



ARDS BOROUGH COUNCIL

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ASHLEY BORELAND, LLB (Hons) FCIS
Chief Executive

Our Ref.

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Date

CG 8238

10 November 2004

Single Equality Bill Team
Office of the First Minister and
Deputy First Minister
Room E.3.18
BELFAST
BT4 3BR

Dear Sir/Madam

A Single Equality Bill - Discussion Paper

I refer to the above named consultation document which was considered by the Council's External Affairs and Planning Committee at its meeting in November.

The Committee agreed to forward the response provided below which relates to specific chapters in the discussion paper.

Introduction

The Committee welcomed the opportunity presented by the Bill to bring clarity, cohesion and harmonisation to anti-discrimination provision. It also believed that where tension exists between prohibiting discrimination and promoting equality of opportunity priority should be given to promoting equality of opportunity. This approach is less adversarial and the fact the regulatory agency adopts a more negotiation-minded approach is to be welcomed.

Chapter 3 Grounds

The Fair Employment and Treatment (N.I) Order 1998 excludes a political opinion that consists of or includes approval or acceptance of the use of violence for political ends connected with the affairs of Northern Ireland. In relation to the political loophole in the "political opinion" the Committee considered that the existing definition should be amended to exclude all political opinions that support the use of violence, whether or not these are connected with the affairs of Northern Ireland. It recommended this approach as it believes political opinions that support the use of violence are unacceptable.

The Committee believed that as many grounds as possible should be added to at least include the nine categories under section 75 of the N.I Act because it wished to see as many categories of individual included in the legislation. However, in relation to past convictions, if such convictions are not spent it is important that they are not in compatible

with the post in question. In relation to language it is important that if language is part of the essential job criteria it is acceptable to appoint only those with that specific language. However, a robust mechanism should be in place to ensure that language is an essential requirement of the post.

The Equal Pay Act (NI) 1970 provides for equal pay between men and women by giving a woman the right to equality in terms of her contract of employment where she is employed on like work, work rated as equivalent or work of equal value to that of a man. The Committee believed that the existing provisions on equal pay should be extended to all other grounds in the Bill. The Committee believed the Equal Pay Act should be repealed and the provisions re-enacted in this Bill.

Chapter 4 Scope

This chapter considers the activities for which protection against discrimination is provided within each of the grounds to be covered. The Committee believed that scope should be the same for all the grounds to be included in the SEB. The Committee wished to see as many categories being included as possible despite the possible difficulties that may arise by including a large number of specific exemptions to cater for the differences.

In relation to employment, self-employment and occupation the Committee believed that the Bill should define employment, self-employment and occupation. However, employment should not be defined using the definition in current legislation, namely "employment under a contract of service or a apprenticeship or a contract personally to do any work." The concepts should be defined so they are consistent with the EU Directives which refer to "employment, self-employment and occupation" but should not give lesser protection than is already provided in existing Northern Ireland law.

In relation to Volunteers the Committee recognised that they are a significant part of the labour market and are diverse in terms of formality, ability, responsibility and authority. The Committee recommended that the Government consults specifically with the Volunteer Development Agency.

In relation to vocational guidance and vocational training, including practical work experience there are exceptions in existing legislation which allow a provider of training to refuse to offer training to a person where the employment for which the training is to be undertaken is employment for which a genuine occupational requirement operates. An example of this is in relation to membership of a particular racial group where the job requires participation in a dramatic performance. The Committee accepted that the associated exceptions should be carried through to the Bill for all new grounds to ensure harmonisation.

Chapter 7 Goods, Facilities and Services

The Single Equality Bill (SEB) provides an opportunity to consider/review the extent and nature of protection against discrimination in the provision of goods, facilities and services (GFS) and to consider how harmonising, as far as practicable, all existing Northern Ireland anti-discrimination legislation could be addressed in this specific area. The chapter addresses a series of interlocking issues (such as scope, definition, grounds). The Committee believed that the SEB could leave "goods, facilities and services" without

express definition but give guidance, both by way of examples and more directly, on whether to take a broad or narrow approach. For example, the SEB could state that there was a presumption an activity constituted provision of goods, facilities or services unless demonstrated otherwise. This would prevent the Courts taking a narrow view and concluding in certain circumstances that discrimination is lawful, because it has not involved the provision of "goods, facilities or services" as defined by the Courts.

The Council believed that all public functions should be covered under the SEB. In other words it will be unlawful for a public or private body to discriminate on all of the grounds covered under the SEB in respect of any public function. Discrimination over the provision of GFS will also be unlawful even when the transaction is between two private persons when providing a public function.

In relation to possible exceptions to the requirement not to discriminate in the provision of GFS the Committee believed there should be scope for providing a genuine service requirement, with the possibility of including a list of specific exceptions. As mentioned above the Council wished to see as many categories of person as possible being protected in the provision of GFS.

Chapter 8 Addressing Under-Representation in Employment

This chapter addresses under-representation of particular grounds in employment. The Committee believed that the SEB should address under-representation in employment in relation to as many grounds as possible. The Council believes that under-representation in employment could be addressed by building on the Section 75 approach. This would leave more discretion to employers to devise appropriate strategies to address under-representation, in consultation with the grounds affected, leading to the formulation of a plan of action.

Chapter 10 Tribunals and Courts

There are currently Industrial Tribunals to hear employment complaints and Fair Employment Tribunals to hear employment complaints that involve a religious or political ground. Claims of discrimination on the grounds of race, sex, disability, religious belief and political opinion in the provision of GFS and the disposal or management of property are heard in the County Court by a Judge. The Council believes that instead of the current system of Industrial Tribunal's and Fair Employment Tribunal's, a new system of Equality Tribunals should be established to deal with all discrimination matters relating to employment and GFS and the Industrial Tribunals would retain responsibility for all other employment cases. An Equality Tribunal could call on the considerable expertise already built up in the tribunal system as the Courts have less experience in dealing with complex equality principles. The creation of an Equality Tribunal would ensure harmonisation, facilitate consistency in the treatment of all discrimination cases and make it easier to deal with a case that is taken on a number of grounds. Although there will be a cost in the creation of an Equality Tribunal the benefits to society in the promotion of equality outweigh the cost of not amending the current system.

Chapter 11 Alternative Dispute Resolution

This chapter discusses alternative dispute resolution (ADR) as a means whereby discrimination disputes in employment can be resolved without resorting to the more formal procedures enshrined in employment tribunals. ADR encompasses a variety of processes which includes those already in existence in N.I such as arbitration, conciliation and mediation. In Arbitration both sides to a dispute normally agree to let a third party, the arbitrator make a decision on the outcome. The arbitrator will usually be legally qualified or an expert in the field of the dispute. The decision will be legally binding and enforceable through the courts. Mediation is a process whereby a third party, the mediator, helps both sides in a dispute to reach an acceptable agreement. The mediator can either be appointed by the parties to the dispute or by an official organisation. Conciliation is similar to mediation, but the third party, the conciliator, adopts a more interventionist role in bringing the parties together and suggesting possible solutions to assist in reaching an agreed settlement. The Committee believed that the development of ADR for discrimination disputes in Northern Ireland is a useful and necessary development and would welcome the further development of ADR processes. It recognised that there are clear advantages for resolving disputes close to the time of the incident and at the workplace. The process is less adversarial and therefore minimises damage to employment relationships and reduces costs to the parties.

I trust this information is of assistance.

Yours faithfully



Mary Higgins
Equality/Compliance Officer