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David McGowan

21/12/2004 16:57

To: Adrian Mackin/OFMDFM/DFP@DFP
Subject: CoSO SEB response attached...

Adrian

Can you log and copy this response to the SEB consultation document.

Many thanks

David

----- Forwarded by David McGowan/OFMDFM/DFP on 21/12/2004 16:31 -----



"coso"
<james@coso.org.uk>

21/12/2004 12:21

To: "David McGowan" <David.McGowan@ofmdfmi.gov.uk>
cc:
Subject: CoSO SEB response attached...

David,

I appologise for the delay in this.

I have attached a copy of the response received from the focus groups which were held as part of our own internal consultation processes.

As I stated at the meeting to which sectoral groups were invited that CoSO as a completely voluntary organisation has no resources or staff and finds the orgainisation of these processes a great deal of work as a result. All other sectoral organisations and umbrella groups have staff in place which enables them to fully engage in the process to carry out these consultations.

We are however aware that all consultation processes are important and that CoSO is expected by government agencies to respond, amidst the amount of work which we already have responisiblity for. Yet we find this a very difficult process. We are however grateful to OFMDFM for providing us with the funds to carry out this consultation, however, as stated earlier, we have no members of staff and therefore find this a difficult and lengthy process to engage in as a result.

I have forwarded copies of the invoices received.

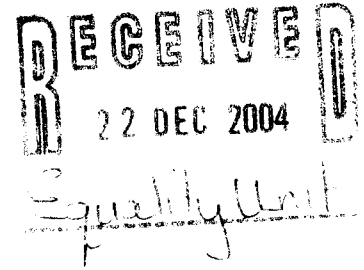
Appologies again and I hope you understand our predicament,

James.

James Knox
Convenor

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SEB.doc

Report back from CoSO Consultation Meetings on the Single Equality Bill Consultation

**Focus Groups held on, 28thOctober and 1stNovember 2004
Facilitated by Barbary Cook, Artis Consulting**

Report compiled by Barbary Cook, Artis Consulting, 9th November 2004

Chapters in the main consultation document

Grounds – existing and possible new grounds

Question:

The groups were asked whether existing grounds in other legislation should be included in the Single Equality Bill (SEB) and if there are new grounds that should be included. The focus groups commented on the inclusion under race of colour and nationality; the inclusion of 'perceived disability'; the inclusion of all the S. 75 grounds, for example age, marital status. A further list was also presented of grounds which have been discussed in terms of the SEB, for example, socio-economic status, past convictions, victims, genetic disposition, trans issues (gender reassignment, gender identity) and other status. The focus group was also asked if there was any other ground that LGBT people would be interested in seeing included.

Response:

- There was a general agreement that all the S. 75 grounds should be included.
- There were differing opinions as to the inclusion of further grounds:
 - Some agreed that it was important to 'spread it wide', and that all the later grounds (socio-economic status, past convictions, victims, genetic disposition, trans issues (gender reassignment, gender identity) and other status) should be included. One person also suggested the inclusion of trade union membership.
 - However there was a concern that the list would become unworkable. The grounds should stop at the S. 75 grounds and with a 5 year review built into the legislation, more grounds could be added at a later stage if necessary.
 - One person expressed a particular concern that genetic disposition be included. This could have an affect on gay people in the future, for example the debate around the 'gay gene' and the potential choice not to have a gay child.

Scope – extent of protection

Question:

The groups were asked if they agreed that the scope of the Single Equality Bill should include a wide definition of 'employment relationship'; that the SEB should cover volunteers; that there should be a full extension to goods, facilities and services for all grounds, including covering small premises & private clubs; that the scope should be extended to include the performance of public functions by the public sector and that it should include education and the provision of social security and healthcare.

Response:

- It was agreed that the scope of the SEB should include a wide definition of 'employment relationship'.
- There was a strong opinion that volunteers should be included under scope.
- One person noted that people from Queer Space had attended a meeting at the Volunteer Development Agency who are taking a strong line that volunteers ought not to be included in the SEB because it would extend liability to too many small community organizations. However members of Queer Space had discussed the issue and thought that as long as it's reasonably applied then volunteers ought to be entitled to the same degree of protection as other employees. If people are working for the organization then they ought to be protected.
 - There were different opinions as to when this ought to apply.
 - "With regard to volunteers it's important to take into account the size of the organization which is relying upon volunteers. If someone feels they have been discriminated against then the remedies should be proportionate, for example a reasonable accommodation might be to fix the volunteer policy. For example if you had an organization like Oxfam they should be expected to do monitoring because they have the resources to be able to

- do that but QueerSpace wouldn't.”
- “With regard to monitoring, the size of the organization should be taken into account, particularly if it's a community organization.”
- However, there were people who thought that the size of the organization/company wasn't relevant, unlike in FETO. They agreed that all areas of LGBT life needed to be covered. For example, the provision of public services, that it is unlawful to deny them to LGBT people.
- It was noted that CoSO remains in support of the extension of protection on the basis of sexual orientation to goods, facilities and services.
- All agreed to extend the scope to cover education. “If people are discriminated against in education, why should children have to deal with that?” Issues such as homophobic bullying are particularly relevant for LGBT people.

Definitions of discrimination – direct and indirect, victimisation and harassment

Direct discrimination

Question:

The focus group was presented with the following standard definition of direct discrimination: ‘direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation, on any of the grounds.’ The group then discussed whether or not they were satisfied with this definition and whether or not they would prefer that a comparator be required or whether it should be left as a question of ‘proof, not necessity’.

Response:

- It was agreed that it is better to focus on the reason for discrimination and then there is no need for the comparator.

Harassment

Question:

The groups were presented with the following standard definition of harassment: ‘Harassment shall be deemed to be a form of discrimination...when unwanted conduct related to any of the grounds referred to in Article 1 takes place with the purpose or effect of violating the dignity of a person *and* of creating an intimidating, hostile, degrading, humiliating or offensive environment.’ They were asked if they would add anything to this definition and whether or not the standard should be ‘person *and* of creating...’ or ‘person *or* of creating...’.

Response:

- The group was happy with the definition as presented.
- It was agreed that the ‘and’ should be changed to ‘or’ within the definition. It was noted that this is already the definition inside the Employment Equality (Sexual Orientation) Regulations (NI) 2003. The group agreed that this would increase the number of people who might litigate under the SEB and they wanted to encourage that.
- One person said that with harassment the emphasis should be on the effect even if that effect is unintentional.

Indirect discrimination

Question:

The groups were presented with the following standard definition of indirect discrimination: ‘Indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless:

(i) that provision, criterion or practice is objectively justified by a *legitimate aim* and the means of achieving that aim are appropriate and necessary.’

The group considered whether there should be instead a “necessary aim” test in accordance with EU gender

employment equality law.

Response:

- It was agreed that there should be a 'necessary aim' test. The group recognized that indirect discrimination is about systematic discrimination, which is not necessarily intentional.
- It was noted that the necessary test would be particularly important in relation to faith based organizations and within education, for example where the issue of maintaining a Christian ethos tests is used as a way to avoid employing gay teachers.

Reasonable accommodation

Question:

The groups considered the example of reasonable accommodation in terms of disability legislation – 'employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer.' The group was asked whether or not this would be a useful concept and practice in relation to discrimination against LGBT people.

Response:

- The groups agreed that reasonable accommodation is a simpler mechanism to stop discrimination than using the indirect discrimination route. The groups agreed that they are in favour of proactive accommodation for the needs of LGBT people, rather than the current anti-discrimination penalty based system.
- It was agreed that reasonable accommodation should be extended to all grounds under the Bill.
 - Some people said there was a need to keep it proportionate to the size of the organization, with a further reference to Queer Space and their lack of resources.
 - Some people said that businesses are a different matter.
 - If organizations were resourced to make the improvements that would be great.
 - Perhaps if the organization has a paid worker then they should have to do it but if they only have volunteers then they shouldn't.
 - Don't want to stifle organizations which are starting up.

Exceptions – existing provisions and consideration for possible new grounds

Question:

The groups reviewed the following definition of a genuine occupational requirement: 'a difference of treatment which is based on a characteristic related to any of the grounds... shall not constitute discrimination where, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and *essential* occupational requirement, provided that the objective is legitimate and the requirement is proportionate.' The group discussed whether or not the essential test was sufficient and to whom the GOR should apply. The group also considered the general service requirement.

Response:

- The groups agreed that the essential test should be maintained.
- It was noted that there is a need for a tight definition so the list of exceptions doesn't get absurd but not so tight that it precludes diversity, with the aim that minority groups should find it easier to claim than majority groups.
- LGBT groups will find it necessary to use the General Service Requirement, in that they may wish to provide services to a particular group of people. It was agreed that this requirement should also have the essential test.
- One person noted that all educational institutions should be included; they shouldn't have a lower test.

Goods, facilities and services

Question:

The groups were asked if they agreed that the SEB should cover all goods, facilities and services, including public services and contracted out goods, facilities and services.

Response:

- It was agreed that the SEB should cover all goods, facilities and services for all grounds.
- This is important to LGBT people because,
 - “Goods, facilities and services affect people in so many different ways, if the SEB isn’t extended then it won’t be worth anything to lesbian, gay, bisexual and trans people.”

Addressing under-representation in employment

Question:

The groups were asked whether or not the FETO model of monitoring should be extended to cover all grounds and the scope extended to cover both employment and goods, facilities and services and whether or not the SEB should encourage S. 75 type models which might include equality impact assessment, mitigation and positive inclusive measures – which may be indirectly discriminatory in favour of previously disadvantaged groups – e.g. younger workers/recipients of services.

Response:

- All agreed that the FETO model should be expanded across all the grounds, specifically the monitoring systems.
- There should be monitoring on the basis of all the sexual orientation categories.
- People felt strongly that for LGBT people this needs to be anonymous to ensure people’s privacy. LGBT people will only begin to fill out the monitoring forms over time.
- It was noted that the presence of the check boxes may help the LGBT community internally to encourage people to fulfill monitoring.
- It was also noted that the statistics need to be useable. The monitoring is part of a diagnostic process; it’s supposed to let you know that something is wrong with the system. If it can be implemented along with qualitative, consultative measures as found in the statutory duty then that process of dialogue and reasonable accommodation might be more productive - as opposed to a penalty based system entrenched in the tribunals.
- Some one said that the monitoring is the only way to begin describing things as they actually are and shows that an organization/company expects to have gay employees.

- It was agreed that there is scope for positive action, for example in recruitment it’s essential, and if the police want to recruit more gay people they should place an advert in GCN.
- Gay people are so silent and invisible and need encouragement, so it’s a good idea to target specific groups of people in employment.
- It’s a question of how you can make employment and GFS protection more open to under-represented groups, for example public authorities holding meetings in a gay bar in order to consult with the community.

Equality Commission for Northern Ireland – functions and powers

Question:

The groups were asked if the ECNI’s general duties should be harmonised; whether the application of the ‘goods relations’ duty should be extended across all SEB grounds and what form of assistance should be provided to groups representing particular constituencies.

Response:

- It was agreed that the general duties of the ECNI should be harmonized.
- It was agreed that the application of the good relations duty should cover all the grounds for

- example extending the hate crimes legislation, which currently only applies to race and religion.
- It was noted by the groups that legal assistance is incredibly important for LGBT people. If the ECNI is not adequately resourced so that they can fulfill monitoring services and legal services for LGBT people, then the SEB will be ineffective.

Tribunals and courts

Question:

The groups were asked whether or not a Single Equality Tribunal should be created which would govern all equality issues, including goods, facilities and services; whether there should be legal aid provided; whether the ECNI, TUs and NGOs should be able to act in own name *on behalf of* named complainants and also act in own name without a named complainant; whether the type of remedies should be extended beyond compensation to the victim to proactive remedies to require changes to policies and practices.

Response:

- It was noted that CoSO has consistently argued that a Single Equality Tribunal would be especially important for multi-identity issues.
- All strongly agreed with public interest litigation (ECNI, TUs and NGOs should be able to act in own name *on behalf of* named complainants and also act in own name without a named complainant) as it will help LGBT people to come forward.
- It was agreed that the process must be well funded because individual and public interest litigation is so expensive.
- Remedies, positive remedies as ordered by the Tribunal would be a good idea, but again they need to be proportionate.

Alternative Dispute Resolution

Question:

The groups were asked if they thought that the development of an ADR process would be helpful to LGBT people.

Response:

- Some noted that any system which prevented the discrimination from occurring again would be helpful to LGBT people.