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Women's Support Network

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23 NOV 2004
Equality Unit

Downtown Women's Building
109 - 113 Royal Avenue
Belfast
BT1 1FF

Tel: +44 (0) 28 9023 6923
+44 (0) 28 9024 4397
Fax: +44 (0) 28 9031 0307

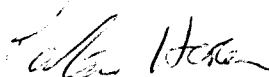
Email: info@womenssupportnetwork.org
Website: www.womenssupportnetwork.org

19 November 2004

Dear Sir/Madam

Please find enclosed the response from the Women's Support Network to the OFMDFM Consultation Paper 'A Single Equality Bill for Northern Ireland'.

Yours faithfully



Patricia Haren
Director



Office of the
**First Minister and
Deputy First Minister**
www.ofmdfms.gov.uk

Inland Revenue Charity No. XR40415



**EU Programme
for Peace and Reconciliation**

RESPONSE TO OFMDFM CONSULTATION PAPER 'A SINGLE EQUALITY BILL FOR NORTHERN IRELAND'

WOMEN'S SUPPORT NETWORK

NOVEMBER 2004

INTRODUCTION

The Women's Support Network (WSN), established in 1989, is an infrastructural umbrella organisation representing the interests of up to 40 groups of women in the Greater Belfast Area, including community-based women's centres, women's projects and women's infrastructure groups. The aim of the WSN is to achieve social, political and economic justice through the promotion of the autonomous organisation of women.

The WSN welcomes the opportunity to respond to the OFMDFM Consultation Paper, A Single Equality Bill for Northern Ireland. We believe that a Single Equality Act (SEA) has the potential not only to harmonise equality law but to extend the scope of equality legislation. We believe that the existence of a variety of legislation aimed at redressing inequalities in a wide range of areas such as sex, race, sexual orientation, marital status, religious belief, political opinion and disability, has led to confusion and unnecessary complexity. It is the view of the WSN that a single law can address the interests of everyone and will provide a framework to achieve equality for all. We would add, however, that in order to achieve a true equality that recognises the multiple disadvantages suffered by many within our society, much more than a commitment to prohibit discrimination and promote equality of opportunity is necessary. We believe that there is a continuum that ranges from equality of access to equality of condition, as the following illustrates:

- equality of access
- equality of participation
- equality of outcome
- equality of condition.

We believe that the purpose of legislation must be to achieve an equality of outcome so that we may eventually arrive at equality of condition. For example, barriers that prevent women from participation in work and public life, such as inflexible working patterns, lack of childcare and the tax-benefit system, must be examined with the aim of achieving not only equality of opportunity but an equality of outcome. In itself, anti-discrimination legislation will not result equality for women. For this, affirmative/positive action will be necessary. The WSN believes that quotas should be considered as a means to ensure full equality.

CHAPTER 2: PURPOSE AND PRINCIPLES

We welcome the reference to the values of human rights and equality as enshrined in the Belfast Agreement and the commitment to build on existing legislation to promote equality of opportunity ‘for the whole community’. As a women’s organisation we are acutely aware of the under-representation of women in public life and the consequences this has in terms of the development of policy that is sensitive to the particular needs of women. The Good Friday commitment to ensure the full participation of women in public life remains a paper commitment that has done little to alter the gender deficit in public life. It is our belief that positive measures, such as quotas and affirmative action, will be necessary to alter this situation. The UK government is a signatory to the Convention for the Elimination of all Forms of Discrimination Against Women (CEDAW), which includes the following provision:

Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.¹

It is important that the SEA complies with international law, such as CEDAW, the European Convention on Human Rights, the United Nations Convention on the Rights of the Child and other international obligations. We are concerned to ensure that there will not be a ‘hierarchy of inequalities’. There must be a commitment to best standards in every respect. Women, for example, have multiple identities, in terms of age, ethnicity, sexual orientation, social class, etc. and we believe that a robust promotion of equality can be a positive influence within Northern Irish society.

CHAPTER 3: GROUNDS

The WSN, as an organisation representing the interests of women living in some of the most disadvantaged communities in the Great Belfast Area, is concerned to ensure that the various and diverse interests of women are fully represented in the extension of grounds as contained within the SEA. There are some issues, for example, political opinion, that we do not feel is within our remit.

Racial grounds

The WSN welcomes the updating of regulations and their extension to cover new grounds, such as colour and nationality, including Irish travellers. We are however concerned that there is no recognition of the need to protect non-nationals from discrimination. As NICVA has stated, in referring to asylum seekers, migrant workers and refugees, ‘they represent some of the most vulnerable members of society, illustrated

¹ CEDAW, article 4-

by the high incidence of recent racist attacks and the imprisonment of asylum seekers who have committed no crime.’² Women from many ethnic communities are members of the WSN and we would urge a re-consideration of additional grounds to include non-nationals.

Extension of Goods, Facilities and Services

In our submission to the initial consultation on a SEA we stated that ‘Anti-discrimination legislation should be extended to the provision of goods, facilities and services to all designated groups. The definition of goods, facilities and services should be as broad as possible.’³ We are most concerned that there is still only ‘consideration’ being given to including age within provisions regarding GFS. We believe it is vital, both for reasons of natural justice and to demonstrate the commitment of society as a whole to ensure that all individuals are treated with respect, to include protection with regards to GFS to transgendered groups and lesbians and gays. Such an omission within a SEA could imply tolerance of homophobic views, making it even more difficult to challenge homophobic behaviour. Protection from all forms of discriminatory treatment must be a fundamental principle within the SEA.

Marital or family status/dependents

A number of suggested additional grounds have particular significance to women and it these that we concentrate upon. We would support the inclusion of ‘marital and family status’ taking this, as the initial consultation suggested, to include persons who are ‘married, single, cohabiting and with dependents’ including both opposite and same-sex couples. We believe that this will provide a greater degree of security to many people, particularly cohabiting heterosexual couples and same-sex couples, in terms of entitlements to pensions and other benefits and in terms of their treatment by service providers during times of emotional stress, for example as ‘next of kin’ in circumstances of hospitalisation or death.

Pregnancy and maternity

The issue of pregnancy and maternity continues to be one of the chief sources of discrimination against women, as is evidenced by the numbers of cases taken to employment tribunals. We support the recommendation of the former EOCNI, reiterated by the Equality Commission, that ‘for the avoidance of doubt’, direct discrimination on grounds of pregnancy is also direct discrimination on grounds of sex.⁴

Socio-economic status

Our concern to represent the interests of views of our members leads us to have concern with the failure to extend protection to disadvantaged socio-economic groups. We

² NICVA Discussion paper, *A Single Equality Bill for Northern Ireland*, p.3

³ WSN, *Submission in Response to the Initial Consultation by the Office of the First Minister and Deputy First Minister on a Single Equality Bill for Northern Ireland*, 2001, p.3

⁴ ECNI, *Working Draft Response to OFMDFM Consultation Paper, ‘A Single Equality Bill for Northern Ireland’*, October 2004, p.12.

support the argument expressed by NICVA that ‘unified equality legislation should be as inclusive as possible and promote full and effective equality.’⁵

Other status

The WSN, mindful of the possibility of the emergence of other groups requiring protection against discrimination, supports the inclusion of an ‘other status’ ground in the SEA. This could also be used to incorporate future European Equality Directives into our domestic legal system.

Equal Pay

As an organisation representing women from a wide range of backgrounds, the WSN has the lived reality of our members’ lives as evidence that the current sex discrimination and equal pay legislation has failed to tackle the problem of discrimination and of low and unequal pay for women. Women still earn on average only 81% of male full-time earnings and women workers remain disproportionately concentrated in low-waged, overwhelmingly female, areas of the economy. The WSN supports the recommendation of the Equal Pay Taskforce (2001) that pay audits should be put on a statutory footing and we would argue that this must be included within the SEA.

CHAPTER FOUR: SCOPE

The WSN strongly believes that structural patterns of discrimination can only be challenged by means of an integrated approach to challenging prejudice and inequality. A SEA must be comprehensive and clear in its objectives. It is therefore imperative that the scope of the SEA should be the same for all of the equality grounds and this extension must be effective in all fields – employment, education, training, access to and supply of goods, facilities and services – so that all the different protected areas are harmonised and any potential for the development of hierarchies is removed.

Employment, self-employment, occupation

The WSN, as an organisation that represents the interests of user groups, women in employment within the women’s NGO sector and volunteers within the sector, is aware of the changing nature of employment relationships and of the need to include the interests of as many as possible within that relationship. We therefore support the use of the term ‘employment relationship’ as the basis of any new definition

Volunteers

Volunteers are an essential element in many organisations. They provide important services and often use the experience of volunteering to increase their employment potential. The WSN supports the inclusion of all volunteers within the scope of a SEA. We do not believe that a distinction between volunteers should be made. Any discrimination is unacceptable, regardless of the particular status of the volunteer.

⁵ NICVA Discussion Paper, *A Single Equality Bill for Northern Ireland*, p.3

Vocational guidance and vocational training, including practical work experience

Vocational training and work experience is often more difficult for women to access. The WSN believes that this area, which is strongly related to employment opportunities, should be covered by positive obligations to promote equality of opportunity and to consider positive action to remedy the under-representation of specific groups.

Social protection, including social security, healthcare and social advantages

The WSN believes that the scope of the SEA should include these issues across all of the equality grounds.

Education

The WSN believes that that all sectors of education should be brought within the scope of the SEA.

Private clubs/voluntary associations

The WSN supports the extension of the SEA to private clubs/voluntary associations.

CHAPTER 5: DEFINITIONS OF DISCRIMINATION

Direct discrimination

The WSN would welcome a broad definition of discrimination that seeks to be clear and workable, free from the current technical difficulties regarding proof and comparisons. We believe that it is essential that the SEA includes a definition of direct discrimination that will give maximum protection across all of the equality grounds. In particular, we would urge clarification that direct discrimination on grounds of pregnancy is also direct discrimination on grounds of sex.

The definition contained in option ©, 'direct discrimination shall be taken to occur when A has caused, causes or would cause disadvantage to B on the basis of any of the protected grounds' should be the basis for the definition of direct discrimination.

Indirect discrimination

The task of tackling deeply-rooted prejudices as well as changing attitudes is at the heart of a robust commitment to ending all forms of indirect discrimination, particularly against the most vulnerable groups in our society. The WSN supports a broad and workable definition of indirect discrimination that includes a 'necessary aim' standard

rather than ‘legitimate aim’ in its test for justification. We also welcome the proposal to apply the definition of indirect discrimination to disability.

Harassment

The WSN favours a clear definition of harassment in the SEA and we believe that any common definition should apply in relation to all areas covered by the SEA. In our submission to the initial consultation we stated that we welcomed a broad approach, with harassment relating to ‘unwanted conduct related to all the grounds covered by the SEA, which has the purpose or effect of violating the physical integrity or dignity of a person, or of creating an intimidating, hostile, degrading, humiliating or offensive environment.’ In addition, we called for the elaboration of physical integrity as including sexual and emotional abuse and neglect, as well as physical forms of abuse. We do not believe that comparisons should be necessary in relation to harassment.

Victimisation

If the SEA is to be effective as a tool in enforcing the rights of all groups to equality of treatment and in preventing all forms of discrimination, then there must be effective protection against victimisation. The WSN does not believe that there is a need for a comparison.

CHAPTER 6: EXCEPTIONS

In general, the WSN supports the view that the principle of equal treatment should be the basis of equality legislation and that therefore any exceptions should be severely limited to a genuine occupational requirement (GOR) that must be justified on an individual basis and not as a blanket exemption. The WSN is not in favour of the continuation of the ‘teacher’s exemption’ in relation to the recruitment of teachers. Any such exemption in this area must be based on a new GOR definition with specific reference to the individual post in question.

CHAPTER 7: GOODS, FACILITIES AND SERVICES

The WSN is firmly of the view that all the equality grounds contained in the SEA must be applicable to goods, facilities and services, which is where the majority of people most often encounter discrimination and prejudice. Age and sexual orientation, currently outside the scope of GFS must be included, alongside all other categories, for example, race, disability and gender. We do not believe that there should be a list of what would constitute GFS but would favour the proposal ©, namely, that there is a presumption that an activity constitutes provision of goods, facilities or services unless demonstrated otherwise.

There is some urgency in the need to include all equality grounds within the provision of GFS and the WSN would urge the immediate implementation of this equality measure.

We do not believe that there should be any distinction between functions carried out by public or private bodies; they should all come within the GFS provisions.

CHAPTER 8: ADDRESSING UNDER-REPRESENTATION IN EMPLOYMENT

The WSN believes that positive action must be at the centre of any equality framework. If the SEA is to be effective, then it will need to contain much more robust provision than currently exists, as for example in the duty of employers to make ‘reasonable adjustments’ for disability. The approach must be direct, placing positive obligations on employers to promote equality of opportunity and fair participation, backed up by effective enforcement mechanisms. We agree that gender under-representation within large areas of the economy is a critical issue but it cannot be tackled effectively without affirmative action that is directed at the structural barriers which prevent women from participating equally within the labour market. If employers sought to include more women in their workforce then a range of measures that would attract those who have both working life and family life responsibilities, including a willingness to consider the importance of life skills rather than formal qualifications, would have to be considered. Positive action aimed at ensuring equality of opportunity for all, particularly groups most vulnerable to discriminatory and unequal treatment, cannot be viewed in narrow terms as exceptions to the non-discrimination principle. Employers and service providers should not only be permitted to enact positive measures to include previously disadvantaged groups in employment and the receipt of services without discrimination action being taken, they should also be obliged to do so in situations where there is evidence of under-representation.

The WSN supports the argument expressed by the ECNI that there should be a ‘significantly expanded role for positive action in line with the permissive limits of the EU definition.’⁶ The WSN also supports the suggestion of the Commission that a consultative model be developed in relation both to employment and to the provision of goods, facilities and services, which would apply to the private sector also and which would consider mitigation of and alternatives to adverse impacts of employment policies.

CHAPTER 9: ECNI – FUNCTIONS AND POWERS

The WSN supports an Equality Commission which has its powers, functions and duties harmonised upwards across all the equality grounds. We therefore prefer option (b) on page 125. We also believe that there needs to be a greater level of funding to enable the ECNI to fulfil effectively its enhanced remit. In addition, the duty to promote ‘good relations’, currently restricted to religious belief, political opinion and racial group must be extended across all the equality grounds. There is urgent need for disability and sexual orientation to be included in the good relations duty.

⁶ ECNI, *Working Draft Response to OFMDFM Consultation Paper, ‘A Single Equality Bill for Northern Ireland’*, October 2004, p.38.

While the power to support complaints in discrimination cases is an important function of the ECNI, this is limited to strategic interventions in different equality areas. The WSN is of the belief that legal aid should be available to those unassisted by the ECNI seeking to take cases to employment tribunals.

Discriminatory advertisements should be unlawful across all of the equality grounds and in relation to all areas covered by the SEA.

CHAPTER 10: TRIBUNALS AND COURTS

The WSN supports a specialist tribunal which would have the power to deal with all equality cases, in both areas of employment and also the provision of goods, services and facilities. The development of greater expertise would assist in a more efficient hearing of cases. However, for this to be truly effective, legal aid must be available for applicants, particularly those from vulnerable groups, who are currently often prevented from seeking legal redress because of lack of support and fear of the costs involved.

The promotion of equality must be about more than the representation of individual interests. The present system, which requires individual application to courts and tribunals even in situations where it is obvious that a whole group of people are affected by a particular practice or law, runs counter to the duty to promote equality and eliminate discriminatory practices. There is no reason why class actions cannot be permitted and the WSN would urge that the SEA includes provision for this. We would also recommend that appropriate interest groups, such as trade unions, be permitted to bring actions under their own name as a method of challenging discrimination that affects large numbers of individuals. In this we support the proposal of ECNI that 'it should have standing to bring cases on behalf of named individuals and that this standing should also be granted to trade unions and other suitably qualified organisations.' Further, that in cases of systemic discrimination, such organisations should have standing to bring cases in their own name.⁷

Finally, we believe that more should be done in terms of possible remedies in cases of discrimination. The ultimate aim should be to change policies and practices, so compensation, while important, should not be the only remedy.

CHAPTER 11 – ALTERNATIVE DISPUTE RESOLUTION

The WSN would favour consideration of alternatives methods of resolving disputes, such as mediation, but with the proviso that the final decision on such an alternative lies with the complainant alone.

⁷ ECNI, *Working Draft Response to OFMDFM Consultation Paper, 'A Single Equality Bill for Northern Ireland'*, October 2004, pp.47-48.