Consultation response October 2009



Trade Union Congress proposal for an amendment in support of Union Equality Representatives

Introduction

The TUC is proposing an amendment to give union equality representatives in Great Britain the same rights to paid time off for training and to carry out their duties as those enjoyed by shop stewards and other union representatives. This would only be for workplaces where a union is recognised for collective bargaining purposes¹.

Equality representatives are trained trade union members to advise staff about equality issues. They have no role in collective bargaining although individual members may carry the distinct roles of shop steward and equality representative. As such the proposal would not extend the frameworks of collective bargaining.

Government is pursuing research into the benefits of equality representatives for promoting diversity and tackling inequality through Nottingham Business School that will report by the end of the year. The TUC and the Government Equalities Office are collecting evidence from interested parties on the proposals.

At ROTA we have considered the proposals and have outlined the key issues that we consider to be relevant. More specifically while being generally supportive of the proposal we do have certain concerns over the implications of these proposals outlined below. This being the case, union-employer relations is not ROTA's area of expertise and so we have gathered evidence on this specific issue through the course of our ongoing work with the Winning the Race Coalition.

About ROTA

Race on the Agenda (ROTA) is one of Britain's leading social policy think-tanks focusing on issues that affect Black, Asian and minority ethnic (BAME) communities. Originally set up in 1984, ROTA aims to increase the capacity of BAME organisations and strengthen the voice of BAME communities through increased civic engagement and participation in society.

¹ Sections 168 and 168A of the Trade Union and Labour Relations (Consolidation) Act 1992 provide rights for union officials and union learning representatives, respectively, to paid time off for undergoing training and performing their functions, and regulation 4 of the Safety Representatives and Safety Committees Regulations 1977 gives union safety representatives similar rights. These rights are conferred only on officials or members of an independent trade union which is recognised by the employer.

ROTA's Articles of Association state that the charity is set up "to work towards the elimination of racial discrimination and to promote equality of opportunity, human rights and good relations between persons of different groups".

For historical and demographic reasons, our work prioritises London, but our activities and a number of our projects have national and international significance. To this end we work in close partnership with our membership and others interested in race equality, human rights and the promotion of good relations.

Our presence in London is enhanced by the regional network, MiNet. **MiNet** is the London focused BAME network of networks, which joined ROTA in 2002 to strengthen the voice for London's BAME third sector in the development of regional policy.

ROTA definition of BAME and approach to race equality

ROTA works on social policy issues that have an impact on race equality and BAME communities. We use the term BAME to refer to all groups who are discriminated against on the grounds of their race, culture, nationality or religion which includes but is not exclusive to people of African, Asian, Caribbean, East European, Irish, Jewish, Roma and South East Asian decent. ROTA adopts a holistic approach to race equality and works in partnership with other Third Sector organisations that complement its expertise and have a similar vision.

About the Winning the Race Coalition

Race on the Agenda (ROTA) formed a national coalition of third sector bodies to highlight some areas of concern in relation to the Single Equality Bill and to develop a unified and stronger voice to our concerns. Our focus is primarily on race equality and the discrimination faced by Black, Asian and minority ethnic (BAME) groups. However, the coalition's creation aims to make the argument for cross-equality and human rights issues where appropriate.

ROTA and the coalition members have been working and will continue to work over the duration of all the stages of the Bill and its roll out to engage with key stakeholders involved in ensuring that the needs of BAME communities and the BAME third sector are met. ROTA has been representing the Winning the Race Coalition at meetings with Government Equalities Office Ministers, the EHRC, and has given evidence to the House of Commons Committee scrutinising the Bill. ROTA keeps coalition members updated with all developments. The Winning the Race Coalition is working to ensure that effective civic participation is achieved in all processes of engagement with those who will be affected by the legislation. For a list of Coalition members and full details of the activities of the coalition visit https://www.rota.org.uk/pages/WTRC.aspx

Key issues for ROTA

1. It puts equality in practice on the same standard of importance to a workforce as health and safety. This is positive, proactive, and mainstreaming for equality.

This proposal would essentially be a permissive amendment to support the development of equality advice through trade union frameworks.

ROTA generally considers this to be a good amendment in that it embeds the importance of equality issues parallel to that of health and safety within the regulations for trade unions. This is a good principle for evidencing the importance of equality and puts it on a par with health and safety regulations as outlined in the footnote (1).

There is the suggested potential to extend the protection from dismissal for equality representatives when asserting their rights, equivalent with other union members. Again this is good for the place of equality within the philosophy of workforce rights. We would welcome a development like this but recognise that this is not within the scope of this proposal as of yet.

2. It would give the opportunity to establish equality provision to the same standard in large private sector workforces, although public sector provision would generally be covered by the public sector duty and secondary legislation

ROTA is concerned that the proposals would not significantly increase the coverage of equality advice in the private sector workplace. This is because it relies on recognition by the employer of the union, and those employers recognise the business case for supporting dialogue with union representatives to meet equality obligations. Information from the labour market survey indicates that 82% of equality representatives in Wales are in the public sector². Public sector protections in the equality bill make it only of real added value in the private and third sectors. In the public sector the provision of paid time off to develop capacity of equality representatives would be covered by the public sector equality duty by ensuring training and representation among staff, although for staff rather than union roles. Therefore the benefits of this amendment would be in the opportunity it gives for growth of good equality based advice in private sector work forces

This proposal would only apply where trade unions are recognised by employers. Large private sector organisations are where unions are recognised most in the private sector. It would therefore give the opportunity for upskilling workforces to a similar standard in equality in large private sector organisations.

3. It could undermine the place of BAME staff representation organisations, like the BPA, if non-union affiliated. ROTA would like the amendment to

² Labour Market Information for Trade Union Professionals and Representatives Part 1 by ENTO June 2009.

be extended to include those non-union equality representatives from recognised staff bodies.

The amendment would place the right of unions to represent on equality issues in the primary legislation. For representation other than individuals going to tribunal, judicial review, or the EHRC starting compliance actions, this would only be contained in guidance from the EHRC or through agreement with individual private companies or public bodies.

It is right and proper to recognise the particular role of unions within workforce negotiation and representation. ROTA is concerned in how this will improve equality representation and whether this conflates issues for BAME individuals within traditional workforce representation. For example this amendment would not apply to non-union related representative bodies. Examples of these would be the Black Police Association, or Respect the BAME probation officers organisation. Considering that these groups developed out of the failures in representation of unions, such as the Police Federation, giving those unions' equality representatives rights that are not extended to BME representative bodies would be tantamount to bypassing these organisations.

Therefore ROTA believes that there should be some extension of the amendment to those representative organisations that are democratically constituted and **voluntarily recognised** by a private or public body as a representative staff organisation. This relies on recognition being mutually agreed by employer and union or staff network/ body and therefore given the same rights to paid time off for training. This would also capacity build those organisations with experience and skills in anti-discrimination activities to ensure equality throughout the private and public sector, as well as links with promoting links with unions.

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targeting social policy

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