Maurice Smith Review

A review of the measures to prevent the promotion of racism by teachers and the wider workforce in schools

January 2010

COMMENTARY

1. At the end of September 2009, the Secretary of State for Children Schools and Families invited me to review the existing measures in place in maintained schools in England to prevent the promotion of racism and intolerance. I have reviewed those measures and their effectiveness.

2. He asked me if there was a case for further measures. I have considered this carefully, in particular, whether there is a case for barring members of the teaching workforce from joining organisations or political parties that promote racism. There is no consensus here.

3. He also asked me whether these measures should be extended more widely across the school workforce.

4. I have come to the view that the existing ten measures in place are well-grounded and comprehensive enough to mitigate the risk. Like all measures some of the newer measures will need time to bed-in and can be improved upon. Specifically, it would help if the gap between policy on the shelf and practice in the classroom could be closed in some schools, and it would help if all government agencies were consistent in the standards they set.

5. I do not believe that barring teachers, or other members of the wider school workforce, from membership of legitimate organisations which may promote racism is necessary at present, although it should be kept under active review. To bar teachers or other members of the school workforce from joining non-proscribed organisations would be a profound political act. In my analysis, it would be a disproportionate response, taking a very large sledgehammer to crack a minuscule nut. Over the last seven years, only four members of the teaching profession, and two governors have been publicly identified as being members of racist organisations and only nine incidents of teachers making racist remarks or holding racist materials have been subject to disciplinary sanction by the General Teaching Council for England.

6. In addition to the argument that a ban would be disproportionate, there are other difficulties. Although police and prison officers are banned, to ban more than half a million teachers from joining a legitimate organisation would take this to a different scale of magnitude. The Secretary of State has the necessary powers, should he choose to use them, to consider imposing a ban of this nature. However, currently there is insufficient evidence of risk to justify such a profound step, and furthermore there is no clear consensus on where 'to draw the line' beyond that, in terms of the wider school workforce or the public sector as a whole. If as a result of the recommended ongoing scrutiny and monitoring, the prevalence, and thus the risk, were to increase substantially, the Secretary of State could reconsider his position.

7. During the Review, the Secretary of State asked me if I would look more widely at the independent sector. Here, the measures listed below largely do not apply. The Secretary of State, whilst keeping his watching brief, may wish to look at this in more depth.

8. Teachers and their colleagues set out to improve society with a national curriculum at their disposal that explicitly promotes equal opportunities and race equality. There are many examples of how they do this well. In this respect, trust in our teachers and other workers in our schools remains high, and rightly so. That trust should be shared by politicians of all political persuasions; at present, a ban is neither necessary nor proportionate.

MAIN FINDINGS

- All agree that behaviour that promotes racism is incompatible with membership of the teaching profession.
- The evidence presented to this Review does not support the profound measure of barring members of the teaching profession, or the wider school workforce, from membership of organisations that promote racism and intolerance because:
    1. It would be disproportionate to the level of risk/prevalence.
    2. The relationship between racist behaviour and membership is not necessarily causal.
    3. There is no consensus about where to 'draw the line' if a ban were considered.
- There are ten measures in place to protect children and young people from discrimination or political indoctrination; they are:
    1. The requirement for schools to have equal opportunities policies.
    2. The duty to promote race equality.
    3. The requirement to report racist incidents.
    4. The duty to forbid the promotion of partisan political views in the teaching of any subject in a school.
    5. The duty to promote community cohesion.
    6. The registration powers of the GTC(E).
    7. The disciplinary powers of the GTC(E)
    8. The professional standards for teachers.
    9. The National Standards for Headteachers.
    10. The inspection of schools' duties to promote equal opportunities and community cohesion.
- Some of these duties and powers have been revised or implemented recently; they need time to bed in and, as with all duties and powers, they can be improved in their implementation.
- Overall, these measures are sufficiently well-grounded and comprehensive to meet the risk.
- Few of these measures apply to schools in the independent sector.
- The National Curriculum is a force for good in promoting race equality.
- The Secretary of State should keep an active 'watching brief' on these issues.

RECOMMENDATIONS

1. The Office for Standards in Education, Children's Services and Skills (Ofsted) should consistently include a specific reference in the content of the school inspection report if a school is judged inadequate in promoting equal opportunities or community cohesion.

2. The impact of the duties to promote equal opportunities and community cohesion should be evaluated by external scrutiny; Ofsted sample surveys are an ideal mechanism for this purpose, highlighting outstanding and inadequate practice. The Department for Children Schools and Families (DCSF) annually commissions part of Ofsted's sample survey work. This will enable the Secretary of State to keep this issue under active review.

3. An independent evaluation of the journey from an 'inadequate' Ofsted judgement, in relation to promotion of equal opportunities and racial equality, to 'good' performance in these areas should be conducted. This could occur at the end of this inspection programme when sufficient evidence is available to enable lessons to be learned for the future.

4. The reporting of racist incidents should be monitored for compliance by local authorities. This should be subject to specific inspection and evaluation by Ofsted.

5. The Training and Development Agency for Schools (TDA), the General Teaching Council for England (GTC(E)) and the National College for Leadership of Schools and Children's Services (the National College) should share their expertise in establishing and articulating consistent standards and conduct for teachers and school leaders that explicitly promote equality and diversity. This work should be done immediately and implemented during the academic year 2010/11. Those standards should be shared with the Children's Workforce Development Council (CWDC) which should consider how they may be adopted across the wider children and young people's workforce.

6. The Secretary of State should keep these matters under active review, and liaise closely with other Government departments, particularly those with policy responsibilities affecting children. He should use his existing non-Departmental public bodies, councils, departments and advisory bodies to report to him regularly, and comprehensively, on matters of concern and he should use his own Department to draw together the outcomes of the implementation of these recommendations and report to him within a year and annually thereafter.

PART 1

SAFEGUARDS ALREADY IN PLACE

Introduction

1.1 In the remit letter for this Review, the Secretary of State listed a number of measures already in place to prevent the promotion of racism in schools. Below, more detail of each measure is given. In addition, I have listed some additional measures that exist in DCSF sponsored bodies and organisations which also have the potential to prevent the promotion of racism in schools.

The requirement for schools to have equal opportunities policies

1.2 Schools must comply with equalities legislation, both as employers and as education providers. In the context of this Review, the law prohibits discrimination based on race. There is a general prohibition that a governing body of a school must not discriminate against: job applicants; existing members of staff; a child seeking admission to school; and, existing pupils; either directly or indirectly, on the grounds of race. Because of his/her race, a person cannot be treated less favourably than others in comparable circumstances; a person cannot be placed at a disadvantage; and, a person cannot be victimised or harassed.

1.3 Although there is no statutory duty for schools to have an equal opportunities policy, Ofsted will evaluate the impact of equal opportunities practice within schools, including independent schools, and most commonly this is articulated in a written policy.

The duty to promote race equality

1.4 Under the Race Relations Act 1976, the governing body of a school must not discriminate against a child on grounds of race in:

- admission to school;
- providing teaching or allocating him or her to particular types of classes;
- applying standards of behaviour, dress and appearance;
- giving careers guidance and work experience;
- conferring access to other benefits, facilities or services.

1.5 The Race Relations (Amendment) Act 2000 requires maintained schools and local authorities to have due regard to the need to:

- eliminate unlawful racial discrimination;
- promote equality of opportunity;
- promote good relations between persons of different racial groups.

1.6 The specific duties that all local authorities and maintained educational establishments will be expected to comply with are:

- to have a written policy on race equality;
- to assess and monitor the impact of their policies on different racial groups of pupils, staff and parents, with the emphasis on the attainment of different racial groups of pupils;
- to make information available about their policies to promote race equality;
- to take steps to publish annually the results of monitoring.

1.7 A school's race equality policy can be combined with another policy, such as its equal opportunities policy, but the race equality policy should be clearly identifiable and easily available. This requirement does not apply to independent schools.

1.8 Evidence suggests that all maintained schools have policies to promote equal opportunities and racial equality. Less common is any collective evaluation of the impact of these policies – do they make a difference to behaviour across the country? All schools are encouraged to self-evaluate the impact of their policies on promoting equal opportunities and race equality and, most recently, community cohesion. Evidence from Ofsted reports, and contributions from teacher unions, highlighted the potential gap between having a policy on the shelf and implementing it in practice.

Reporting of racist incidents

1.9 In response to recommendation 15 of the Macpherson Report of the Stephen Lawrence Inquiry, the Racist Incidents Standing Committee published a Code of Practice which expects schools to record all racist incidents that take place in the school and report them to their parents and local authority annually. In their evidence, local authorities reported high levels of compliance with this recommendation, some collecting the data annually, others termly, although there is no external verification of this. The DCSF is currently consulting on draft regulations which would convert the current 'expectation' to record and report incidents of racism into a legal requirement on maintained schools; this would not extend to independent schools.

The duty on governing bodies, headteachers and local authorities to forbid the teaching of partisan political activities

1.10 The Education Act 1996 (s406) places a duty on governing bodies, headteachers and local authorities to forbid the promotion of partisan political views in teaching and the pursuit by pupils of partisan political activities. Section 407 of that Act requires them to take reasonable steps to ensure pupils have a balanced presentation of opposing views where political issues are brought to their attention. This will apply to any political issues brought to pupils' attention in school, including the distribution of political material. The Secretary of State has never been called upon to use his powers of intervention.

The duty to promote community cohesion

1.11 The Education Act 2002 (s21), as amended by the Education and Inspections Act 2006, also places a duty on governing bodies of maintained schools to promote community cohesion in the way they run the school.

1.12 The DCSF guidance to schools explains that the term "community" has a number of dimensions; it covers the school community, the community within which the school is located, the UK community and the global community. It explains that cohesion is about how to avoid the corrosive effects of intolerance and harassment, how to build a mutual civility among different groups, and how to ensure respect for diversity alongside a commitment to common and shared bonds.

The registration and disciplinary powers of the General Teaching Council for England (GTC(E))

1.13 The GTC(E)'s aims and functions are set out in the Teaching and Higher Education Act 1998, as amended by the Education Act 2002 (s148 and Schedule 12). The essential duties of the GTC(E)are to provide advice to the Secretary of State and others on: standards of teaching; standards of conduct for teachers; the role of the teaching profession; the training, career development and performance management of teachers; recruitment to the teaching profession; the standing of the teaching profession; medical fitness to teach; and to provide an annual report to the Secretary of State. The GTC(E) has also reported on good practice in schools and supported schools in meeting their statutory remit in the area of promoting race equality. One of the most significant powers of the GTC(E) is to produce and enforce the Code of Conduct and Practice and to promote the standing of the teaching profession.

1.14 The GTC(E) has the potential to intervene at two points: at registration; or after a referral from the employer or an allegation from a member of the public. At registration, it has to determine the 'suitability' of a person to register as a teacher, and, at the point of referral, whether a teacher has engaged in unacceptable professional conduct. If unacceptable professional conduct is found, the GTC(E) has four punishments at its disposal: to reprimand; to make registration conditional; to suspend registration; and to prohibit registration.

1.15 The revised GTC(E)'s 'Code of Conduct and Practice for Registered Teachers' sets out expected standards of conduct and norms of practice for 540,000 registered school teachers in England. Its expectations for standards of conduct also apply to trainee teachers who are provisionally registered with the GTC(E). It was approved by GTC(E) Council in July 2009 and came into effect on 1 October 2009, replacing the previous Code.

1.16 Principle 4 of the revised Code sets out that registered teachers should demonstrate respect for diversity and promote equality by:

- acting appropriately towards all children and young people, parents, carers and colleagues, whatever their socio-economic background, age, gender, sexual orientation, disability, race, religion or belief;
- taking responsibility for understanding and complying with school policies relating to

equality of opportunity, inclusion, access and bullying;

- addressing unlawful discrimination, bullying, and stereotyping no matter who is the victim or the perpetrator;
- helping create a fair and inclusive school environment by taking steps to improve the wellbeing, development and progress of those with special needs, or whose circumstances place them a risk of exclusion or under-achievement;
- helping children and young people to understand different views, perspectives, and experiences and develop positive relationships both within school and in the local community.

1.17 This Review has identified three additional measures at the disposal of Government agencies and departments which have the potential to prevent the promotion of racism in schools. These measures are the responsibility of three separate public bodies: the Training and Development Agency for Schools (TDA); the National College for Leadership of Schools and Children's Services (the National College); and the Office for Standards in Education, Children's Services and Skills (Ofsted).

Professional Standards for Teachers (TDA)

1.18 The TDA has constructed, since 2007, a framework of professional standards for teachers which sets out what teachers must know, understand and be able to do at each career stage. This includes a formal assessment against the criteria at the points of: awarding qualified teacher status (QTS); the end of the statutory induction period when teachers need to have demonstrated competence with the core standards; being placed on the upper pay scale; being identified as excellent teachers; and being identified as advanced skills teachers. At each stage the standards set out the expectations of teachers' professional attributes, professional knowledge and understanding, and professional skills.

1.19 Teachers cannot be awarded QTS and cannot gain full registration with the GTC(E) unless they are assessed as having met the professional standards. Similarly, they cannot progress in their career unless they can demonstrate, through the process of annual performance review, that they continue to meet the standards, or meet the higher standards for career progression. The core standards underpin all subsequent advanced standards.

1.20 Under the heading of 'professional attributes', core standards 1 and 2 state the following –

All teachers should:

1. Have high expectations of children and young people including a commitment to ensuring that they can achieve their full educational potential and to establishing fair, respectful, trusting, supportive and constructive relationships with them.

2. Hold positive values and attitudes and adopt high standards of behaviour in their professional role.

1.21 Under the heading of 'Professional knowledge and understanding – Achievement and diversity'', core standards 18 and 19 state the following –

All teachers should:

> 18. Understand how children and young people develop and how the progress, rate of development and well-being of learners are affected by a range of developmental, social, religious, ethnic, cultural and linguistic difficulties.
>
> 19. Know how to make effective personalised provision for those they teach, including those for whom English is an additional language....and how to take practical account of diversity and promote equality and inclusion in their teaching.

1.22 Teachers have to demonstrate, and show evidence that they meet, these standards at the end of their induction period and on each occasion when they wish to formally progress in their careers. These standards are used to inform teachers' annual performance management discussions.

1.23 Ofsted inspects against the Secretary of State's requirements for initial teacher training and all providers of initial teacher training, mainly universities, assess trainees against all standards. In this context, Ofsted makes a judgement about promoting equality and diversity – it is: "to what extent does the provision promote equality of opportunity, value diversity and eliminate harassment and unlawful discrimination?" In 2008/9, no providers were judged inadequate in this category, and 90% were outstanding or good.

National Leadership Standards and National Standards for Headteachers (National College)

1.24 In order to achieve promotion to the role of headteacher, the National College, working with the DCSF and other stakeholders in 2004, established National Standards for Headteachers; teachers cannot become headteachers without meeting these National Standards and gaining the National Professional Qualification for Headship (NPQH). The Standards include one of Strengthening Community; the first two actions named under this standard are to:

- build a school culture and curriculum which takes account of the richness and diversity of the school's communities; and
- create and promote positive strategies for challenging racial and other prejudice and dealing with racial harassment.

1.25 The National College is in the process of developing National Standards lower down the leadership chain.

Inspection of schools' duty to promote community cohesion (Ofsted)

1.26 Schools' duty to promote community cohesion became part of the Ofsted inspection framework in September 2008; there is strong evidence that criteria, defined in Ofsted's inspection framework, receive additional and prioritised attention in schools.

1.27 Ofsted judges the effectiveness with which schools promote community cohesion and publicly shares the criteria under which these judgements are made. Inspectors evaluate the extent to which a school understands its communities - local, national and global - and the extent to which it takes a set of actions which have a positive impact.

1.28 Evidence to date only covers one year's worth of inspections, about one-third of schools. In 2008/9, 7,065 maintained schools were inspected, around a third of all maintained schools nationally. Of these, 42 schools were judged inadequate in failing to promote equal opportunities and community cohesion (a further 42 were judged inadequate in promoting equal opportunities alone). Most schools judged inadequate for equal opportunities and community cohesion were also judged inadequate for overall effectiveness. This is just over 1% of schools inspected in that year. There is no particular pattern to those schools judged inadequate in this regard except a slight prevalence bias towards secondary schools.

1.29 Occasionally, inspection reports lacked any specificity when reaching inadequate judgements regarding the duties to promote equal opportunities and/or community cohesion making it difficult for the report's audience to understand the specific weaknesses.

1.30 If a school is judged 'inadequate' overall, this prompts a set of additional responses from Ofsted itself, in terms of regular monitoring visits and/or inspections, until the school in no longer inadequate. Such a judgement may also prompt additional support from the local authority school improvement partner (SIP) and other improvement agencies. There is no evidence yet, specific to the promotion of equal opportunities and racial equality, which provides an audit trail of the journey from 'inadequate' inspection judgement to 'good performance' in implementing these policies.

Summary of the measures already in place

1.31 In addition to the measures that the Secretary of State sets out in his remit letter to this Review, there are a number of additional measures that have been identified during the review; most of these have been revised or implemented recently. They include: the revised GTC(E)'s Code of Conduct and Practice for Registered Teachers; the TDA's Professional Standards for Teachers; the National College's National Standards for Headteachers; schools' duty to promote community cohesion; and Ofsted's inspection of that duty.

1.32 This completes a suite of ten statutory or regulatory measures designed to establish trust in the teaching profession and to protect children and young people from discrimination, political indoctrination or racism from their teachers.

1.33 In the maintained sector, each school has an equal opportunities policy and each school has a duty to promote race equality and community cohesion; employers and governors are bound by these duties. Schools are expected to record and report racist incidents to parents, governors and local authorities, and partisan political teaching is unlawful. Ofsted inspects the impact of all these duties regularly and more recently, the school's responsibility to promote community cohesion. These matters are taken so seriously that Ofsted, in 2009, introduced into its new framework the concept of a 'limiting judgement', that is, if a school is judged 'inadequate' in promoting equal

opportunities, its overall effectiveness is also likely to be judged inadequate, and so it proved to be in all cases in 2008/9.

1.34 The training of teachers to reach 41 professional standards and signing up to the Code of Conduct when registering with the GTC(E) are additional safeguards recently introduced or revised. Teachers, themselves, must continuously meet requirements to take account of the diversity of educational needs of pupils in their classrooms, and, if they develop their careers to senior posts and headship, to translate that awareness into the communities they serve.

1.35 Some of these measures have only been implemented recently and outcomes are not immediate. For example, duties in relation to: meeting the new requirements of the GTC(E) Code of Conduct and Practice; meeting professional standards for teachers and headship; and, promoting community cohesion. It will take time to embed them. Of course, all measures can be improved, and some concerns exist about 'gaps in the system'. In general terms, those gaps are between policy and practice, and between negative Ofsted judgements and improvement.

1.36 Overall, though, the suite of ten measures which contributes towards the protection of pupils from racist behaviour by teachers, and secures the continuing trust in the professionalism of teachers in maintained schools, is well-grounded and comprehensive.

1.37 My recommendations for improvement lead from the evidence-based findings of this Review.

1. Ofsted should consistently include a specific reference in the content of the school inspection report if a school is judged inadequate in promoting equal opportunities or community cohesion.

2. The impact of the duties to promote equal opportunities and community cohesion should be evaluated by external scrutiny; Ofsted sample surveys are an ideal mechanism for this purpose, highlighting outstanding and inadequate practice. The DCSF annually commissions part of Ofsted's sample survey work. This will enable the Secretary of State to keep this issue under active review.

3. An independent evaluation of the journey from an 'inadequate' Ofsted judgement, in relation to promotion of equal opportunities and racial equality, to 'good' performance in these areas, should be conducted. This could occur at the end of this inspection programme when sufficient evidence is available to enable lessons to be learned for the future.

4. The reporting of racist incidents should be monitored for compliance in local authorities which should be subject to specific inspection and evaluation by Ofsted.

5. The Training and Development Agency for Schools (TDA), the General Teaching Council for England (GTC(E)) and the National College for Leadership of Schools and Children's Services (the National College) should share their expertise in establishing and articulating consistent standards and conduct for teachers and school leaders that explicitly promote equality and diversity. This work should be done immediately and implemented during the academic year 2010/11. Those standards should be shared with the Children's Workforce Development Council (CWDC) which should consider how they may be adopted across the wider children and young people's workforce.

PART 2

ARE THE CURRENT SAFEGUARDS SUFFICIENT AND DRAWN IN THE RIGHT PLACE?

- **TO MAINTAIN TRUST IN THE PROFESSION**
- **TO PROTECT CHILDREN AND YOUNG PEOPLE**

IS THERE A CASE FOR MAKING AFFILIATION TO AN ORGANISATION THAT PROMOTES RACISM AND INTOLERANCE GROUNDS FOR BARRING FROM THE PROFESSION?

Proportionality and prevalence

Question: Are the current safeguards sufficient and proportionate to the prevalence of the 'problem' of teacher-to-pupil racism in schools?

2.1 The evidence for the prevalence of teacher-to-pupil racism in schools can be drawn from two sources. First, the number and nature of reported 'incidents' and, second, the findings from recent research.

Evidence from the number of reported 'incidents'

2.2 The sources of reported incidents are threefold: the DCSF; the employers (ie local authorities); and the GTC(E) – some of which may overlap.

2.3 The DCSF reports six known incidents of British National Party (BNP) membership coming to the Department's attention over the last six years. Two concerned governors; one, who was a parent governor, was selected as a BNP candidate for European elections in 2004, while a teacher in an identical position did not have his contract renewed following suspension. In 2006, a teacher at a Pupil Referral Unit was identified as a BNP candidate (unsuccessful) in a local government election, but no further action was taken. The other two cases of membership of organisations that could be considered racist (both relating to the BNP) involve two brothers in schools in the North East of England, one of whom is subject to a referral to the GTC(E) associated with his professional conduct . This is one of the two cases cited in the Secretary of State's remit letter for this Review.

2.4 The local government employers were unable to cite any cases in the last three years that had resulted in disciplinary action in relation to promoting racist views or teaching partisan political views, neither was there any evidence of such cases from the significant number of local authorities who submitted evidence.

2.5 The GTC(E) reported nine cases in the last seven years where an element of racist behaviour was either part of, or the whole of, the nature of the conduct which was subject to referral and

investigation by the GTC(E). In chronological order, they are: a secondary school teacher in Liverpool for "*an inappropriate remark to students that they could reasonably construe as being racist*"; a secondary school teacher in Halifax who "*used inappropriate language to identify a particular group of students by their ethnicity*"; a teacher in Birmingham, who, "*in December 1999, was found to be in possession of racially offensive material*"; a middle school teacher in Somerset who "*made inappropriate comments and jokes, and encouraged and listened to inappropriate comments and jokes, of a racial nature with pupils*"; a primary school headteacher in Berkshire who "*used inappropriate language and behaviour in relation to staff and pupils at the school*"; a teacher in Rotherham who "*made inappropriate and derogatory remarks with a potential racial connotation*"; a teacher in Bradford who "*used a school laptop to access, store and distribute material that was of an inappropriate and (sexual and) racist nature*"; a secondary school teacher in London who "*spoke inappropriately to a pupil making a particular racial reference*"; and a teacher in Berkshire who "*spoke inappropriately in front of pupils making a potentially racist remark*". There is no pattern to these incidents, either geographic or demographic, and no apparent increase in incidence over time.

2.6 In summary, therefore, over the last seven years there have been two governors and four teachers identified as members of the BNP, and nine teachers who have been subject to disciplinary sanction by the GTC(E), seven for inappropriate remarks and two for ownership or use of inappropriate materials. To the knowledge of the relevant agencies, no trainee teacher or teacher has failed to meet the professional standards for teachers, nor have any aspirant leaders failed to meet the standards required for NPQH, in terms of the requirements relating to promoting racial equality. No teacher has been disciplined for promoting partisan political views.

2.7 The six (members of the BNP) plus nine (disciplined for making racist remarks or holding racist materials) governors and teachers, identified over the last seven years, should be viewed in the context of, in round figures, half a million teachers teaching six million pupils for 190 days over those seven years.

2.8 This is the quantifiable and substantive evidence.

2.9 In his remit letter, the Secretary of State highlights the second event causing him to reflect further on whether the current safeguards in place are drawn in the right place as:

"*The release of information on membership of the BNP [in 2008] revealed 15 individuals who identified teaching as their profession.*"

2.10 In the only other 'evidence' relating to BNP membership amongst the teaching profession, the National Union of Schoolmasters Union of Women Teachers (NASUWT) states:

"*There is some evidence of individual teachers who are members of organisations like the BNP. However, the absence of data confirming the widespread extent of the problem does not undermine the argument in favour of introducing a prohibition. In the much publicised leak of BNP membership records during 2009, the NASUWT has knowledge of at least 27 teachers who are members of the*

BNP. However, in the absence of a statutory restriction in this area the Union would be at risk of legal challenge under the Data Protection Act if it confirmed publicly the identity of these teachers."

2.11 This Review has difficulty in dealing with 'evidence' from 'leaked lists' and self-declaration. The BNP membership list has allegedly been 'leaked' twice, in 2008 and 2009. The 2008 list contained the self-declared professions of members, but there is no way of substantiating this or of knowing of its accuracy. The 2009 list did not include the 'employment' details of members, so the Review does not know how the NASUWT has 'knowledge' of 27 members of the BNP who are teachers. However, even in the NASUWT scenario, this constitutes 0.005% of the teaching profession, or one in 20,000.

2.12 Those in favour of a ban do not dispute the substantive evidence of prevalence; they take a different view articulated by the NASUWT:

"*The NASUWT asserts that the decision to introduce a ban on particular organisations should be taken on principle...the absence of data confirming the widespread extent of the problem does not undermine the argument in favour of introducing a prohibition.*"

Evidence from recent research

2.13 Apart from the documented cases of racist behaviour outlined above, most of the other evidence comes from recent research evidence which highlights either the under-performance of pupils from certain ethnic groups or the disproportionately fewer number of people who are teachers, or in senior roles, in schools. The claim here is one of 'indirect discrimination', defined in 'A Guide to the Law for School Governors' as follows:

"*Indirect discrimination occurs when a provision, criterion or practice is applied equally to all but has a different impact on members of one or more protected groups, of which the complainant is one, and is placed at a disadvantage as a result.*"

2.14 This definition was not accepted by some contributors to the Review, although the trade unions, in particular, are keen to highlight the unequal outcomes for pupils and their members and some contributors to the Review, especially those most vociferous in support of a ban, dismiss the incidence rates cited in this Review as irrelevant under-reporting. The Association of Teachers and Lecturers (ATL) quote a number of ethnic groups' pupils' performance and conclude by stating:

"*It is important to recognise that these unequal outcomes occur despite the duties imposed on schools to promote race equality and community cohesion and the very positive desire of the vast majority of teachers to ensure equality of opportunity. Despite good intentions and, in many schools, very good equal opportunities policies which are actively promoted by school staff, unequal outcomes still pertain.*"

2.15 The National Union of Teachers (NUT) highlights the under-representation issues in the teaching profession:

"*Black and minority ethnic teachers are under-represented in teaching and in senior leadership roles in schools. The NUT has conducted surveys in 2003 and 2008 of its black and minority ethnic members and found that they face barriers to career progression and promotion.*"

2.16 However, neither the ATL nor the NUT recognises a causal link between these outcomes and membership of racist organisations or political parties. Indeed, they play down such a relationship:

"*It is ATL's present policy position that teachers should be judged on their behaviours, not their beliefs. It is for this reason that the Association has decided that teachers who become members of far right organisations which promote racism, such as the BNP, should not automatically be barred from membership of the profession. Rather, it is behaviour which should be judged.*"

"*...outside of isolated instances, we (NUT) do not believe that school workforces are a site of extensive far-right presence. We believe that effective whole-school approaches to equality throughout would quickly eliminate what is a relatively isolated phenomenon. The NUT is more concerned with the attitudes and behaviours of teachers and other members of the school community than their organisational affiliations...*"

2.17 The NASUWT, in contrast, considers that: "*there is now compelling evidence of institutional racism in schools*". Its evidence base is a very recent report that it commissioned, with the National College, carried out by the University of Manchester, entitled 'The leadership aspirations and careers of black and minority ethnic teachers'. The report reinforces the concerns about career progression for black and ethnic minority (BME) teachers, concluding that :

"*...it is clear that the incidence of discrimination reported by BME teachers and leaders within the schools system is indicative of an endemic culture of institutional racism.*"

2.18 This is very contentious. The Macpherson Report defines institutional racism as: "the collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin". No other research evidence has been presented to this Review to suggest that any other contributor considers schools to be places where "*an endemic culture of institutional racism*" exists.

2.19 Some indicators, which claim to show elements of indirect discrimination, such as attracting BME teachers into the career and the number of BME teachers promoted to higher positions, are moving in a more positive direction. The same report cites a doubling in the training of BME teachers over the last decade. Other indicators are mixed – some BME groups of pupils perform better than their 'white British' counterparts, and, within the 'white British' grouping, there are significant disparities on grounds of gender and socio-economic deprivation, which continues to be the highest correlating factor to poor performance.

2.20 A significant amount of other evidence has been presented to the Review by employers. This shows that schools and their teachers make tremendous efforts to implement anti-racist and

equal opportunities policies in their day-to-day teaching. Innumerable examples of good practice have been presented to this Review of how this works in practice. For example, in Leeds, the Stephen Lawrence Education Standards, begun by members of local communities, and taken on by Education Leeds, are helping schools to work collaboratively with each other, and with other partners, to combat racism and promote equality. Schools compile portfolios of evidence and gain awards to demonstrate their success. A conference in January 2010, co-hosted by Education Leeds and DCSF, and addressed by the Secretary of State, watched presentations ranging from a dance drama about a survivor of the Holocaust to sixth-formers explaining how local and international school twinning have transformed understanding and attitudes.

2.21 There was wide ranging evidence of schools being involved in projects as diverse as the 'UNICEF Rights Respecting Schools Award' to work with local football clubs to 'Show Racism the Red Card'.

Behaviour and affiliation

Question: Is racist behaviour from teacher to pupil the issue that this Review addresses, and/or is it membership of an organisation that promotes racism and intolerance?

2.22 There is no dispute that racist behaviour by teachers to pupils is intolerable, and that it should be dealt with through the proper channels. Those channels are clear and in place, through the school's and employer's own disciplinary procedures and through the GTC(E). Those channels have been used in the past, and have been strengthened for the future. As previously reported, incidents are very rare and, with the outstanding exception mentioned, there is no evidence that teachers who have been subject to disciplinary measures from the GTC(E) were members of such an organisation. This supports the assertion that you do not have to be a member of such an organisation to make such remarks or hold such attitudes, and, *vice versa,* members of such organisations may not necessarily be racist or promote racist views, although this can be, and is, challenged by many.

2.23 This challenge is the most significant challenge of those in favour of a 'ban'. The Secretary of State sets out the argument clearly in the remit letter for the Review: "*whether membership of an organisation that promotes racism and intolerance is so incompatible with the duties and behaviours expected of teachers and their professional standing that there is a case for affiliation to such an organisation being grounds for barring from the profession*." Indeed, some argue that the very joining of such an organisation is racist behaviour in itself.

2.24 The argument in favour of a ban, on these grounds, is supported and articulated by half of the trade unions concerned: the NASUWT, the National Association of Headteachers (NAHT), Unite and Unison (who represent many non-teachers), and the Trades Union Congress (TUC) itself. It is also supported by the TDA, and the Catholic Education Service (CES). In their evidence, a consistent point is articulated:

"(The TDA) would have a specific measure to bar anyone working closely with children and young people owing to the incompatibility argument...This is about sending out a clear marker, there is very deep institutional racism in schools (NASUWT)... I would certainly welcome the necessary regulatory steps to prohibit BNP membership...and at first glance would support barring from the profession. However, the detailing and nuancing of such a complex matter would require extremely sensitive handling... (CES)".

2.25 The argument also receives some support from those who oppose the ban or remain equivocal, such as the NUT and the ATL:

"The NUT believes that membership in the BNP, or other far right groups, is incompatible with the professional requirements of teaching. We do not believe that a teacher with BNP membership could remain in the classroom without being a racist in some way shape or form ... (we) would find it difficult to believe that an active member of a far right group would be able to conduct themselves in a school that is meeting its legal duties."

2.26 The ATL raises the question in a more pragmatic classroom situation:

"Would students from ethnic minorities feel safe and valued if they knew that their teacher was a member of the BNP? Would they want to engage with the teacher in ways that would be necessary for them to learn effectively? Would they feel safe in this teacher's classroom? Would they be prepared to accept that teacher's assessment of their work was based on their professional judgement and expertise or would they suspect, if they received a disappointing assessment, that they were being judged on their ethnicity, not their ability. It must be questioned whether students from ethnic minority groups could achieve their entitlement when in a classroom taught by an active member of a far right organisation."

2.27 These are indeed powerful arguments, but are they powerful enough to overcome concerns about the lack of causal relationship between affiliation and behaviour and the lack of evidence to support such a relationship? There is no evidence that teachers who have been subject to disciplinary measures from the GTC(E) for racist behaviour were members of such an organisation, except for the outstanding case, or that membership, in itself, is sufficient to justify a 'ban'. Those in favour of a ban often used the expression 'to make a statement; to put down a marker'. However, to ban half a million teachers or the remainder of the school workforce, or, indeed, all six million public servants, from joining a legitimate political party in a democracy would be a profound act of Government. The Association of Directors of Children's Services encapsulates the views of those, who, while considering racist views and behaviour to be incompatible with the teaching profession, are opponents of a ban:

"The Association believes that membership of any organisation that espouses racist views is fundamentally incompatible with the values and ethos of public service. The Association believes, however, that teachers (and other professionals in the children and young people's workforce) cannot be banned from their profession on the sole basis of <u>membership</u> of organisations or registered political parties that promote racist views <u>unless</u> such organisations are proscribed in law

– it is their actions and behaviour, and its implications, that must form the grounds for barring – the espousal of racist views and/or the promotion of partisan political activity is completely unacceptable in the teaching profession. "

2.28 One further difficulty in relation to a ban in terms of affiliation, rather than behaviour, is the question of where the parameters are drawn. Although regulatory powers could allow the Secretary of State to re-name political parties or organisations from time to time as levels of concern arise – and these parties do notoriously change their spots on a regular basis (even during the short period of this Review, Combat 18 seems to have given way to the English Defence League in terms of levels of concern) – the focus of existing measures in the Prison Service and the Police is against white, right-wing groups. Such a ban raises significant questions about other groups, both race and faith based, which may be considered as falling into the net. As recently as January 2010, an Islamic faith based group was 'proscribed' and, in December 2009, a Parliamentary question was raised about the role of another Islamic group and its links with a proprietor of two independent schools. Nor should we ignore the evidence that racism is not an exclusively white versus black issue.

Lack of consensus

Question: Is there stakeholder consensus, or is there disagreement?

2.29 One thing that this Review has exposed is that there is no consensus of opinion on this matter. This applies between relevant stakeholders, and within stakeholder groups.

2.30 On the political front, the Government has retained neutrality during the period of the Review. Up to that point, with records going back to 2005, the Government had consistently opposed a 'ban' whilst presiding over the strengthening of existing measures and introducing new measures. It has formally rejected requests from the NASUWT on three occasions over the last five years. However, more recently, the Secretary of State has expressed an increased level of concern by commissioning this Review. Inevitably, the BNP and the National Front are against a ban, as are the union Solidarity, seeing it, in itself, as discriminatory against their members of legal, non-proscribed, political parties, otherwise political opinion is divided.

2.31 Nor is there consensus in the trade union movement. The TUC itself urges a ban across the public sector, a stance supported by the NASUWT which has led the way in the field of education in requesting a ban since 2005. The unions who represent many members of schools' support staff also support a ban right across the public sector. All the unions in favour recommended a ban on members of 'far right' organisations; no mention is made of the 'far left' or other potentially racist groups. The NAHT supports a ban for teachers, but the ASCL is against a ban. The small teachers' union, Voice, is against a ban; the other two large teacher unions, the NUT and ATL, are more circumspect, as set out previously - they question the appropriateness of affiliation with teaching, yet do not go as far as recommending a ban. They consider that, on the rare occasions when racist behaviour is identified, the existing measures in place are appropriate.

2.32 There is disparity in the views of agencies related to the DCSF. The TDA supports a ban; the National College does not, it believes that the current measures, if rigorously and consistently applied, are sufficient. The GTC(E) believes it is not in a position to take a view, although five of its Council members wrote collectively to the broadsheet newspapers last summer urging a ban. Four are no longer Council members and the fifth – interestingly the NUT representative on the GTC Council – supported a ban when her parent body remains equivocal.

2.33 There is greater consensus and clarity amongst other Government departments. The Prison Service, now part of the National Offender Management Service [NOMS], in 2001, and the Police in 2005, have already imposed a ban, but no other Government department plans to do so, ranging from the judiciary, through the health service, the armed forces and the senior civil service itself. Although most have 'rules' about not engaging in political activity, particularly at senior levels, and, in the case of judges, 'must forgo any kind of political activity', there is no overt ban in any of the other government organisation, nor is there planned to be.

2.34 Employers, whether they are the local authorities, as is the case in three-quarters of maintained schools, or the governing bodies of Church of England schools, show no inclination to impose a ban. The same applies to employers in independent schools. All hold the line that it would be a disproportionate response and it is the behaviour of employees that should be judged, not their affiliations. The National Society (Church of England education service) is against a ban but the CES 'would welcome the necessary regulatory steps to prohibit BNP membership'.

2.35 In summary there is disagreement amongst and within stakeholder groups. The balance of argument is against a ban with the exception of some trade unions, the TDA and the CES. The trade unions in favour of a ban would like to see that ban extended throughout the public sector of over six million employees; the TDA would constrain it to those directly involved with children, although they were not clear 'where the line should be drawn', and almost all were particularly perplexed about what to do about members of racist parties or organisations who are school governors, whether elected or appointed.

Teachers and the wider school workforce, and governors

Question: Should the current measures, or any new ones, be extended more widely across the school workforce?

2.36 In many schools now, the teaching workforce is less than half of the wider school workforce which can include support staff and cover assistants, learning mentors, administrative and site management staff in addition to many peripatetic staff and volunteers which make up the wider school community. Although most of these staff will fall under the general policy directions of the school – such as equal opportunities and race equality policies – many of the measures in place relate to teachers and teaching, and do not apply to the wider school workforce.

2.37 In particular, professional standards for teachers, and for their career development, do not exist for the wider school workforce, or are in development phases under the deliberately renamed

Training and Development Agency for Schools (formerly the Teacher Training Agency) and the National College for Leadership of Schools and Children's Services (formerly the National College of School Leadership). The same applies to the Government departments responsible; the Department for Children, Schools and Families for the first time since the war has lost the word 'education' from its title, whereas the Office for Standards in Education (Ofsted) has extended its title to include 'Children's Services and Skills'. Many may not be aware of these titular changes, but most will be aware that Government is taking a more holistic approach to services to children, including education, thus the school workforce has changed dramatically over the last decade. The number of adults present in an average primary school is unrecognisable from a decade ago. Similar trends are occurring in the use of school buildings as they extend themselves into community resources with a longer day and wider remit.

2.38 The principles relating to the intolerance of racist behaviour towards children apply equally to the after-school club and football coaching session as they do to the classroom; measures relating to standards in teaching are not, as yet, securely in place for other members of the wider school workforce. This is complicated by the number of different employers and voluntary roles in today's schools and wider roles associated with the care of children in early years and social care settings. These are not matters for this Review and largely fall under the auspices of the Children's Workforce Development Council (CWDC) and the General Social Care Council.

2.39 The most significant voluntary role is the crucial role of governors in school, and this role, in my view, merits particular attention in this Review. It is with the express permission of the Secretary of State that I address it.

2.40 Each maintained school in England has a governing body made up of volunteers from its community. The governing body of a maintained school always includes elected governors representing teachers, support staff and parents. It also includes community representatives and an appointed governor by the local authority. A strong governing body has the potential to have a significant influence for good in a school. It can provide the strategic vision for the school to move forward, ask the 'awkward question' of the headteacher to ensure wider accountability to the community it serves, and perhaps the more detailed scrutiny of the school's leadership and management and financial security in a heavily devolved system. It has the responsibility to support and challenge the school leadership, thus contributing to it – all this from an army of unpaid and unsung volunteers.

2.41 The question of political motivation or affiliation is not asked of these volunteers. It is possible that, in a local authority which nominates its appointed school governors in a politically representative way, legitimately elected councillors of a party that promotes racism could be appointed to maintained schools' governing bodies. This does happen from time to time. At present, we rely on the democratic nature of governing bodies to overcome any racist influence and, ultimately, a local authority may, with the consent of the Secretary of State, remove a governing body and replace it with an Interim Executive Board (IEB).

2.42 If a school falls into an Ofsted category of concern, the Secretary of State has powers (Education and Inspections Act 2006 s69) to appoint an IEB. He may also use his default powers (Education Act 1996 s497) to declare a breach of duty, but these have never been tested in a scenario where, for example, a governing body became controlled by those who wish to promote racist views, or if the local authority itself was to be controlled by a party that promotes racism. This is especially relevant as many of the aforementioned duties that fall to 'schools' do, in fact, fall to the governing bodies of those schools, and the only other powers of intervention currently rest with local authorities. The democratic checks and balances, and the powers of the Secretary of State, which exist at present have, to date, proved strong enough to prevent a governing body being controlled by those who promote racism.

The prison officers, the police and teachers

Question: Why prison officers and police officers, and not teachers, or others?

2.43 The Review sought to interview, face-to-face, the main political players, that is, representatives of the three main political parties and the three parties named in the prison and police services' ban. Contributors to the Review were asked to be explicit about whether they would support a ban or not, as set out in the remit letter and, although not in agreement, most have been prepared to honestly 'nail their colours to the mast'. What has proved more difficult is, for those in favour of a ban on teachers, to be explicit about where the line should be drawn in future.

2.44 The prison service introduced a ban on any of its employees being members of the BNP, the National Front or Combat 18 or any other organisation promoting racism in 2001. Pre-determining incidents included high levels of perceived discrimination amongst minority ethnic staff, examples of inappropriate behaviour and, in March 2000, the murder of Zahid Mubarek by a cellmate. Since the ban has been in force it has been challenged on one occasion. However, since becoming the 'National Offender Management Service', it is now having to consider extending the ban to include probation officers; it is less sure about this, reinforcing the pragmatic difficulty of 'where to draw the line'.

2.45 The police introduced a similar ban in 2005 for police officers and support staff, naming the same three organisations. Again there were pre-determining incidents including the murder of Stephen Lawrence and the subsequent labelling of the police force as institutionally racist by the Macpherson Report; there was also a 'hidden camera' exposé of racism at a police training school. Since the ban a small number of forces have taken disciplinary action and required officers to resign.

2.46 No other public body is actively considering a ban although this Review, in itself, has stirred the debate in other quarters. Most significantly and relevantly, no such ban exists in other 'children's services' provided by local authorities or other employers. No such ban exists in the health service – here individual health trusts are the employers, and there is no evidence of a ban being considered in relation to doctors, nurses or other health professionals. No ban exists for the judiciary ie judges and magistrates (apart from the previously cited constraints), senior civil servants or local government officers, or members of the armed forces, although generic constraints exist

forbidding any active or partisan political activity at senior levels. It is not completely accurate for the remit letter to state that: "*More recently the Church of England has also voted overwhelmingly in favour of banning the clergy from membership of the BNP*." The General Synod has, in fact, asked the House of Bishops to formulate and implement a policy comparable to that of the police.

2.47 The arguments here relate to any differences between the prison and police services, and all others. The prison and police services are 'coercive services' which, as a rarity in this country, have powers to use force. There were crises of public confidence in each service caused by pre-determining events.

2.48 Despite the Secretary of State's reflection that: "a *number of recent events have caused me to reflect on whether the current safeguards are drawn in the right place.*". those events are not of the same significance, or scale, as those which influenced the steps taken by the prison and police services. The referrals to the GTC(E) over the last two years, and the self-declaration – on a leaked BNP membership list of 15 people who describe themselves as teachers – are not, in my view, of similarly significant magnitude to challenge the public confidence and trust in teachers. The NASUWT has presented evidence from an on-line petition it has organised on which anyone can register their support for a ban; out of a membership of 275,000, less than 8% have done so. The trade union describes this as part of an 'overwhelming support for action'.

2.49 No evidence has been presented of 'endemic racist behaviour' amongst members of the teaching profession or the wider school workforce in our maintained schools. Teaching remains an all-graduate profession; its training is lengthier than the comparator professions where a ban has been imposed, and it contains significant practice elements. Its recruitment hurdles are now more significant in this context. Once in the profession, teaching has become one of the most scrutinised of our public services through classroom observation for performance review purposes, with external scrutiny of a school's performance, policies and practices on a regular basis by school improvement partners and Ofsted. Teachers now rarely work in isolation, and they are part of a broader institution which has its own checks and balances on staff behaviour. The overwhelming evidence is that most teachers go the extra mile to ensure the personalised, but equitable, teaching of pupils and use all curriculum opportunities to enhance racial, cultural and religious awareness.

The influence of the curriculum

Question: Is 'education' the route to a more equal society?

2.50 Underpinning this Review is a potential virtuous circle which leads to a much greater prize: a society whose members are equally valued in their humanity. This Review has rightly focussed on teachers, their aptitudes and attitudes; high quality education cannot be received without high quality teaching. However, since 1988, we have chosen to have a National Curriculum in this country. In terms of promoting anti-racism, this provides us with a unique opportunity, as well as a unique risk.

2.51 We have mitigated the risk by keeping the design and development of the curriculum and qualifications and its regulation at arms-length from the Government, with the single Qualifications and Curriculum Authority divided into the two separate bodies of the Qualifications and Curriculum Development Agency (QCDA) and the Office of the Qualifications and Examinations Regulator (Ofqual). We have placed the responsibility for inspecting both the curriculum and the quality of teaching with another separate Government department, Ofsted, with a Chief Inspector (and the Chair of Ofqual) accountable directly to Parliament. Constitutionally, and structurally, this is a good place to be – and the envy of the world.

2.52 What, then, is needed, is high quality teaching allied to a curriculum which will encourage the virtues we espouse, and which will guard against the discrimination and prejudice that we seek to eliminate. Here we have made much progress, but there remains a long way to go; to borrow a phrase from a Commission for Racial Equality report: *'A lot done, a lot to do'.* Most efforts have been made in the two curriculum areas that adults of a previous generation would not recognise: Citizenship and PSHEE (Personal, Social, Health and Economic Education), and the oldest curriculum subject on the books, Religious Education (RE).

2.53 Religious education is a statutory part of the curriculum, but is not a subject of the National Curriculum in that its programmes of study are prescribed locally by local authorities advised by Standing Advisory Councils for Religious Education (SACREs). In Church schools, the syllabus is decided by the governing body, advised by the relevant Diocese, in accordance with the trust deeds of the school. Parents have a right to withdraw their child from RE, although this right is rarely exercised. The Education Reform Act, 1988, states that RE should be wholly or mainly of a broadly Christian character and include study of the principal religions represented in Great Britain. Locally agreed syllabuses can include the religions that reflect the religious make-up of the local area in addition to Christianity. It is common in community and church schools for the major festivals of other religions to be celebrated in addition to Christmas and Easter and pupils' knowledge of world religions far exceeds that of previous generations.

2.54 Citizenship, a subject of the National Curriculum for secondary schools since 2002, is planned to form part of the new primary curriculum in 2011. The first teaching of the identity and diversity strand began in 2008 in response to Sir Keith Ajegbo's review of Diversity and Citizenship in the Curriculum. In the QCDA's National Curriculum guidance on 'Identities and diversity: living together in the UK', it states:

"*Citizenship encourages respect for different national, religious and ethnic identities. It equips students to engage critically with and explore diverse ideas, beliefs, cultures and identities and the values we share as citizens in the UK. Students begin to understand how society has changed and is changing in the UK, Europe and the wider world.*

Citizenship addresses issues relating to social justice, human rights, community cohesion and global interdependence, and encourages students to challenge injustice, inequalities and discrimination."

2.55 Underpinning these key concepts are details about the range and content of the taught curriculum. An Ofsted report into Citizenship in a small sample of schools, published in January 2010, found:

"*In the great majority of the primary schools visited, provision for teaching about Britain's diversity was good. Sometimes this took place in the context of religious education, including good teaching about the range of faiths represented in the community, visits to different places of worship and visits to the school by representatives of a range of faiths. These schools also promoted the understanding of different cultures across the curriculum and through themed days or weeks on identity and diversity. This provided an opportunity for the pupils to think about media stories relating, for example, to refugees, asylum seekers and racism. The handling of sensitive topics was often good, with pupils given the opportunity to consider and articulate their own ideas in discussions. Where the survey found a lack of provision, it was most often linked to insufficient opportunities for pupils to meet people from different faiths, ethnic backgrounds and cultures.*

The subject matter in the lessons observed included race and stereotyping, racism and the causes of discriminatory behaviour, multiculturalism and tradition. In most of the schools visited, pupils discussed migration, including refugees and asylum seekers. In some cases, this was closely linked to work on shared values and human rights, building on earlier learning. These opportunities came in citizenship and PSHE education lessons and through other subjects and events such as 'suspended timetable' days. Work related to identity and diversity was also seen in other subjects, for example in teaching about faiths in RE and slavery in history."

2.56 Personal, Social, Health and Economic Education (PSHEE), following citizenship, is proposed to be the next 'compulsory' new subject in the National Curriculum, and this is proposed formally in the new Bill currently before Parliament, with cross-party support. Its content is not directly related to the focus of this Review. However, its emphasis on personal development and well-being, linked to Citizenship, as it often is on a day-to-day basis and will be in primary education in future, creates a package that is intended to promote community cohesion, and militate against the development of racist attitudes amongst pupils.

2.57 Such endeavours are cross-curricula in schools and can feature in established yet diverse national curriculum subjects such as English Literature, History, Geography, Biology and Modern Foreign Languages.

Independent schools

2.58 During the course of the Review, a specific issue arose regarding the Islamic Shakhsiyah Foundation Schools and their links to Hizb ut-Tahrir. The Review was asked to consider what implications there might be in relation to its terms of reference and findings.

2.59 The measures outlined in Part 1 of this Review have less influence in the independent sector. First and foremost, independent schools are independent of many of the measures put in place by Government bodies – that is their very nature. They enjoy greater freedoms and are more lightly

regulated as a result of their independence. This carries with it, inevitably, greater risks being taken by those parents who choose to educate their children in the independent sector.

2.60 Of the ten measures already in place to protect pupils from discrimination, or political indoctrination, there is an expectation that independent schools will have an equal opportunities policy, but they have no legal duty to have one and the duty to promote race equality does not apply. The other measures, which focus on qualified teachers and local authorities, only apply to the qualified teachers in the independent sector. No one knows what proportion of teachers in the independent sector is qualified (hold QTS status), therefore: the registration and disciplinary powers of the GTC(E) may not apply; the professional standards for teachers and headteachers, as set out by the TDA and the National College, may not apply; the rules regarding the teaching of partisan political views and reporting racist incidents do not apply; the duty to promote community cohesion, and the inspection of that duty, do not apply; and, of course, the teaching of the compulsory subjects of the National Curriculum, such as, potentially, citizenship and PSHEE, does not apply.

2.61 The Independent Schools Council (ISC) cites the relatively recent switch for independent schools' inspection reports to be made available to the public and the inspection framework's criteria on the social, moral, spiritual and cultural development of their pupils as measures of assurance and transparency. It says there is a complete absence of complaint about the promotion of racism in its member schools, and it quotes the absolute right of paying parents to withdraw their child if dissatisfied.

2.62 The existing measures to prevent racist behaviour by teachers in schools can be divided into two, broad categories; those that are preventative, relating to the teaching profession, and those that relate to inspection. Those measures which apply to teachers in the maintained sector are not comprehensively applicable to teachers in the independent sector, because teachers in the independent sector are not necessarily qualified or registered with the GTC(E). Independent schools are subject to inspection by Ofsted, but under a separate framework that does not include judgements about promoting community cohesion or racial equality. The recent Ofsted report, 'Independent Faith Schools', offers some reassurance in that "*good citizenship was considered by all schools to be the duty of a good believer because this honoured the faith*", but the same report also found evidence that, in a small number of the schools, some of the published teaching materials included biased material or provided inaccurate information about other religions.

2.63 My assessment is that the most recent public concern is focussed on independent schools staffed by unqualified teachers, rather than the promotion of racism by qualified teachers in maintained schools. The consideration of the status of teachers, the other requirements and the wider curriculum in all independent schools go beyond the scope of this Review and any proposals for change in the future would have to apply to all independent schools.

Summary

2.64 As set out in Part 1, my view is that the safeguards already in place are drawn in the right place to maintain trust in the teaching profession and to protect pupils from racism from teachers. I have set out my recommendations as to how these measures could be improved.

2.65 In Part 2, I have considered carefully the arguments for and against barring teachers from the profession if they are members of groups that promote racism and intolerance. There is no consensus on this matter, either within or between stakeholders. Based on the substantive evidence, I have reached the conclusion, that, at this point, such a ban would be disproportionate to the prevalence of the problem and that there would be no clarity as to where to 'draw the line' in terms of the wider school workforce, including governors, and the public sector as a whole. Where the 'line is drawn' at present ie prison and police officers specifically banned, but no other profession, is defendable. To include over half a million teachers and start to add associated professions and members of the public (ie governors), based on the levels of prevalence and public concern, would be taking too large a sledgehammer to crack a very small nut.

2.66 The Government should also be mindful of the profundity of such action. The BNP, for example, at the time of writing is a legitimate political party. It has democratically elected local councillors and Members of the European Parliament. The scale of the action being considered by some would ban more than half a million individuals, and potentially many more associated professionals, from exercising their democratic freedom of joining a legitimate political party.

2.67 The Secretary of State has the power to impose a ban in relation to maintained schools, or he could seek a wider ban on all teachers through a related statutory body, the GTC(E). Other Government departments have exercised similar legitimate powers. The Secretary of State has formally considered the use of this power on three occasions in the last five years, and, on balance, has rejected the argument. My conclusion is that there is no evidence of an increase in prevalence of racist behaviour among the teaching profession that threatens the integrity of the profession, nor causes a risk to pupils, therefore the Secretary of State should resist calls for a ban at this time, no matter how emotively attractive they may appear. Also, there is no coherent argument as to where the 'line should be drawn' in the future if such a ban were to be applied to teachers, and this should require a cross-Government consensus that does not exist at present.

2.68 The prevalence issue is not only powerful in its scale but in its legal context. If such a ban were imposed, it is likely that it would be challenged in the courts by the BNP, or others, under Human Rights legislation, which protects the right to freedom of association (Article 11 of the European Convention on Human Rights). Any 'interference' with this right has to have a 'legitimate aim', and any action must be 'proportionate' to that legitimate aim. The government would have to show, amongst other things, that its aim was legitimate and its action was proportionate. There are two risks: the challenge may be successful, and, even if it wasn't, it has the potential to create a long-running saga in the courts giving 'political oxygen' to the very bodies whose racist behaviour the Government wishes to eliminate.

2.69 I, along with every contributor to the Review, am sympathetic to the view that, in the words of the Secretary of State, membership of an organisation that promotes racism and intolerance is incompatible with the duties and behaviours expected of teachers. However, I am also of the view of the majority of contributors that, at this point, it is the behaviour of the individual that should be judged, not the affiliation.

2.70 In the light of the evidence presented, I recommend against bringing in additional measures such as a ban on membership of non-proscribed organisations at this time. I make the following additional recommendation:

6. The Secretary of State should keep these matters under active review, and liaise closely with other Government departments, particularly those with policy responsibilities affecting children. He should use his existing non-Departmental public bodies, councils, departments and advisory bodies to report to him regularly, and comprehensively, on matters of concern and he should use his own Department to draw together the outcomes of the implementation of these recommendations and report to him within a year and annually thereafter.

METHODOLGY AND REPRESENTATION

3.1 In setting his remit for this Review, the Secretary of State was explicit in stating that it was essential that the Review gathered a wide range of views. I concur with the Secretary of State's view. In order to determine the views of those with a stake in the teaching profession or wider school workforce, and also those with experience of ensuring that appropriate measures are in place to tackle racism across the public sector, I cast the net as widely as was possible in the relatively short time afforded to the Review.

3.2 I set up a website (www.dcsf.gov.uk/mauricesmithreview) giving details about the Review and inviting written representations. In addition to this, I approached a targeted range of organisations, parties, trade unions, public bodies and other Government departments with interests in the relevant issues. All local authorities, for example, were invited to make representations, as were the trade unions with membership amongst the schools' workforce. I took representations from a wide range of officials within the DCSF, including those with responsibility for community cohesion, race equality, governance, the proposed licence to practise, and the school workforce and similarly met with the major Government agencies associated with the DCSF.

3.3 To satisfy the Review's remit to look at how the promotion of racist views is tackled elsewhere, I met with a range of Government departments and agencies including a member of the Association of Chief Police Officers (ACPO) Hate Crime Group and the National Offender Management Service (NOMS) who are responsible for maintaining the current bans on membership of racist organisations in the police and prison services.

3.4 In order to take a balanced look at how these existing bans operate, I attempted to meet with the British National Party (BNP), Combat 18 and the National Front. Whist I was able to take oral evidence from the National Front and the Solidarity 'trade union', I was unable make contact with Combat 18 due to the lack of publicly-available contact details. Despite four invitations to contribute to the Review over a two month period, and offers to meet Nick Griffin MEP personally, the BNP did not have the courtesy to respond to any of these approaches. I was able, though, to meet with representatives of the three main political parties.

3.5 I am most grateful to all those who gave their time so generously and met with me to give evidence.

3.6 A full list of those who made oral representation is set out below, followed by details of all those who submitted written evidence. I would like, again, to place on record that I am similarly appreciative of the considerable time, effort and thought that was given to the written submissions received.

3.7 This Review, as set out in the remit letter, has been conducted independently. All evidence, findings and recommendations are independently drawn and do not represent the views of the DCSF, the Church of England, Diocese of Manchester, or any other body.

Those making oral representation

Association of Chief Police Officers (ACPO), Member of ACPO's Hate Crime Group

Association of Directors of Children's Services (ADCS)

Association of School and College Leaders (ASCL)

Association of Teachers and Lecturers (ATL)

Children's Workforce Development Council (CWDC)

Conservative and Unionist Party

Department for Children, Schools and Families (DCSF)

Department of Health

General Teaching Council for England (GTC(E))

Independent Schools Council (ISC)

Labour Party, Minister of State for Schools and Learners, DCSF

Liberal Democratic Party

Local Government Employers (LGE)

Ministry of Defence

Ministry of Justice

National Association of Schoolmasters Union of Women Teachers (NASUWT)

National College for Leadership of Schools and Children's Services

National Front

National Governors' Association (NGA)

National Offender Management Service (NOMS)

National Union of Teachers (NUT)

Office for Standards in Education, Children's Services and Skills (OFSTED)

Solidarity, The Union

Training and Development Agency for Schools (TDA)

Organisations and individuals submitting written representations and evidence

Association of Directors of Children's Services (ADCS)

Association of School and College Leaders (ASCL)

Association of Teachers and Lecturers (ATL)

Board of Deputies of British Jews

Catholic Education Service (CES)

Children's Workforce Development Council (CWDC)

Church of England Education Division

Equality and Human Rights Commission (EHRC)

General Synod of the Church of England

General Teaching Council for England (GTC(E))

General Teaching Council for Scotland (GTC(S))

General Teaching Council for Wales (GTC(W))

Gnanadoss, Vasantha (member of the Church of England General Synod)

Independent Schools Council (ISC)

Miles, Berenice (writer on education and equality)

National Association of Headteachers (NAHT)

National Association of Schoolmasters Union of Women Teachers (NASUWT)

National College for Leadership of Schools and Children's Services

National Union of Teachers (NUT)

Solidarity, The Union

Trades Union Congress (TUC)

UNISON – the public service union

UNITE, The Union

Voice, The Union

Local Authorities making written representation

Bexley

Bournemouth

Bradford

Calderdale

Cambridgeshire

Cumbria

Dudley

Halton

Hampshire

Hertfordshire

Hounslow

Hull

Kent

Lambeth

Leeds

Northumberland

Nottingham

Peterborough

Poole

Reading

Redbridge

Sheffield

Slough

Sutton

Wakefield

Wandsworth

Westminster

West Sussex

Wigan

Wolverhampton

Worcestershire