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THE ASSOCIATION OF HEALTHCARE HUMAN RESOURCE MANAGEMENT

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**SINGLE EQUALITY BILL CONSULTATION**

The Association of the Healthcare Human Resource Management welcomes the opportunity to respond to the discussion paper issued by the Office of the First Minister and Deputy First Minister on the options for a Bill to harmonise update and extend Anti-discrimination and Equality legislation in Northern Ireland. The Association represents the Health and Personal Social Services and in particular those who work within the Human Resource Management context and specialism. In total the sector employs in excess of 60,000 people and we have considerable experience of working through the current Equality and Anti Discrimination legislation particularly as it affects the employment of staff.

In general the Association welcomes the proposed harmonisation, updating and extension of the legislation as the desired outcome of a harmonised legislative framework is to be welcomed.

The Association believes that whilst recognising the need for prohibitive measures the preferred approach would be where the promotion of equality and anti-discrimination is in the ascendancy. The development of clear regulatory frameworks would also be helpful to all employers. However, the Association recognises that a tension will exist between these approaches and this needs to be reflected in the culture and organisation of the enforcement and regulatory bodies.

In particular the Association believes that there needs to be an equity within the Equality Commission about the support given to employers and the potential conflict between those providing support to employers on equality issues and the fact that the Equality Commission would always reserve the right to take legal action against an employer even though it may have accepted and understood the employers need for a particular course of

action. This approach has created tensions in the past and needs to be further clarified.

The rest of this response is set out on the basis of the main areas of the discussion paper.

### Purpose and Principles

The Association believes that a stronger reference to the business advantages of the promotion of equality of opportunity and the eradication of unfair discrimination should be included at an earlier point in the purpose and principles section.

Whilst recognising in the political imperatives of the legislation, to set these out at the start may not be helpful in the implementation of the new legislation and indeed some of the references to the Belfast Agreement may in themselves become post-dated after a few years.

The document also makes reference to the creation of hierarchies of inequalities and this needs to be further clarified, as the document appears to suggest that a hierarchy of inequality will exist. It would be the Association's view should hierarchies should not exist and that discrimination on the range of grounds that exist in section 75 should all have equal status.

### Grounds

The extension of the grounds of discrimination is to be welcomed although in response to the particular question about the amendment of the existing definition to exclude all political opinions and support the use of violence whether or not these are connected with the affairs of Northern Ireland is to be welcomed. Those who support the use of violence undermine the right of access to employment, training and services and support the breaches of fundamental human rights and should in the Association's view not receive protection under legislation which such organisations/people would deny others access to. However any amendment to the legislation should recognise that people do change and that previous support to the use of violence should not be a grounds of discrimination.

The Association would welcome the extension of the legislation to marital and family status and dependants which should be defined to include cohabiting couples and all dependants. A direct consequence is however that there may be implications for current pension arrangements.

The Association will contend a broader definition is more inclusive particularly with those with diverse sexual orientation.

The other areas which the Association believes need to be included in the legislation are marital and family status, pregnancy and maternity, gender identity and genetic pre-disposition.

The Association also believes that there needs to be a code of practice dealing with the rights of volunteers, however this code of practice should not provide volunteers

with the same level of rights as employees given their different status. However, it is recognised that volunteers should be protected from elements of discrimination particularly on the grounds of the work they undertake and the contribution they make to organisations.

The Association does not believe that the following areas should be included in the legislation:

1. Past convictions
2. Victims
3. Social and economic status
4. Language

The reasons for this are that language should not be included as within the healthcare environment it is essential for patient and client safety that all employees of the Health and Personal, Social Services are required to have an appropriate level of English to be both spoken and written.

In respect of convictions again it is important that convictions are taken account of in a reasonable way to enable the health and social services organisations to protect patients and clients.

Finally, in relation to genetic pre-disposition it would be unethical to permit anyone to discriminate on the basis of their genetic pre-disposition.

The Association does not believe that there is any evidence to suggest that the existing provisions on equal pay should be extended to other grounds within the Bill.

In relation to employment concepts it would be helpful if the new Bill would define employment, self-employment and occupation. We also believe that the Bill should be extended to some of those organisations who have a membership of workers or employers. We also believe as an underlying principle that the legislation should apply to all the various categories which are included within section 75.

### Definitions of Discrimination

The Association would have a preference for the maintenance of the existing definition as contained in the EU Directives and transferred into Northern Ireland legislation allowing the reasonable adjustment duty to remain within the disability legislation. Again the Association believes that these definitions should apply to all the grounds of discrimination to be included in the Bill.

In relation to harassment, equally we believe the definition of harassment as set out under the current European Directives should apply and that we will also contend that a comparator is required if someone believes they have been treated differently.

## Exceptions

The Association would contend that all existing exceptions in Northern Ireland legislation should be removed and replaced with genuine occupational requirements/general service requirements, with the exception of the responsibility of the Westminster Parliament. However, if a list of exceptions is to be raised they should only be on the basis of physiology authenticity, embarrassment/decency/physical contact, affirmative action, national security.

## Addressing under-representation in employment

The Association does believe that the Bill should set out a clear framework to enable employers to understand how they can address under-representation in employment in a fair way and that the following areas should be covered in such provisions:

- Gender
- Race
- Disability
- Perceived religious affiliation

The reasons for excluding the other areas at this time is that the ability to capture relevant and up to date information to enable substantive analysis and assessment is difficult and consequently there may not be clarity as to how to address the problem.

In dealing with under-representation it is the Association's clear view that there should be a preference given by the enforcing and regulatory agencies to use non-legislative approaches rather than more formal and adversarial means.

The Association also believes that the affirmative/positive action measures as they relate to the different grounds should be harmonised. This is to ensure that progress can be made on a broad front across all the various areas where under-representation occurs in the organisations. It should also be possible to have a wide range of voluntary affirmative action measures to enable a greater degree of innovation in dealing with under-representation.

## Equality Commission for Northern Ireland Functions and Powers

The Association believes that the Equality Commission for Northern Ireland has a powerful and significant role to play in the promotion of equality and anti-discrimination legislation. The general duties of the Equality Commission should apply across all the grounds included in the Single Equality Bill and the additional duties faced for race, fair employment, sex and disability discrimination should also be applied across all the grounds. This however, has to be balanced by a pragmatic approach in recognising the difficulties, for example in monitoring sexual orientation and all political opinion in its most general sense.

The codes of practice which the Equality Commission will develop in the future have to recognise the difficulties which arise from the application of such codes and they need to reflect clear and pragmatic arrangements.

The codes of practice should also be written and devised in such a way that they allow for changes in human resource practice and consequently the codes of practice themselves should be a subject of regular updating, for example the code of practice on recruitment and selection is now in need of significant updating.

The association believes that the whole arrangements in relation to the functions and powers of the Equality Commission should be standardised as far as possible.

In regard to the question of no fault concept, this should be extended to all grounds to ensure consistency and to facilitate the Commission's ability to understand the issues which affect the provision of employment opportunities and service provisions.

It would be the Association's view that the more flexible disability model which was set out in the documentation would be more preferable and would help bring a more rapid end to some discriminatory practices without the resorting to formal investigations.

### Tribunals and Courts

In relation to the remit of tribunals and courts, to hear complaints it would be the associations view that an employment tribunal should be established possibly with a fair employment addition, a County Court would continue to hear GFS complaints. This is set out at option D.

The Association would also welcome the establishment of a separate employment appeal tribunal to hear appeals against employment decisions.

It is important that the appeal process is open to both applicant and respondents and efforts should be made to take the tribunals back to the less legal format as was originally envisaged. The current arrangements are unsatisfactory in that they have become more adversarial than originally intended and involves significant legal costs.

The Association would have a strong view that legal aid should not be available for employment issues. This would encourage a higher level of vexatious applications which have little or no substance.

The Association would also have a view that the following should be allowed to engage it in support of or on behalf of a complainant:

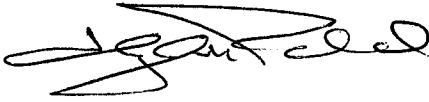
- Trade Unions
- Citizens Advice Bureau
- Voluntary Umbrella Organisations e.g., NICGA, Disability Action, NICAM

Finally the association would welcome the introduction of alternative dispute resolution procedures as an important step to reduce overall costs in dealing with tribunal applications.

The Association as stated earlier has welcomed the opportunity to comment on the proposals and would be happy to meet with the appropriate officers from the Office of

the First Minister and Deputy First Minister to provide further clarification to its response.

Yours sincerely

A handwritten signature in black ink, appearing to read 'H McPoland', written in a cursive style.

H McPoland

Chair

Association Healthcare Human Resource Managers (NI Branch)