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HCS/3/89

cc PUS (B & L)
Mr Brennan
Mr Stephens
Mr Chesterton
Mr Gilliland
Mr Pearson
Participants

DISCRIMINATION IN EMPLOYMENT

Note of a meeting held on 22 March 1985

Present: Mr Bloomfield, Dr Quigley, Dr Hayes, Mr Barry, Mr Fell, Mr Carvill,
Mr Hodges, Mr Mayne, Mr Merifield, Dr Harbison, Miss Elliott, Mr Wilson.

1. Participants had before them the Agenda annexed below. [Numbers in square brackets refer to relevant sections thereof.] Reference was also made to the report (22 November 1984) by Mr Hodges and Dr Harbison on their fact-finding trip to North America.

The existing situation

2. The background to the meeting was summarised [1]. As regards relevant data on the subject of equity of employment [2], it was noted that a great volume already existed, as a result of census data, PPRU studies, academic work, FEA reports etc. What was needed now was for this information to be systematised and marshalled into a readily useable form. Developments here were hampered to some extent by the fact that no single group within Government had overall responsibility for such a task, yet it was clear that a well-organised corpus of analytic material would be of immense tactical and strategic use in combatting the arguments put forward by intelligent and reasonably well-informed critics (cf Mr Eccles' comments on his recent trip to the USA about disinvestment). PPRU had, of course, a special interest, but the concept of equality of opportunity covered a wide area of disadvantage, and most Departments would have some input (eg DOE on housing, DENI on education, DHSS on social need, DED on employment, etc). It was also important to avoid over-burdening PPRU, which, after all, had numerous other tasks to progress, and a good argument could therefore be made for devoting additional resources to any new work in the equality of opportunity field.
3. It was noted that while enough information on the employment picture had now been gathered, there was still some way to go on information about those presenting themselves for employment in a given area or location - it would be relevant, for example, to see who did not get a job, and why. These "availability

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estimates" would be important in helping to prevent bald percentages being bandied about, and in bringing home the distinction between equality of opportunity and equality of outcome (cf Hodges and Harbison). PPRU was at present collating the results of DED's Labour Force Survey and working on Education Output Measures with DENI.

4. It was agreed that extra resources would need to be provided as required to ensure that a central lead was taken within Government, both to compile such a database and to read across experience from other relevant areas, eg GB developments on race relations (though it could well be that Northern Ireland was at best in line with, or even ahead of, developing theory and practice in GB) [4]. While bodies like SACHR had a clear role, Government itself would do well to lead development rather than appear to be driven by external pressures. This was especially important in view of the political relevance of the subject. There was a danger that a two-nation society (characterised by possession/non-possession of attributes such as skill, mobility, etc) was developing, and that this would overlay and reinforce the Catholic/Protestant division - some people might then infer a cause and effect situation. Being able to demonstrate equality of opportunity would also be a vital element in persuading the minority community to participate fully in the institutions of state in NI.

Government's role

5. It was clear that Government could only give an effective lead by devising practical procedures for the areas it could control - in other countries with similar problems, progress had only been achieved when Government itself provided the motive force [3.3]. This point had been made, for example, in the recent (1984) report of a Canadian Royal Commission on "Equality in Employment". But it was not enough to set up a special central unit to oversee developments (as in the old Ministry of Community Relations) - in such a case, Departments would tend to see equality of opportunity as a specialism which could safely be passed on to the unit, which would then be reduced to the status of corporate "conscience". Ensuring equality of opportunity was, on the contrary, a hearts-and-minds exercise - it was an attitude and philosophy that had to permeate Departments, no less than FMI. This could argue for a "federal" system, with a central unit which would give guidance and back-up and could also challenge Departmental conceptions, working with liaison officers in individual Departments. Equality of opportunity was something important in its own right - it was about using all of NI's resources to the best advantage - and yet there was evidence that many organisations failed to

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give a high priority to equality of opportunity until the FEA actually began to investigate them.

The role of the investigatory agencies

6. Assuming that a "federal" central unit was established within Government to spread the equality of opportunity concept through the rest of the public service, this left the question of what role an agency outside Government would have [5]. The FEA, for example, faced a great deal of antipathy and had limited credibility throughout NI as a whole; moreover, its methodology was sometimes suspect - it tended to consider imbalance in the workforce as prima facie evidence of inequality of opportunity, whereas, as noted below, this was not necessarily so. If strongly-entrenched attitudes and institutions had to be shifted in the interest of equality of opportunity, then the FEA might not have the clout to do it. There was a lot to be said for a new beginning, with a single powerful agency of high standing which would oversee developments in the entire field of equality of opportunity. Overseas practitioners (eg in Canada) would argue that a single body of high prestige could avoid the divisiveness, tunnel vision, and relative lack of research capability of the present multiple agencies. These had been a phase in the necessary process of educating people to realise the importance (and indeed in some cases (eg Shorts) the financial importance) of equality of opportunity, and it could be argued that the next phase would require a weightier and more substantial body, to tighten up the whole process.

Quotas

7. The question of quotas [3a] was likely to be brought up at some point, especially since the Chairman of SACHR was understood to be inclined towards them. Chapter 5 of the Van Straubenzee Report had marshalled the arguments against quotas, but were these still valid, given the paucity of change in some areas over the past decade (eg some areas of manufacturing), even weighed against considerable change in others (eg the NICS)?
8. This was a fundamental question, but it was unanimously agreed that quotas would only make matters worse and impair any chance of progress. They would be seen as pure manipulation - the very figures on which they would be based would be a controversial matter. Balance in the general population, in the labour force at large, in one particular area, in a particular intake to an organisation, in the organisation itself - each figure would have its own cult of devotees. Quotas were

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no alternative to slow, steady progress; they were the "Russian campaign" of equality of opportunity. It had, unfortunately, been difficult enough to sell what the NICS was proposing to do, and it would have been impossible if there had been the slightest hint of distortion or manipulation of the system. US experience also argued against quotas - with those American companies which operated such a system (eg Sears, GM), there was a tendency for local managers to cast around for the most accessible minority group and recruit from it, so that they could say they had met their quota; this was "fair" only to the minority group chosen - there might be other such groups who were equally disadvantaged but were less accessible. The effect of quotas in "redressing" disadvantage therefore depended on what groups were defined as being disadvantaged - this introduced yet another subjective element into the judgement. It was, moreover, almost beyond argument that quotas would be repugnant to those who were members of the quota group, because it was obvious that unless they had obtained their positions through merit and merit alone, they could not enjoy the respect of their subordinates or the confidence of their superiors, and it would be impossible for them to carry out their jobs.

Affirmative action

9. On the other hand, there was also unanimous agreement that if quotas were to be rejected, then affirmative action would have to be made to work much better [3b]. Up to now, too many organisations and businesses had seemed to think that commitment to equality of opportunity could be evidenced by a simple declaration of principle and intent. It might be necessary to go beyond a voluntary, exhortative procedure towards a mandatory, aggressive one, backed by sanctions (eg fines or withholding of grants), with perhaps a quasi-judicial or "audit of performance" role for whatever body was in charge of policing the area.
10. Affirmative action as a concept needed to be more sophisticated, and had to go beyond jobs and advertising to such things as location of facilities, training, demographic blocs, labour force mobility etc. The principle of affirmative action (what Government wanted people to do) had to be distinguished from the technique (how Government would deal with non-compliance). It was important to emphasise that affirmative action was not in any way incompatible with the principle of merit; on the contrary, it complemented and augmented that principle (Hodges and Harbison, p11, last paragraph). The impact of such a programme should not be overstated, since all sorts of rigidities were built into the situation (eg static employment levels), but more imaginative spelling-out and promotion of the concept might have substantial effects.

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11. On the principle of location of facilities, for example, it was possible to argue that for Shorts to put a factory in West Belfast was not a purely commercial decision. On the other hand, it was also possible to say that Government had pinpointed West Belfast as an area of need, and as a consequence was trying to channel resources there. Since Shorts was almost entirely Government-owned, it was not unreasonable to ask them to join this effort. Once the factory was there, however, recruitment should be on merit - there would be no manipulation of intake - but simply having the factory in the area should alter the employment situation there. If, of course, Shorts were to find that not enough qualified people were presenting themselves for recruitment, then the proper response in terms of affirmative action would not be to pull out, but to instal training facilities to "homegrow" some talent.
12. On the technique of affirmative action, there were some practical points to be clarified. How, for example, would one judge whether the construction industry was offering equality of opportunity, particularly in a period of static employment? Since this industry depended mainly on Government contracts, any sanctions for lack of equality of opportunity would have a disproportionate effect. It was pointed out that the primary question was not "do you offer equality of opportunity?"; this could only be answered subjectively on the balance of information derived from the question "what reasonable steps are you taking to ensure that you offer equality of opportunity?". In this regard, certain questions could be posed immediately: have you established the facts on the equality of opportunity balance in your workforce?, do you monitor annually?, what is the position with recruitment procedures (eg do you advertise in all the newspapers)?, what other steps do you think you could take? If the body concerned could show clearly that it was trying to provide equality of opportunity, then it could not be held culpable, even if there was no immediate change in its labour force - affirmative action was basically about problem-solving rather than providing facile short-cuts.
13. The first necessity for any organisation was to assemble the facts about the makeup of the workforce. The next thing was to compare these figures with the availability estimates for that location or concern. Once these two sets of figures had been obtained, then they could be compared in an "employment audit" process, which would be primarily concerned with the area of recruitment or labour turnover, rather than the existing workforce. After such a retrospective analysis, the onus would be on the employer to justify any differences in the ratios. If the employer could do so satisfactorily, then the process would stop. If he could not do

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so, and refused to institute an affirmative action programme, then he would be subject to penalties. If on the other hand he accepted the need for an affirmative action programme, then changes in recruitment procedure would be called for, perhaps involving the use of prospective "targets". These would be benchmarks tailored to each organisation's particular needs and developed in consultation with them, and would therefore be crucially different from quotas, which were broad-brush figures imposed on organisations, with little regard for their aptness to that particular situation.

14. The Guide to Manpower Policy and Practice had been re-examined and was felt to be sophisticated enough to handle further developments in equality of opportunity [3.2]. It was agreed that the Guide should be maintained as an integral part of the equality of opportunity drive and that subscription to it should be part of the essential core of credible activity expected of an organisation trying to demonstrate that it offered equality of opportunity.

District Councils

15. It was noted that only 7 of the 26 District Councils had signed the FEA Declaration [3.1]. The wording had been adjusted to meet objections from Councils which had not signed, and DOE was trying to emphasise the presentational benefits of signing, but the proximity of the May elections precluded a full campaign on this point. It was agreed that in the longer term this was a wholly unacceptable state of affairs - it left Government open to criticism from abroad, and it could be argued that it was most anomalous for Government to cite the Declaration in defence of its policy while public bodies themselves did not all subscribe to it. The question of sanctions was of course difficult, since the Declaration was currently a "voluntary" one; whether to move to sanctions, and how, would require careful consideration. It was noted that equality of opportunity was a matter of awareness, acceptance and commitment, and that if District Councils were quibbling about wording it was legitimate to doubt their sincerity in this regard. It might well be necessary to move from the core provisions of the Constitution Act towards more specific requirements for public bodies, obliging them to make progress and to be "audited" in doing so; this would in effect change the situation from one where District Councils had the choice of "opting in" to one where they would be deemed to have done so, or made subject to sanctions of some kind for failure to do so.

Suggested strategy

16. It would be a mistake to put the whole topic of equality of opportunity on ice until

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SACHR had completed its review; this would mean Government losing the initiative on timing, which was vital. The next step in developing the views expressed at the meeting might be a presentation to Permanent Secretaries at PCC or a specially convened seminar. Since two ^{N. American} Canadian experts on equality of opportunity would be in London in June on other business, it would be wise to seize the chance of inviting them to Northern Ireland, to further tap their experience. Moreover, by June, with the local elections over, DOE would be tackling District Councils again about the FEA Declaration, and continued intransigence could provide a platform for more direct action. It was agreed that we needed to establish a database of the most significant sources and research bearing on equality of opportunity in NI. This would provide a backdrop of hard facts for any new initiatives.

17. The long-term aim would be to extend the concept of equality of opportunity more widely [3.4]. In the public sector, preferably without new legislation but in the last resort by legislation if required, we should move as soon as possible to a position in which a public body was in practice required to involve itself positively in affirmative action. It was also worth considering expanding the "area of opportunity" by promoting greater mobility between the various arms of the public service in NI [3.5]. Attention could then be focussed also on inducing greater momentum in the private sector, and, in the long term, considering how wider government policy (eg on education, housing, industrial development, etc) might be reshaped in order to provide an environment more conducive to equality of opportunity. The theoretical area for action was very wide, and in practice it would be necessary to identify manageable key areas for attention within a cohesive total strategy.
18. There were obvious difficulties with such an enterprise, not least, if the experience with the NICS programme was anything to go by, the attitudes of local political and other interests. It was also emphasised again that, to do a good job (and after all, Government could not afford to do a bad one), adequate resources would have to be committed to the work - it was hardly less important as an area of activity for Northern Ireland than information technology, to which specific manpower resources were being increasingly dedicated.

Kermy Donnelly

K G DONNELLY
PS/Mr Bloomfield
28 March 1985

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Meeting on Discrimination in Employment

22 March 1985

AGENDA

1. Chairman's introduction: background to this meeting.

- (a) Disturbing recent data on extent of imbalances in employment and unemployment.
- (b) Direct action in the US: the McBride principles etc.
- (c) Forthcoming review by SACHR.
- (d) 'Human rights' dimension in models for internal/external elements of political progress.

2. The factual and statistical background.

- (a) Need to build up a comprehensive database embodying relevant data from census, PPRU activities, reputable academic work, sectoral or individual case-studies by FEA, etc.
- (b) What do we now know about imbalances ...
 - Province-wide;
 - in locational terms;
 - in occupational terms?
- (c) What do we know about trends, particularly since 1976, ...
 - towards a better balance in those offering themselves for employment;
 - towards a better balance in those obtaining employment;
 - towards a better balance in total workforces?

3. Fundamental concepts underlying the approach to date.

- (a) "Positive discrimination" or quotas : bound to be further argued in forthcoming debate. Do we continue to reject it, and if so do we continue to rely upon the sorts of argument advanced in Chapter 5 of the Van Straubenzee Report?
- (b) "Affirmative action". If this is to remain the main thrust of activity can we make it more effective in practice? Many organisations seem to contemplate affirmative action only after the FEA

spotlight illuminates them. Questions:-

- 3.1. Is it any longer acceptable to have public sector organisations (eg certain District Councils) declining to subscribe to the Fair Employment Declaration?
- 3.2. Does the DED's Guide to Manpower Policy and Practice fully reflect the most up-to-date practice, and take on board in particular the weaknesses illustrated in the course of FEA investigations?
- 3.3. Does the public sector have a special responsibility in accepting and implementing good practice? (FEA coverage of the public sector in its investigations has been patchy. There is evidence of some public bodies subscribing to the Declaration but not contemplating any affirmative action until put under pressure by FEA.)
- 3.4. Does the special responsibility point in the direction of more coherent means to plan a strategy for the public sector and oversee its implementation?
- 3.5. Will the cause of equality of opportunity in the public sector be significantly advanced by much greater mobility as between parts of the public service?

4. Relevance of developments elsewhere.

- (a) Are we sure that we are studying carefully enough any developments at the national level in handling Race Relations which might have relevance here?
- (b) Whose task is it to do so?
- (c) What lessons can now be "read across" from US, Canadian or other experience?

5. The organisational network.

- (a) Are present arrangements adequate, or would a single agency be more effective?
- (b) What contribution might such a single agency have to make to the wider political strategy?