterwards) then the effects of such
requirements may to cause the part exclusion of children of
certain religions from participating in the full
curriculum.

4.7 Religion. Admissions policies that stipulate membership of
a particular faith or denomination may exclude a
considerably higher proportion of members of those
particular racial groups who are less likely to be of that
faith or denomination will depend on whether or not it is
justifiable on non-racial grounds. [Further paragraph to be
added on charities].

4.8 Certain pre-school practices. Certain practices operated by pre-school establishments may have the effect of making it difficult for working parents to make use of them, and this may affect ethnic minority mothers more than others. These practices may include a requirement for parental participation, and limited S1(1)(b) opening hours. Unless these policies can be justified they may constitute indirect discrimination. [For further details on pre school provision in a multi racial society. See]

4.9 School and Further Education catchment areas. It is unlawful to draw catchment areas in such a way that a considerably higher proportion of members of a particular racial group are disadvantaged and the arrangement can be justified. For example, if one particular school was regarded by parents as being better than others, but its catchment area was drawn in such a way as to exclude a considerably higher proportion of Asian pupils, this would be indirectly discriminatory unless the arrangement could be justified in some other way.

4.10 Dispersal. If school pupils were bussed on racial grounds this would constitute direct discrimination. If they were bussed on some other ground, eg their educational need or S1(1)(a) the availability of school places, this would constitute +S.17 indirect discrimination if it disproportionately affected pupils of a particular racial group and could not be justified on non-racial grounds. For example, it would be unlawful to disperse

Asian pupils whose English was poor unless it could be shown that such dispersal helped them to learn English better and this was not S1(1)(b) outweighed by the disadvantages involved.

4.11 Language. The placement of English as Second Language (ESL) pupils in separate language centres cannot be justified and constitutes S.1(1)(b) indirect discrimination. This is because it + S.17 denies them access to mainstream schooling, and the available evidence suggests that it slows down their acquisition of English.* The placement of ESL pupils within schools in special language classes for extended periods, denying them access to mainstream schooling during this time, may also be discriminatory, depending on the particular circumstances. Similarly in Further Education, the practice of placing such students in language courses prior to mainstream vocational courses, rather than providing language support to vocational students may be discriminatory.

4.12 Single Sex Schools. The cultural or religious practices of particular racial groups may be such as to require single sex education for their children. Lack of S1(1)(b) sufficient places ^{meet this need} to [^] where single sex schools exist or + S.17 new schools are being provided ~~meet this need~~ might

* See Teaching English as a Second Language: Report of a Formal Investigation in Calderdale LEA (CRE 1986)

be indirectly discriminatory in that it would have the effect of denying them access to the schools of their choice.

Alternatively the location of single sex schools might be such that a considerably larger proportion of ethnic minority children were unable to attend their local school and had to travel an unreasonable distance.

Alternatively the location of single sex schools might be such that a considerably larger proportion of ethnic minority children were unable to attend their local school and had to travel an unreasonable distance.

4.13 Immigration and nationality status. It is directly discriminatory to ask parents, on racial grounds, to produce passports or other documentary evidence as proof of a child's entitlement to education in a S1(1)(a) maintained school, or, after questioning, to refuse admittance to a child because of a parent's status under the Nationality Act 1981, the Immigration Act 1971 or + S.17 subsequent Immigration rules.

4.14 Pupils from overseas. For a school to refuse admission at the beginning of a term to children from overseas or the children of overseas visitors, would be in breach of Section 3 of the Education Act 1944 and Section 6 of the Education Act 1980 and contrary to the advice contained in the Annex to DES Circular/81. [Legal details to be checked and paragraph to be added on further and higher education].

4.15 Differential fees. The charging of higher fees (or the same fees but on different conditions) to overseas parents or students by private educational establishments would be directly discriminatory if based on nationality or indirectly discriminatory if based on place of ordinary residence. The charging of higher fees to overseas students is not unlawful where it is done under statutory or ministerial authority, in this case the Secretary of State for Education.

4.16 Selection criteria. The selection of pupils on the basis of assessments of ability, attainment, intelligence or character would be indirectly discriminatory if those assessments were culturally biased in a way that excluded a considerably higher proportion of pupils from a particular racial group and that could not be justified on educational grounds. (For further details of discrimination in assessment, see paragraph 5 below).

4.17 It might also be indirectly discriminatory to require academic attainment or performance in English language that is in excess of that needed for the successful completion of a course if this had the effect of excluding a considerably higher proportion of students from a particular racial group.

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4.18 Recruitment by higher and further education establishments from particular schools, companies or areas. Some higher and further education establishments have special arrangements whereby they recruit students from particular schools, companies or areas. In some S1(1)(b) cases these arrangements will have the effect of + S.17 excluding a considerably higher proportion of potential applicants from a particular racial group. Where these arrangements amount to a requirement or condition, and where they cannot be justified, they will constitute indirect discrimination.

4.19 Refusing or deliberately omitting to accept applications for admission on racial grounds constitutes direct S1(1)(a) discrimination.*
+ S.17(b)

4.20 Scholarships which are only open to pupils from certain schools may also be indirectly S.34 discriminatory unless they can be justified or unless they are covered by charitable foundations exemptions.

4.21 MSC training schemes. It is unlawful for educational establishments which are the managing agents for MSC

* See Admissions to Medical School: Report of Formal Investigation into St. George's Hospital Medical School. CRE 1938.

training schemes to discriminate on racial grounds in selection of applicants for different types or levels of schemes. It is also unlawful for educational establishments to discriminate indirectly in the selection of students for such schemes by applying criteria which exclude a considerably higher proportion of students of a particular racial group and which cannot be justified on non-racial grounds.

4.22 Interviews. It is unlawful to reject an applicant because he has been treated less favourably at an interview on racial grounds, eg by being asked more difficult or more hostile questions, asking different questions of certain applicants because of their racial origins, or if factors have been considered which are not taken into account for applicants of other racial groups.

4.23 Day and block release. If employers discriminate in whom they employ or take on as apprentices, FE colleges will be receiving day and block release students who had been selected on racial grounds. This may be unlawful, depending on the circumstances.

4.24 It is recommended that every educational establishment should:

- (a) review and monitor its admissions procedures and criteria to ensure that they are not discriminatory, either directly or indirectly.

(b) ascertain the ethnic origins of pupils or students who apply for admission. If it is found that any particular racial group is under-represented among applicants in relation to its numbers in the relevant catchment area, the reasons for this should if possible be ascertained and members of this racial groups should be given special encouragement to apply, eg through advertisements in the local or ethnic minority press.

(c) find out if applicants of any particular racial groups are being shortlisted or selected at a lower rate than applicants of other racial groups and, if so, find out the reasons for this and discontinue any discrimination that may be occurring.

5. Assessment

5.1 Various methods of assessment are used in almost all educational establishments to evaluate progress, attainment or aptitudes. They are a crucial determinant of access to or exclusion from subsequent education opportunities and work opportunities after formal education is completed.

5.2 Direct discrimination. It is unlawful to give a lower assessment to a pupil on racial grounds. Such discrimination may arise, not just from overt racism, but from unconscious assumptions about the relative abilities and characteristics of different racial groups. This applies to every age and stage of education. For example, it would be unlawful to allocate pupils to a lower set or stream or to a lower

examination course on the ground that, because they belong to a particular racial group, they were less likely to perform well, or were more likely to be unco-operative. Similarly it would be unlawful to deny a student his or her subject preference because of perceptions, based on racial grounds, of his or her aptitude or ability in that subject.

5.3 Indirect discrimination. It is unlawful to apply procedures or criteria which are culturally biased and which result in a lower assessment being given to a considerably higher proportion of pupils from a particular racial group if other non-discriminatory forms of assessment can be used. For example:

5.3.1

Tests. The use of general screening tests (eg on verbal reasoning and reading) to assess levels of attainment would be indirectly discriminatory if they were S1(1)(b) culturally biased and resulted in a lower assessment being given to a considerably higher proportion of pupils from a particular racial group and if other non-discriminatory forms of assessment could be used.

5.3.2

Diagnostic tests. Similarly the use of diagnostic tests, to assess special educational needs, might be indirectly discriminatory if they were culturally biased and resulted in a considerably higher proportion of pupils from a particular racial group being referred to various forms of special educational provision and if other

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non-discriminatory methods of assessment could be used.* Where appropriate assessment should take place in the child's home language and interpretation and translation facilities should be available for parents.

5.3.3

Language tests. If a considerably larger proportion of pupils from a particular racial group fail or do badly in an English test, and if the test is irrelevant for the purposes for which it is used (eg many vocational courses) and so cannot be justified, then this is indirectly discriminatory.

5.3.4

Examinations. Examinations which are culturally biased and which result in a lower assessment being given to a considerably higher proportion of pupils from a particular racial group may be indirectly discriminatory if they cannot be justified and if other non-discriminatory forms of assessment can be used. For example, the oral element in GCSE examination may indirectly discriminate against pupils for whom English is a second language.

* Under Section 1(4) of the Education Act 1981 children are not to be taken as having a learning difficulty and assessed as in need of special education, solely because the language or form of language of the home is different from that used in school.

5.3.5

Non-academic assessments. The application of certain non-academic criteria may also constitute indirect discrimination. For example, if a college, when considering applicants for admission gives a higher assessment to students who have displayed an interest in western classical music, or who have excelled in playing rugby, this may be indirectly discriminatory, if it excludes a considerably higher proportion of students from a particular racial group and if it cannot be justified.

5.4 It is recommended that all forms of assessment should be reviewed. If it is found that pupils from any particular racial group are being assessed at a lower level than other pupils, then the reasons for this should be ascertained. Insofar as discrimination plays a part, whether direct or indirect, that discrimination should be stopped.

6. Teaching

6.1 Teaching must be free of racial discrimination, be responsive to the educational needs of all pupils and students, recognise the worth of different cultures, and provide pupils and students with the skills and knowledge that are needed for the multi-cultural society in which they will live. The implications of this are as follows.

6.2 Direct discrimination. It is unlawful to treat a child less favourably on racial grounds, eg by treating him or her in a

hostile way, or in a less friendly way, or by making negative statements or assumptions about his or her learning potential because of their race..

6.3 Materials. Notions on racial hierarchy have been embedded in European civilisation for centuries and take many different and subtle forms. It is inevitable that these notions are sometimes reflected in teaching materials. It is therefore recommended that all such materials (including text books, children's fiction, reading schemes and audio-visual aids) should be examined to make sure that they do not contain racist stereotypes or biased presentations and caricatures of particular racial groups.*

6.4 Curriculum. Pupils of all ethnic groups must be given the skills that will enable them to work to the best of their ability when they leave full-time education.

6.5 Children for whom English is a second language must have special teaching to help them to acquire it. As indicated in paragraph above, however, this should not be done through Special Language Centres (which would be unlawful), or through total withdrawal within schools (which might also be unlawful), but should be integrated as far as possible in mainstream schooling. As with any language, children will learn best, not by learning it in a detached environment, but by using it in their everyday dealings with other pupils

*For constructive guidance on teaching materials see

and teachers both in the playground and in the classroom

6.6 Teaching in ethnic minority languages may well be beneficial in transitional learning from mother tongue to English. It is recommended that, where practicable, such teaching should be provided.

This provision should extend from nursery and infant level through to GCSE examination level.

6.7 LEAs are responsible for deciding which of their schools will offer the Technical and vocational Education Initiative courses of study. It may be unlawful to allocate TVEI courses in such a way that they are unavailable to a considerably higher proportion of pupils of a particular racial group because of their concentration in particular schools or because their parents are differentially informed about the courses.

6.8 Since pupils are being educated to live in this country it is right that particular emphasis should be given to helping them to understand the cultural achievements of the society of which they will form a part. But that society is now multi-cultural, and a narrowly ethno-centric curriculum is a disservice to pupils. Moreover neglecting the cultural achievements of particular groups is tantamount to saying that they are less important, and reinforces other forms of racial prejudice.

6.9 The curriculum should therefore be multicultural and anti-racist. It is particularly important that teaching and examination courses should be provided, as far as possible, in the languages of ethnic minority pupils, and these courses should be regarded as just as important as any other part of the curriculum. Similarly religious education should be based on a plural, multi-faith approach, art courses should include the some study of non-European arts, history syllabi should include the study of Asia, Africa and America before colonisation, and domestic science classes should include information on Indian and Chinese cooking. Moreover, within this framework, every culture should be presented on its own terms, and not as 'primitive' or 'exotic'

6.10 The curriculum should also challenge racial injustice more directly through the discussion of race relations. Moral and social education has long been recognised as part of the core curriculum to prepare young people for contemporary society, and race relations should form part of this. By learning about the nature of society, how power is exercised and how existing structures may operate to the detriment of minority groups pupils and students will be able to acquire the skills and knowledge to see racial injustice for what it is and to argue rationally about it.

7. Acts of worship

- 7.1 As indicated already in paragraph 6.9 above, on the curriculum, religious education should be based on a plural, multi-faith approach.
- 7.2 The 1944 Education Act, however, also makes provision for an act of collective worship and, although it does not specify that this should be Christian, this was clearly intended by the framers of the legislation. In many multi-racial schools such an act of collective worship is difficult if not impossible to achieve, and in any event the provision of exclusively Christian worship is clearly inconsistent with the multicultural principles that should non inform education generally. It is therefore recommended that, as far as possible, collective acts of worship should take cognisance of the faiths of all the pupils who attend a particular school.

3. Discipline

- 3.1 It is unlawful to discipline a pupil or student more severely than others on racial grounds, eg through punishment, suspension or expulsion. For example, it would be unlawful to suspend an Afro-Caribbean pupil for behaviour for which a white pupil would not be suspended, simply because the authorities concerned associated Afro-Caribbean pupils with disciplinary problems. Discipline should be even handed between the various ethnic and racial groups.

8.2 It is recommended that all forms of discipline should be carefully monitored. If it is found that a disproportionately high number of students from a particular racial group are being disciplined, then the reasons for this should be ascertained and, insofar as discrimination is playing a part, whether direct or indirect, it should be stopped.*

9. Racial Harassment

9.1 Racial Harassment may range from graffiti through name calling to physical violence. It may be perpetrated by teachers, other staff, pupils parents or outsiders. Ideally all educational establishments should build up the sort of ethos in which racial harassment does not occur. More immediately they should have practical guidelines for dealing with it.

9.2 Persons who suffer racial harassment should feel that they can report it without fear to a senior member of staff, and there must be procedures for dealing with their complaints. These complaints should be treated promptly and seriously. It is unlawful for an educational establishment to treat complaints from members of ethnic minorities less seriously than those from others.

*For an example of such monitoring, see the Commission's report on a formal investigation into suspensions in the Birmingham LEA.

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9.3 Any member of staff or pupil found guilty of racial harassment should be disciplined.

9.4 Every incident of harassment should be recorded by the educational establishment concerned, and LEAs should collect such records for all the establishments for which they are responsible.

9.5 For more detailed discussion and guidelines on racial harassment see the Commission's publications:

Racial Harassment in Schools and Colleges CRE 1988

Living in Terror CRE 1987.

10. Other Educational Provision

10.1 Educational establishments provide a wide variety of facilities and services in addition to education, and it is an important indication of their commitment to equal opportunity that this provision, like education itself, should be genuinely free from racial discrimination and sensitive to the needs of all racial groups.

10.2 Meals. It is recommended that meals should reflect the cultural backgrounds of the pupils or students, so that where, for example, there is a significant proportion of Chinese pupils, some of the meals should be of Chinese food. Pupils should not be asked or expected to eat food which is forbidden to them by their religion, eg Jews and Muslims should not be asked to eat pork. Local authorities |

and Governors should have particular regard for this when considering competitive tenders for school meals provided.

10.3 Pastoral service, including welfare and counselling. This should be sensitive to the cultures of all the racial groups concerned. Where services to members of a particular racial group can most effectively be provided by a person of that racial group, then a person of that group may be appointed to the post for that reason and this does not constitute unlawful discrimination. It is recommended that LEAs and educational establishments make full use of this provision of the law.

10.4 Relations with parents. It is recommended that schools should make every effort to involve all parents, regardless of racial origin, in the affairs of the school. If it is found that parents of particular racial group are less involved than others, eg in the Parent Teacher Association, the reasons for this should be ascertained, and those parents should be given particular encouragement to join. Thought should be given to the timing of parental consultations and meetings so that those involved in evening or shift work have the opportunity to attend.

10.5 Work experience and placements. An increasing number of courses in secondary schools, FE colleges and institutions of higher education, involve an element of work experience

and placement with an employer. It is unlawful for S.30 or employer to instruct or put pressure on a school or college 31 not to send him students from a particular racial group for work experience.* It is unlawful for a school, or college S.17(c) to comply with such instructions or to yield to such pressure. Similarly it would be unlawful for schools or colleges to allocate work experience placements on a racial basis.

10.6 Careers advice. It is unlawful for a teacher responsible for careers advice, or for a local authority careers officer, to refuse to give advice to a pupil on racial grounds, or to dissuade a pupil, on racial grounds, from considering a particular career or particular education or training opportunities.

10.7 It is unlawful for an employer or vocational training body to instruct or put pressure on a school, a college, or the careers service not to send them persons from a particular racial group. It is unlawful for a school, college or the careers service to comply with such instructions or to yield to such pressure.

* See CRE v Fern & British Electrical Repairs Limited (Westminster County Court 1987. No. 8617523)

This case is reported in detail in the Commission's 1987 Annual Report.

10.3 Grants. It is unlawful for LEAs and educational
 S.18 establishments to discriminate, directly or indirectly, in
 S.17 awarding grants, bursaries or scholarships.

10.9 Accommodation. It is unlawful for educational
 establishments such as boarding schools or residential
 colleges to discriminate in the provision of accommodation.

Some educational establishments, in addition to or instead
 of providing accommodation themselves, act as accommodation
 agencies for their students. The provisions of the Race
 Relations Act relating to accommodation agencies are
 complex, and full guidance is given in the Commission's
 publication, A Guide for Accommodation Agencies and
 Landlords. Officers dealing with accommodation are advised
 to consult this in full.

10.10 Educational self-help. Many minority communities run their
 own education projects, such as supplementary schools and
 mother tongue classes. These projects may be regarded as a
 response by the communities to what they see as the
 inadequacies and failings of mainstream schooling.
 Afro-Caribbean Saturday Schools, for example, have come
 into being because many black parents are worried about the
 underachievement of their children, and mother tongue
 classes because many linguistic minority parents are
 worried that their language is not included in the
 mainstream curriculum. In spite of these implied
 criticisms, the projects should not be regarded as a

rejection of mainstream schooling, or as a threat to ,
but as constructive and innovatory additions.

10.11 It is recommended that LEAs and schools should give every encouragement and assistance to such projects, eg by providing funds and accommodation, and that they should establish and maintain close liaison with them. It is important, however, that the projects should not be used to justify the failings of mainstream provision, and that their control should remain firmly with the community groups themselves.

11. Teacher Education

11.1 Since it is the task of teachers at all levels to understand the nature of multi-cultural Britain and to prepare pupils and students for life in a plural society, all teachers must be equipped with the skills and knowledge to carry this out function effectively.

11.2 It is not sufficient for training courses to have an additional multi-cultural option. Both initial and in-service training courses should be permeated in all their elements by a multicultural perspective, and members of ethnic minority communities should be invited to assist in this training.

11.3 On attracting more ethnic minority students, see paragraph 12.5 below).

APPENDIXTHE RACE RELATIONS ACT AND EDUCATION1. Discrimination

- S.17 & S.20 1.1 The Race Relations Act 1976 makes it unlawful to discriminate against a person, directly or indirectly, in the field of education.
- S.1(1)(a) 1.2 For direct discrimination, see page 3, paragraph 1.2 above.
- S.1(2) 1.3 Segregating a person from others on racial grounds constitutes less favourable treatment within the definition of direct discrimination.
- S.1(1)(b) 1.4 For indirect discrimination, see page 3 paragraph 1.4 above.
- S.2 1.5 Discrimination by victimisation is also unlawful under the Act. For example, a person is victimised if he or she is given less favourable treatment than others in the same circumstances because it is suspected or known that he or she has brought proceedings under the Act, or given evidence or information relating to such proceedings, or alleged that discrimination has occurred.

1.6 It is also unlawful to operate a practice which calls for the imposition of a condition or requirement which is or would be indirectly discriminatory if there were any occasion for applying it. For example, it would be unlawful to have a rule about uniform that was indirectly discriminatory even if there were not applicants from the racial group affected.

2. Racial Grounds

2.1 Racial grounds are the grounds of race, colour, nationality - including citizenship - or ethnic or national origins, and groups defined by reference to these grounds are referred to as racial groups. In *Mandla v Dowell Lee* (1983) the House of Lords gave a more precise definition of a racial group based on ethnic origins. They said that 'a long shared history' and 'a cultural tradition of its own' were 'essential' characteristics, but other characteristics were 'relevant' - 'a common geographical origin, or descent from a small number of common ancestors', 'a common language', 'a common literature', 'a common religion', and 'being a minority or being an oppressed or a dominant group within a larger community'. In that particular case it was decided that Sikhs were a racial group based on

ethnic origins, but the judgement has obvious implications for other groups such as Jews and gypsies.

3. Sections referring specifically to education

S.17

3.1 It is unlawful under Section 17 for an educational establishment to discriminate:

- in the terms on which it offers admission;
- in refusing to accept an application for admission;
- in the way it affords its pupils access to any benefits facilities or services;
- by refusing to afford them access to them benefits, facilities or services;
- by excluding them from the establishment or subjecting them to any other detriment.

S.17

3.2 The list below shows the body, for each type of educational establishment, which would be held responsible in law for any alleged act of discrimination:

ENGLAND AND WALES

Establishment	Responsible body
1. Educational establishment by a local education authority.	Local education authority or managers or governors, according to which of them

has the function
question-

- | | |
|---|----------------|
| 2. Independent school not being a special school. | Proprietor. |
| 3. Special school not maintained by a local education authority. | Proprietor. |
| 3a. Grant-maintained school | Governing body |
| 4. University | Governing body |
| 5. Establishment (not falling within paragraphs 1 to 4) providing full-time or part-time education, being an establishment designated under section 24(1) of the Sex Discrimination Act 1975 for the purpose of paragraph 5 of the corresponding table in section 22 of that Act. | Governing body |

SCOTLAND

- | | |
|---|---------------------|
| 6. Educational establishment managed by an education authority. | Education authority |
|---|---------------------|

- 7. Educational establishment in respect of which the managers are for the time being receiving grants under 1962c.47 75(c) or (d) of the Education (Scotland) Act 1962. Managers of the educational establishment.
- 8. University. Governing Body
- 9. Independent school. Proprietor.
- 10. Any other educational establishment (not falling within paragraphs 5, 7 and 9) providing full or part-time school education or further education. Managers of the educational establishment.

S.18 3.3 It is unlawful under Section 13 for an LEA to discriminate in carrying out any of its functions under the Education Acts 1944 to 1975 which are not set out in Section 17

S.19 3.4 LEAs have a general duty to provide all their services without discrimination, and this can be enforced by the Secretary of State for Education using his powers under Sections 68 and 99 of the Education Act 1944.

S.20 3.5 Under Section 20 it is unlawful to discrimination in the provision of goods, facilities or services, including facilities for education and the services of

any profession or trade, or of any local or o. . . public authority. This covers discrimination . . . already made unlawful under Section 17 and 18.

S.71 3.6 Under Section 71 it is the duty of every local authority to make appropriate arrangements with a view to securing that its various functions are carried out with due regard to the need -

- a) to eliminate unlawful racial discrimination; and
- b) to promote equality of opportunity, and good relations, between persons of different racial groups.

4. Employment

S.4 4.1 It is unlawful to discriminate in employment, and this covers recruitment, promotion, conditions of employment, dismissal, training, transfer, and access to any benefits, facilities or services provided by the employer. The Commission's Code of Practice in employment gives practical guidance on equal opportunity to employers, trade unions and employment agencies.

5. The Liability of Employers

S.32 5.1 An employer is liable for any discriminatory act done by an employee in the course of his or her employment even if the act was done without the employer's knowledge or consent, unless the employer took all reasonably practicable steps to prevent such discrimination.

S.12

6. Qualifying Bodies

6.1 It is unlawful for a body which confers a qualification for a particular profession or trade to discriminate in the terms on which it confers that qualification or by refusing to grant it or by withdrawing it.

6.2 This provision covers, among others, the Department of Education and Science (in conferring qualifications on teachers), the Royal Society of Arts (in conferring, for example, ESL qualifications) and the National Nursery Examination Board.

7. Vocational Training Bodies

S.13

7.1 It is unlawful for a vocational body to discriminate in the terms on which it admits persons to a training course, or by refusing to admit them or by terminating their training.

7.2 This provision covers industrial training boards, the Manpower Services Commission, employers' associations concerned with the training of employees, and any other person designated as a training body by the Secretary of State for Employment, such as persons running Youth Training Schemes.

9. Charities

8.1 With one exception charitable instruments are exempt from the 1976 Race Relations Act. The exception is that where a charitable instrument restricts benefits

S.34

to persons by reference to colour the instrument is to be read as though it does not contain such a restriction.

8.2 For example, if a school is established under a charitable instrument whereby education is to be provided to children of British nationality, this is not unlawful. But if a school is established under a charitable instrument whereby education is to be provided to white children, then the reference to 'white' must be disregarded and education must be provided simply to children.

9. Act done under statutory authority

9.1 Acts done under statutory authority are exempt from

S.41

the Act. So also is discrimination done under Ministerial authority on the basis of nationality or place of ordinary residence in the UK or part of the UK.

9.2 For example, specially authorised arrangements exist relating to grants and fees for overseas students in

higher education.

10. Advertisements

S.29

10.1 It is unlawful to publish or cause to be published an advertisement which indicates, or might reasonably be understood as indicating, an intention to do an act of discrimination. (There are certain exceptions to this: see paragraph 12 below.)

11. Instructions and Pressure to Discriminate

11. Instructions and Pressure to Discriminate

S.30 & S.31

11.1 It is unlawful to instruct or to put pressure on others to discriminate on racial grounds

12. Exceptions to the Act

12.1 Although they are not legally required, certain acts are allowed and do not constitute unlawful discrimination

S.5 S.5(2)(d)

12.2 Selection on racial grounds is allowed in certain jobs where being of a particular racial group is a genuine occupational qualification for that job. An example is where the holder of a particular job provides children of a racial group with personal services promoting their welfare and those services can most

effectively be provided by a person of that group.

S.35 12.3 Action can be taken to meet the special needs of persons of a particular racial group with regard to their education, training or welfare or any ancillary benefits.

S.36 12.4 Special education and training facilities may be provided for persons who are not ordinarily resident in Great Britain and who do not intend to remain.

S.37 & S.38

12.5 Designated training bodies and employers may encourage applications from persons of a particular racial group, or make training facilities available only to certain persons of a particular racial group, where it can be shown that members of that racial group are underrepresented in the work in question. This does not, however, allow discrimination in favour of persons of that group in making appointments. Further guidance on positive action in employment can be found in the Commission's paper, Equal Opportunity in Employment - Why Positive Action?

13. Incitement to Racial Hatred

Public Order

13.1 Part III of this Act establishes a number of offences all of which require the consent of the Attorney-General to institute proceedings. All of the offences are concerned with various forms of conduct

which is threatening, abusive or insulting and which is intended, or which is likely, having regard to all the circumstances, to stir up racial hatred. For example it is an offence to publish or distribute such materials.

Y SWYDDFA GYMREIG

GWYDYR HOUSE

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Oeddi wrth Ysgrifennydd Gwladol Cymru



WELSH OFFICE

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From The Secretary of State for Wales

CCB9

The Rt Hon Peter Walker MBE MP

2 March 1988

CP/3137/88

MSBm
PCCG
4/3

[Handwritten signature]

FILE WITH PG.

Thank you for copying to me your letter of 24 February to Douglas Hurd about Keith Hampson's proposed amendment to the Education Reform Bill for a statutory Code of Guidance on race relations matters.

I entirely agree that a statutory Code would not be appropriate for education matters and could give rise to difficulties in Wales as well as England. Therefore I support your proposal to resist.

/ Copies go to Douglas Hurd, Norman Fowler, Nicholas Ridley and Malcolm Rifkind.

[Large handwritten signature]

The Rt Hon Kenneth Baker MP
Secretary of State for Education and Science

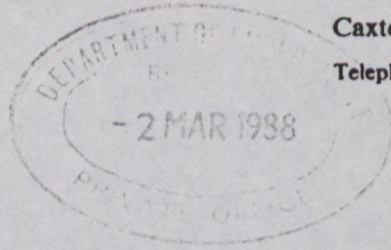
EDUCATION Policy Pt. 16.



JA/A/23



Minister of State



Department of Employment
Caxton House Tothill Street London SW1H 9NF
Telephone Direct Line 01-2735805.....
Switchboard 01-273 3000

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REC
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The Rt Hon Kenneth Baker MP
Secretary of State for Education and Science
Elizabeth House
York Road
London
SE1 7PH

2 March 1988

Dear Ken

File into Po

I have seen your letter of 24 February to Douglas Hurd on the tabled amendment to your Education Reform Bill which would give the Commission for Racial Equality the same code-making power in education as they already have in employment. I am replying as Norman Fowler is away in America.

First of all I think it would be right for me to confirm the success of the CRE's Code of Practice in employment which has been operative since 1984. It has proved to be a most useful document for employers, unions and others in helping to promote equality of opportunity and to eliminate racial discrimination in employment. We have given the Code a general welcome and commend it to employers through this Department's Race Relations Employment Advisory Service.

However, I recognise that different circumstances apply in education and these are well described in your letter. Consequently, the success of the Code in employment is not strictly relevant in the present situation and, given the different circumstances, it must be a matter for your judgement as to whether you continue to resist the amendment.

I am copying this reply to Douglas Hurd, Peter Walker, Nicholas Ridley and Malcolm Rifkind.

JOHN COPE

EDUCATION: General Policy Pt 17





QUEEN ANNE'S GATE LONDON SW1H 9AT

2 March 1988

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Dear Kenneth,

Hep

Thank you for your letter of 24 February about Keith Hampson's amendment to the Education Reform Bill.

I agree with you that this is not the moment to allow the Commission for Racial Equality to embark on a Code of Practice for education. Many of the issues raised by the question of how children should be educated in multiracial schools, or for life in a multiracial society, are highly charged and controversial at present. Your reactions - which I share - to some of the recommendations in the CRE's proposed handbook emphasise how far there is to go before a consensus develops about good practice.

I hope, however, that in resisting the amendment, you will not say anything which might cast doubt on our willingness, in other contexts, to make piecemeal improvements in race relations legislation when we are convinced that, on merits, there is a good case for doing so.

In arguing that the sensitivity of the issues at present - such as the controversy over 'antiracism' in Brent schools - suggests that they are best settled locally, it would be a pity to rule out the possibility that the time will come when there might be sufficient agreement about good practice for a Code of Practice on education to be feasible.

But for now I agree we must avoid the risk of damaging controversy over the terms of a new Code, and point to other encouraging developments which should help to eliminate discrimination and promote equal opportunities in different parts of the education system. If you mean to mention detailed points in the CRE's handbook like the reference to racial harassment, a strong condemnation of racial bullying and taunts in schools, because of their effect on victims' perceptions and performance, could perhaps form part of your response.

I am copying this letter to the recipients of yours.

Handwritten signature: [unclear]
Handwritten signature: [unclear]

The Rt Hon Kenneth Baker, MP



SCOTTISH OFFICE
WHITEHALL, LONDON SW1A 2AU

The Rt Hon Kenneth Baker MP
Secretary of State for Education
and Science
Elizabeth House
York Road
LONDON
SE1 7PH

8 March 1988

Dear Kenneth,

Thank you for letting me have a copy of your letter of 24 February to Douglas Hurd about the proposed amendment to the Education Reform Bill which would give the Commission for Racial Equality the same code-making power in education as they already have in employment.

I share your concern about the Commission's draft code/handbook, which could also give rise to difficulties in Scotland. Accordingly I support your proposal to oppose the amendment.

I am copying this letter to Peter Walker, Norman Fowler, Nicholas Ridley and Douglas Hurd.

MALCOLM RIFKIND



2 MARSHAM STREET
LONDON SW1P 3EB
01-212 3434

My ref: 12409
Your ref: 21649

The Rt Hon Kenneth Baker MP
Department of Education and Science
Elizabeth House
York Road.
LONDON
SW1

8 March 1988

NBPM

RRCo

n/3

Dear Kenneth

at top.

Thank you for copying to me your letter of 24 February to Douglas Hurd about Keith Hampson's proposed amendment to the Education Reform Bill for a statutory code of guidance on race relations matters. We have had a similar amendment put down to the Housing Bill by Robert Hughes and have also had a number of amendments put down on similar issues at earlier stages in the Bill.

There is no doubt that racial discrimination in housing matters does exist in both the public and private sectors, and whilst resisting these various amendments we have agreed to consider what can be done to help tackle this through a Government "race relations package" to be introduced at a later stage in the Bill's progress. We will be deploying these arguments in resisting the Hughes amendment when this is reached in Committee on Thursday.

I have now seen Douglas Hurd's letter to you endorsing your opposition to the Hampson amendment to your Bill. However, in view of what Douglas says in his second paragraph, I see no difficulty in going our separate ways on this issue and I therefore have no objection to the line you propose to take.

I am copying this to Douglas Hurd, Peter Walker, Norman Fowler, and Malcolm Rifkind.

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NICHOLAS RIDLEY



Education Policy.
Pr 17.