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Single Equality Bill
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cc Ivan Millen

David,

SINGLE EQUALITY BILL

As we agreed I attach the NIO's comments in response to the Consultation paper on the Single Equality Bill.

Chapter 3 Para 20 Marital or family status/dependants

As a general overarching principle taken from an Equal Opportunities perspective, the Single Equality Bill should be as inclusive as possible. Option (a) therefore would seem to be most appropriate. If the range of dependants does not cover all partners and all dependants then the possibility of discrimination remains.

The Principal Civil Service Pension Scheme was amended as of 1 October 2002. Existing members of staff at 30 September 2002 were given the option of remaining in the Classic scheme or moving to the premium scheme, which all new entrants join.

The premium scheme states, in relation to partners:

“If neither you nor your partner is married to anyone else, we may pay your partner a pension. We calculate this in the same way as the pension for a husband or wife”.

The premium scheme states, in relation to dependants:

“We will pay a pension to your children (and to any other children who rely on you financially) when you die. We pay children’s pensions to children up to the age of 18 (or up to 26 if they are in full-time education).”

Chapter 3 Paras 34-36 Equal Pay

Given that other legislation impacts upon pay including the Race Relations Act and Disability Discrimination Act, it makes sense to extend the existing provisions on equal pay beyond gender to other grounds within the SEB therefore option (a) would be most appropriate.

Bill is because I provide funding to voluntary organisations within the Criminal Justice System which rely on volunteers to deliver some (or all) of their services.

Chapter 4 Scope Volunteers

The discussion paper makes reference to volunteers and whether or not they should be included in the definition of employment. Concerns have been expressed about how including volunteers in this definition could create problems regarding insurance, casual volunteers and increased bureaucracy which could impact on the recruitment of volunteers and may deter individuals from giving time.

No doubt the Volunteer Development Agency and other voluntary organisations will also respond to this discussion paper. Although it is important for volunteers to have equality of opportunity, aligning volunteers within the employment category of this Bill could have a detrimental effect on volunteering that would lead to difficulties in service delivery and additional cost to both the Voluntary Sector and Government.

Chapter 7 Goods, Facilities and Services

The extent to which Government contracts can be linked to the carrying out of policies by the contractor that address under-representation in employment will be determined in light of current EU Public Procurement regulation and recent case law.

Firstly EU Procurement legislation must be complied with in any major procurement which is subject to EU regulation. The foremost consideration of non-discrimination against any other member state wither directly or indirectly must be observed along with the other principles of transparency, Clarity, integrity, etc. In any evaluation of tenders received the evaluation criteria used must relate to the nature of the contract and permit objective evaluation of tenders. There are two evaluation methods specified under EU Public Procurement Regulation that of lowest cost or most economically advantageous. Where most economically advantageous is the evaluation method all the criteria which will be used to evaluate the tenders received should be set out in descending order of importance. No other criteria may be used except where tow or more tenders have been assessed as equivalent against the specified criteria. This is in line with case law resulting from the judgment of the ECJ in Case C-255/98, Commission of the European Communities v French Republic (the Nord-pas-de-calais case). In this case the Court of Justice held that Contracting authorities can base the award of a contract on a condition related to the combating of unemployment, provided that this condition was in line with all fundamental principles of Community Law.

The European Commission has subsequently interpreted this case as permitting the use of such criteria but only where the bids are determined as equivalent in all other respects. The current NICS Unemployed Pilot Scheme referred to is using this principle as a basis to operate the scheme.

There already exists a "Special Contract Arrangements" (SCA) scheme administered by the Department of Employment and Learning which is aimed at assisting employers of disabled people to compete for Government

Contracts. This provision is available for the provision of goods and services where the contract value would be below the financial threshold where the European Procurement regulations would apply.

The extent to which social considerations can be taken into account will vary due to the nature and type of contract involved. It is generally felt that contracts for works and services should be more suitable in this respect as it is possible to specify how the contract should be performed which could include requirements that could assist in achieving social objectives. However tenderers cannot be asked about their social policies or indeed be asked to employ a certain number or percentage of local workers.

In summary there is potential to incorporate social objectives in public sector contracts but this would need careful consideration to ensure that the principles of non-discrimination, openness and transparency are maintained.

The Department of Personnel Central Procurement Directorate has compiled a Guidance Note 03/04 on Social Considerations in Public Procurement which explores the range of possibilities in this area comprehensively.

Chapter 8 Addressing under-representation in employment

As an overarching principle all grounds should be included. However, our department has found difficulty collecting data on other Section 75 categories such as sexual orientation and staff have raised the issue of their right to privacy. It would be even more difficult for small employers to collect sensitive data. Therefore the key grounds to be included in addressing under-representation would be gender, ethnicity and disability.

I think there is a difficulty in extending arrangements to small employers. Even a larger employer can see large percentage changes in statistics even with a slight change in leavers or joiners. If you have 10 staff, 2 of whom are disabled and one leaves, your percentage drops from 20% to 10%. Yet, many

large employers will not have a workforce with 10% of staff having declared a disability.

It would make sense to harmonize the affirmative/positive action exceptions, but expanding the range of voluntary actions may have consequences that lead to legal challenge and this would need to be taken into account. Allowing employers to devise appropriate strategies to address under-representation, should be backed up with codes of practice, including guidance on monitoring and reviewing working practices.

The Government should continue to encourage employers to adopt the same measures as it does to address under-representation in respect of those in receipt of contracts and grants, subject to the size of the organisation, as stated above.

Chapter 10 Tribunals and Courts

I think the SEB should allow for a representative action which would afford an individual support to enable them to put forward their case and a class/group actions would provide greater efficiency rather than having the same complaint raised by a number of individuals. The representative would have to be identified at the outset whether legal, trade union official or a colleague. I think it would be extremely difficult to take a case forward in respect of unnamed individuals.

Reinstatement or re-engagement should be available in cases involving discrimination although care needs to be taken on how this is done. Do they get reinstated to a different part of the organisation? If they are reinstated to the same part, what mechanisms are in place to ensure there is no reoccurrence? Should the person guilty of discrimination be forced to move to a different part of the organisation? It makes sense that it is conditional on the agreement of the individual.

There should be harmonisation in the remedies available to Industrial Tribunals with those available to FET.

Where there is unintentional indirect discrimination I think it would be unfair to award compensation on all grounds as this could prove costly to an employer who has not set out to cause discrimination, and could have an impact on the viability of the business.

Option (d) would seem most appropriate.

Chapter 11 Alternative Dispute Resolution

The arbitration arrangements should be extended to cover the other grounds to be covered by the SEB. There could be an issue over time limits and while I do not think individuals should be able to bring a claim years later to a tribunal, where the ADR has been adopted initially, this would be a legitimate reason for extending the time limit for lodging a complaint to a tribunal.

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