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TO: SECRETARY OF STATE (B&L)

FROM: PETER VIGGERS

cc PS/Minister of State (B&L)  
PS/Mr Viggers (B&L)  
PS/Lord Lyell (B&L)  
PS/Dr Mawhinney (B&L)  
PS/Mr Needham (B&L)  
PS/PUS (B&L)  
PS/Sir Kenneth Bloomfield  
Mr Fell  
Mr Gowdy  
Mr Burns (NIO - L)  
Mr Carvill  
Mr Wolstencroft ✓  
Mr Lavery  
Mr Taggart  
Dr Smyth  
Mr Cornick (NIO - L)  
MC

FAIR EMPLOYMENT BILL: END OF COMMONS COMMITTEE

Synopsis of Position, Timing and MacBride Strategy

1. I thought it would be useful to summarise the position now that the House of Commons Committee Stage is finished; and to set out some considerations on future timing and anti-MacBride strategy.

Bill: Synopsis of Position

2. The Committee sat for eighteen sessions; the atmosphere was generally congenial and a marked contrast to Second Reading; and progress on understanding of the Bill and conciliation of opposing views been satisfactory.

Whilst I have made no concessions of substance, my strategy throughout has been to play for the support of our erstwhile critics. This is important in NI and of course crucial in the United States.

3. In his letter to you (20 March) Kevin McNamara has tabled two sets of issues. If we deliver on the first set he will recommend to his colleagues that the Bill is not opposed at Third Reading; if we deliver on the second and more demanding set he will welcome the Bill, as I asked him privately, as a "sincere, determined and effective measure".
4. In each set of issues there are three points.



5. To secure an unopposed Third Reading we have to satisfy him on

(i) goals/timetables

(ii) Amendment to Clause 50

(iii) monitoring; use of inferential methods

6. We have already delivered on (i) and this has been welcomed. On (ii) he wishes to see us carry through into Clause 50 the implications of our amendment to Clause 14 - the protection of outreach measures from both indirect and direct discrimination. While we would question the absolute necessity for these amendments (and the Opposition appear to misunderstand the content of Clause 50) initial discussion with lawyers suggests that we should be able to meet McNamara's points. On (iii) it is also probable that we can meet his concern. So the prospects of securing his commitment to an unopposed Third Reading look promising.

7. To secure his open endorsement of the Bill as "sincere, determined and effective" we have to satisfy him on

(i) individual remedies (he wants them unlimited - as at present; the Bill limits them to £8,500);

(ii) Section 42

(iii) indirect discrimination (he wants a new definition in UK terms).

8. Both (i) and (iii) are substantive "read across" issues. It is certain that we could not deliver on (iii) because it would involve obtaining the agreement of Ministerial colleagues on a new definition of indirect discrimination. This would have profound implications for sex and race legislation. It could not be delivered - certainly within the timescale envisaged for the Bill. On (i) we are in an embarrassing position; but the move to the Industrial Tribunal type procedure for individual cases leaves us with no option but to adopt the £8,500 ceiling for compensation in individual cases. To attempt to raise this ceiling for religious cases in



the Province, would have implications for compensation in sex cases (in both NI and GB) and for race cases in GB, and I am firmly of the view that the Bill should stay as drafted. On (iii) it is also unlikely that we will be able to devise a "review" facility for Section 42 that will completely satisfy McNamara though we might be able to go some way to meeting him. So the prospects of securing his endorsement for the Bill as "sincere, determined and effective" are not promising.

#### Timetable

9. Approximately 50-60 Amendments are tabled for Report. These are going to take time to work through and formulate in appropriate legal language. It is most important to ensure that all the major amendments to the Bill are accommodated at Report (any amendments in the Lords having the timing disadvantage of necessitating Commons consideration of Lords amendments). Accordingly we are aiming realistically for a Report Stage around 1 May onwards.

#### MacBride

10. The campaign continues to make substantial inroads. We need to construct our future strategy on the basis of a substantive Bill which secures as much support as possible from the Opposition, the ROI, SDLP, NIC/ICTU, SACHR, and the FEA/FEC.
11. While it is most unlikely that McNamara will give the Bill his warm support, we should remember that he is not the totality of the Labour Party. Through the usual channels we may be able to induce (perhaps through some horsetrading) a more positive and forthcoming response to the Bill - especially if we can deliver on the McNamara points for an unopposed Third Reading. It would then be possible, around June, to formulate our



post-Bill strategy on MacBride and establish the most robust damage limitation position that we can muster. I envisage this being based on a firm and positive restatement of our policy on fair employment, to be promoted with a high profile. This will be for discussion after the Bill has completed its Parliamentary Stages.



PETER VIGGERS

24<sup>th</sup> March 1989