

## Time for positive action



Over four decades have passed since the first Race Relations Act came into operation, yet ethnic minority employment rates continue to be much lower than general employment rates and ethnic inequality continues to be part of Britain's social fabric. Against this background, the time is right to introduce a policy of contract compliance, according to the authors of a recent report for the Department of Work and Pensions. In this article, ahead of the Government's Discrimination Law Review Green Paper - expected in the spring - the authors, Ravinder Singh Dhama, Judith Squires and Tariq Modood, examine the experience of other countries and argue that we need to 'move up a gear' and be prepared to take new positive action measures such as contract compliance to improve the employment position of ethnic minorities.



The arrival of the new Commission for Equality and Human Rights (see Perspective, *IDS Diversity at Work* No.25) marks a public recognition that in order to make further progress on issues such as racial and religious equality, new approaches and new measures are needed. In particular, on some fronts where inequalities continue to persist inter-generationally, we need to move up a gear. As an aid to doing so, we should make an effort to learn from the experiences of other countries.

Getting certain ethnic minority groups better represented in professional and managerial jobs is a case in point. In a recent report\* carried out by the Centre for the Study of Ethnicity and Citizenship, University of Bristol on behalf of the Department for Work and Pensions, we reviewed the use of positive action policies in employment in a number of countries, including the United States, Canada, the Netherlands and Northern Ireland. Our conclusion was that there is a case for the introduction of contract compliance in the UK.



Contract compliance entails public authorities stipulating that a contractor who wants to obtain a government contract must meet specific anti-discrimination criteria. This represents a form of positive action permissible under the *Race Relations (Amendment) Act 2000*, which places public bodies under a statutory general duty to promote race equality.

Since the 1960s the US has operated a form of affirmative action in which contractors on federally funded projects are required to take action to ensure that applicants are employed, and employees are treated during their employment, without regard to their race, creed, colour, or national origin (*Executive Order 11246* (1965)). It applies to all contractors and subcontractors holding any federal or federally assisted contracts above a set annual minimum amount (currently \$50,000). The Office of Federal Contract Compliance Programs (OFCCP) is responsible for ensuring that employers doing business with the federal government comply with the laws and regulations requiring non-discrimination. These employers are required to report annually to the OFCCP on their employment of minority workers by major occupational group, and to compare these rates with the availability of such workers. They are also required to have an affirmative action programme, with numerical goals and timetables for meeting the target of employing these workers in accordance with their availability. The US experience suggests that contract compliance is the most effective instrument for promoting positive action in employment, and is particularly well suited to changing key employers' practices with minimum pain and resistance.

A second example of the effective use of positive action policies - and of contract compliance in particular - can be found in Canada, which is often perceived as a model of multiculturalism following the introduction of the *Multiculturalism Act* 1988. Here,

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the *Employment Equity Act* 1995, which covers both federal government departments and agencies and federally regulated private sector inter-provincial industrial sectors, requires efforts by employers in those sectors covered by the Act (communications, transportation and banking) to reduce disparities in employment and workforce representation of women, Aboriginal peoples, persons with disabilities, and members of visible minorities. In addition, the Federal Contractors Program requires contractors with a resident workforce in Canada of 100 or more employees and in receipt of federal contracts for goods and services of \$200,000 or more, to commit themselves to implementing employment equity as a condition of their contract. In doing so, organisations must develop positive policies and practices and, as required, provide accommodation and special measures for designated groups. As in the US, contractors who fail to meet their commitment may lose the right to receive further federal contracts for goods and services. Comparative evidence indicates that levels of ethnic and racial disadvantage are low in Canada, and studies exploring the employment participation of visible minorities there show that the representation gap has reduced considerably following the introduction of the *Employment Equity Act* - indeed, representation exceeds labour market availability for visible minorities in the banking sector.

Within Europe, developments in the Netherlands suggest that the small-scale direct approach adopted for the Covenants can be highly effective in addressing high levels of ethnic minority unemployment. A *Minorities Covenant*, introduced in 2000 to help unemployed migrants find employment in the small and medium-sized business sector, facilitates coordination between employers with vacancies and labour exchanges with access to ethnic minority job-seekers. This scheme has had a positive impact on ethnic minority employment rates.

A fourth example of the effective use of positive action policies in employment is to be found in Northern Ireland. The *Fair Employment (Northern Ireland) Act* (FEA) 1989 (now the *Fair Employment and Treatment (Northern Ireland) Order* 1998) made discrimination on the ground of perceived religious affiliation and/or political opinion unlawful in employment; the provision of goods, facilities and services; the sale or management of land or property; further and higher education; and partnerships and barristers. The legislation covers direct discrimination, indirect discrimination and victimisation and imposed specific new duties on employers with regard to registration with the Fair Employment Commission (now the Equality Commission for Northern Ireland), monitoring, periodic review of workforce composition and employment practices, and the undertaking of affirmative action.

Recent evaluations indicate that those organisations that had affirmative action agreements with the Commission were able to show demonstrable change during the decade and concluded that the agreements were an integral part of the processes that created change in the Northern Ireland labour market during the 1990s. The developments suggest that the introduction of proactive equality instruments accompanied by the political will to bring about social change can have an observable impact on employment equity.

These measures do sometimes meet with a backlash. This, though, is not necessarily because of disagreement with the goals, but because a strong enough public case is not made for them. We think it essential that there be a public presentation of the arguments and that the Government leads it. The economic rationale - the full utilisation of the country's talents and skills - is of course important, but we believe it vital that the rationale for the policies should appeal to an over-arching liberal democratic culture and respect for diversity, and should be able to win broad support among both the targeted groups and their co-citizens.

In addition to a coherent communications strategy, effective implementation will require the creation of an institution responsible for overseeing contract compliance programmes, with the power of robust enforcement mechanisms, including sanctions

(such as debarment), if employers fail to comply. Detailed statistical data will also need to be generated in order to pinpoint which groups require positive action, and to evaluate the impact of programmes that incorporate targets or timetables for such groups in quantitative terms. The creation of 'availability indices' is also recommended as an important mechanism for establishing who is qualified and potentially available for work. This will enable employers to compare the actual distribution of minorities with the distribution in the availability pool, and to introduce affirmative action plans where actual employment rates are lower than the availability.

Moreover, given the nature of discrimination and disadvantage in Britain today, positive action programmes should consider both religious and ethnic minority equality measures. The case of Northern Ireland, with its positive action on religious equality in employment, is particularly pertinent for Britain at a time when many Muslims, Sikhs and others complain of religious discrimination; when the most disadvantaged groups in the labour market are Muslims; and when discussion about Muslims and integration is dominating the agendas of the Commission for Racial Equality and others.

Of course, contract compliance alone will not be sufficient to address the problems of ethnic minority or religious discrimination in employment. The education and job-skills levels of ethnic and religious minorities also need to be addressed. But we argue that there can be clear benefits from a programme of positive action. Existing policy approaches have been limited in redressing persisting ethnic penalties. In our view, a government committed to eradicating social exclusion can legitimately and confidently engage with an advanced programme of positive action, which includes contract compliance. The implementation of such a policy would send the right signal both to the intended beneficiaries and to those organisations and individuals that continue to deny ethnic groups and visible minorities their full part in the economic and social life of the country. As it is over four decades since the first Race Relations Act, and given that ethnic inequality continues to be a part of the social fabric of our country, the time is now right for such steps.

\* Developing Positive Action Policies: Learning from the Experiences of Europe and North America', Department for Work and Pensions, Research Report no. 406, 2006. Available at: [www.bris.ac.uk/sociology/ethnicitycitizenship/employment.pdf](http://www.bris.ac.uk/sociology/ethnicitycitizenship/employment.pdf)