

# What is Positive Action?

(as defined under the Race Relations Act 1976)<sup>1</sup>

## 1. INTRODUCTION

All public authorities have a duty to promote race equality under the Race Relations (Amendment) Act 2000. This could include taking **positive action**.

The Race Relations Act **does not** allow positive discrimination or affirmative action – in other words, an employer cannot try to change the balance of the workforce by selecting someone for a job mainly because they are from a particular racial group. This would be discrimination on racial grounds, and unlawful.

**Selection must be based on merit. All applicants should be treated equally.**

However, employers can take positive action. The aim of positive action is to ensure that people from previously under-represented groups can compete on equal terms with other applicants. It is intended to make up for the effects of past discrimination.

The law does not compel employers to take positive action, but it allows them to do so. Section 37 (1) is the section relevant to running positive action training initiatives. It states:

*37(ii) [when] “the proportion of persons of that group among those doing that work in Great Britain was small in comparison with the proportion of persons of that group among the population...” and*

*(2a) “...affording persons who are of the racial group in question, and who appear likely to take up that work in that area, access to facilities for training which would help to fit them for that work...”*

## 2. WHAT IS POSITIVE ACTION?

Positive action is a set of measures that aim to prevent discrimination, or to overcome past discrimination. A lack of applications from a certain selection of the community may not be due to unfair recruitment and selection processes operated by the organisation.

However, in order to achieve the objective of widening diversity, positive action may be required to encourage applications from specific groups and equip individuals with the skills they need to compete equally with others.

It is recognised that positive action training initiatives are likely to have a better chance of making a difference if there are already workplace practices and policies that work to eliminate unlawful discrimination and to promote equality of opportunity.

## 3. HOW DOES IT WORK?

The Race Relations Act recognises that because of past discrimination or disadvantage, people from particular racial group may not have fully recognised their potential and may not have the qualifications or experience to make them eligible for particular work.

Positive action under section 37 (1) of the Race Relations Act 1976 **allows for targeted training programmes or encouragement** if it can be demonstrated that at any time in the previous 12 months there were no persons of a racial group doing particular work, or that the proportion of people from that racial group was small in comparison to the proportion of that racial group in the population as a whole.

<sup>1</sup> This information has been taken from the Museum Association's 'Diversify Toolkit'. For further guidance, please go to: <http://www.museumsassociation.org/>

#### 4. WHAT DOES 'ENCOURAGEMENT' AND 'TRAINING' MEAN?

**Encouragement** means making it easier for people from a racial group, under represented in particular work, to take advantage of job opportunities.

Examples could be explicit encouragement in recruitment adverts, mentoring, support networks, open days, career fairs and in information that is given to schools or colleges with large BME populations.

Encouragement does **not** include actually providing the opportunity to do the work.

It also does **not** include a decision to recruit a person because they come from an under-represented group. There must still be equality of opportunity at the point of recruitment.

**Training** means training to fit a person for the particular work. It could include trainee posts and outreach training, or classes in preparing CVs, interview and assessment skills.

Trainees **cannot** be paid a salary but they can be offered training allowances.

#### 5. JUSTIFYING POSITIVE ACTION

Before positive action is undertaken, the organisation needs to collect evidence that demonstrates the need for action. Workforce data could, for example, be based on personnel records for the previous 12 months showing the lack of applications from the specific group targeted.

It is crucial that an organisation, when undertaking positive action, makes it clear to all parties involved - including existing staff - that any positions that come under positive action training schemes are traineeships or placements, and not employment.

Gaining employment can only be achieved by trainees applying and going through a competitive selection process.

#### 6. EXAMPLES OF POSITIVE ACTION

- Job advertisements designed to reach members of under-represented groups and to encourage their applications – e.g. the use of minority ethnic media;
- Use of employment agencies, community organisations and careers offices in areas where these groups are concentrated;
- Recruitment and training schemes for school / college leavers designed to reach members of these groups;
- Encouragement to employees from these groups to apply for promotion opportunities (although it must be shown that the proportion of employees doing that particular type of work is small compared to either its proportion in the workforce or in the population of the area from which the employer recruits for that particular type of work);
- Training for promotion or skills training for employees of these groups who lack particular expertise but show potential (although again it must be shown that the proportion of employees doing that particular type of work is small compared to either its proportion in the workforce or in the population of the area from which the employer recruits for that particular type of work);
- Outreach events, working with community organisations; and
- Positive action statements of encouragement in job advertisements encouraging applications from women / men and BME people in areas where traditionally they have been under represented.

**Positive action is not about giving more favourable treatment to particular groups in the recruitment process. Selection or promotion for employment must be based solely on merit.**