

EMPLOYMENT LAWYERS GROUP  
NORTHERN IRELAND

RECEIVED  
26 NOV 2004

Chairperson: Adam T G Brett  
Arnott House  
1 Bridge Street  
Belfast BT1

88

Tel: 02890 230426  
Fax: 02890 246396

25 November, 2004

Our Ref: ATGB/CR/

The Single Equality Bill Team  
Office of the First Minister and Deputy First Minister  
Room E3.18  
FREEPOST NAT 17679  
Belfast BT4 3BR

Dear Sirs

Re: A Single Equality Bill

I enclose herewith Response for your attention.

Yours sincerely

Adam T G Brett



**Name: Adam Brett**

**Title: Chairman Employment Lawyers Group in Northern Ireland**

**Organisation: L'Estrange & Brett**

**Address: 12-16 Bridge Street  
Belfast**

**Postcode: BT1 1LS**

**Tel No: 02890 230426**

**Fax No: 02890 246396**

**e-mail: [adambrett@lestrangeandbrett.com](mailto:adambrett@lestrangeandbrett.com)**

1. I am responding on behalf of the Employment Lawyers Group in Northern Ireland.
2. The Employment Lawyers Group is an informal association comprising just under 100 lawyers who practice in employment law in Northern Ireland. The membership includes both barristers and solicitors, who represent applicants and employers, those from organisations such as the Equality Commission for Northern Ireland and the Engineering Employers Federation. The common denominator is that nearly all are qualified/qualifying lawyers with an interest in employment law.

Our membership includes a wide range of views across the spectrum and we consider it more appropriate for individuals/their organisations to respond on the wider provisions. This reply is therefore confined to expressing the views of the Employment Lawyers Group Northern Ireland Committee on some of the technical/practical issues.

### 3.11 Equal Pay

Without expressing a specific view on whether the existing provisions on equal pay (currently restricted to men and women) should be extended to another grounds or ground in the bill we would suggest firstly that this could create some difficulties of perception/misunderstanding if not being done in the rest of the UK and secondly that equal pay legislation and claims have proved particularly complex and difficult, and that an extension to other grounds could have a significantly inhibiting effect on employers, and could lead to unexpected outcomes – not least in the public sector.

- 4.3 This question asks if the Bill should define “employment”, “self employment” and “occupation”. The descriptions/boundaries between these categories, with the different usage that have built up in existing EU, UK and Northern Ireland specific legislation continue to develop, not least through decisions of the European Court. We consider that introducing specific statutory definitions may create a subtly different and static position in Northern Ireland which could lead to conflict with European Court decisions and with general practice in the rest of the United Kingdom.

#### Definitions of Discrimination

5. The Employment Lawyers Group Committee considers that it would be preferable to maintain existing definitions, rather than to go for specific options as set out, which would lead to a divergence with UK, and possibly European Court case law.
- 5.4 The Committee considers that extending the concept of “reasonable adjustment” to grounds other than disability would introduce a new concept and a very substantial level of uncertainty for employers and employees alike. In general terms in relation to this and other parts of the consultation paper the Committee considers that it is undesirable save where clearly necessary to have different duties/definitions for different types of discrimination. Therefore the Committee would not favour an extension of reasonable adjustment provisions to only one ground such as sex, race, marital status or religion and believes that it should either apply to all grounds, or to no grounds other than disability.
- 5.9 If there is to be a standardised definition of indirect discrimination then it should relate to all grounds to be included in the bill.
10. Tribunals and Courts  
remit of Tribunals and Courts to hear complaints.

The ELG Committee prefers none of the options (a) – (d), but rather an option (e) outlined below.

### Employment/Discrimination Law

Legal practitioners feel very strongly that the current division between the Fair Employment Tribunal and the Industrial Tribunal leads to a very substantial and unnecessary duplication of paperwork. For example there are many claims which contain elements of possible religious/political discrimination together with industrial elements such as unfair dismissal, failure to make payments etc. The current system requires duplicated paperwork such as application forms, appearances, questionnaires and not infrequently leads to separate hearings arising out of the same sequence of events. This is both inherently undesirable for legal reasons where the same set of facts are considered twice by different Tribunals and also extremely wasteful of time and resources. The Group strongly urges that there should be a unified Tribunal dealing with all discrimination and employment issues, contained within one jurisdiction, so that Tribunals would not be restricted by jurisdiction issues – as provided in option (b). If desired, it would be possible through the administration of panels for discrimination/industrial disputes to ensure balance on panels without retaining separate jurisdictions.

In addition the ELG (many of whose members deal in practice with complaints relating to goods facilities and services as well) considers that these should also be dealt with by a unified Tribunal and not by the County Court. The experience of most of our members has been that County Court Judges and Deputies do not in the main have many dealings with discrimination law and in particular with the definitions and concepts such as comparators, reasonable adjustments etc. When the relatively unusual GFS cases are heard in the County Court there is often a

need for far greater exposition of the legal position and perhaps (through no fault of the judges) a somewhat uneven approach.

#### Option (e)

Establish a new system of Employment [Equality] Tribunals dealing with discrimination matters in employment, all employment disputes currently dealt with by industrial tribunals and GFS complaints currently dealt with by the County Courts.

#### 10.4 – Appeals

The Committee tends to favour option (c), involving the establishment of an Equality Appeals Tribunal to hear appeals against Tribunal decisions in both employment and GFS. We would suggest that the President of the Employment Appeals Tribunal (we suspect a part-time post) might be drawn from among the High Court Judges.

The Committee would be strongly against options (d) and (e) whereby County Courts would hear appeals from an employment Tribunal. This is no reflection of the quality of the County Court bench, but a reflection of the fact that in the great majority of their work County Court Judges do not come across the legal concepts and definitions commonly used in Industrial and Fair Employment Tribunals and particularly discrimination.

#### Other Comments

The various Discrimination Acts/Orders provide for the use of Questionnaires, in a statutory format laid down by regulations, for each of the different categories of discrimination. The ELG considers that the current format used, with variations according to the different type of discrimination, is sometimes difficult for applicants to understand, and complicated in the organisation of replies. Moreover, in many cases an Applicant is uncertain as to whether or not he or she may have been discriminated against

upon only one or sometimes more than one unlawful and discriminatory ground. At the moment in order to comply strictly with the legislation an applicant must complete a separate Questionnaire for each possible ground, and to comply with the legislation the Respondent must complete a separate Reply for each ground. In practice, there is a substantial degree of overlap between the replies and the current process is time consuming, expensive, wasteful and often confusing. We consider it would be a real benefit to applicants and employers alike as well as to their representatives if an optional discrimination Questionnaire and Reply could be developed giving the Applicant the opportunity within one questionnaire to raise questions about one or more unlawful categories of discrimination. This could be in addition to rather than instead of questionnaires. If considered helpful the ELG would be happy to discuss this in more detail and assist in developing a draft discrimination questionnaire - we would suggest jointly with the Equality Commission.

**A. Brett**

**for the Employment Lawyers Group in Northern Ireland**

**26 November 2004**