

all.

TAB A



- cc Mr Loughran
- Mr Spence
- Mr Briant
- Mr Jordan, DENI
- Mr Bell ✓
- Mr Taggart

13 April 1992

TO: PS/Mr Fell

FROM: R J Minnis

FOLLOW-UP TO MR FELL'S VISIT TO US

Your minute of 8 April refers.

I now enclose the following:

- TAB A: Fair Employment Tribunal - progress
- TAB B: Fair Employment Legislation - progress
- TAB C: UU - V - Pryce
- TAB D: MacBride - relevant issues
- TAB E: Linfield/IFA issue

R. J. Minnis

R J MINNIS



DEPARTMENT OF ECONOMIC DEVELOPMENT
An Equal Opportunities Organisation

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FAIR EMPLOYMENT TRIBUNAL

Since the Fair Employment (NI) Act 1989 came into operation on 1 January 1990 over 500 individual cases of alleged discrimination have been lodged with the Fair Employment Tribunal.

However, the Tribunal was unable to determine any of these cases prior to August 1991 because the provisions in section 30 of the Act - concerning disclosure of information - had to be amended. Consequently there is now a substantial backlog of cases to be dealt with, but these are being listed for hearing as quickly as possible.

Experience to date indicates that most hearings are lasting several days, which is longer than was originally anticipated.

A further contributory factor to the build up of cases awaiting hearing is the rate at which the Fair Employment Commission (which is directly involved in assisting 65% of the cases listed for hearing) is putting cases forward.

The difficulty faced by the Commission is that while it is attempting to clear cases as quickly as possible, it takes time to appoint and brief counsel and, in addition, there are numerous requests for interlocutory hearings to determine whether information or documents must be released in particular cases. In order to overcome these problems the Commission is considering the establishment of a small group of solicitors to act on the Commission's behalf and take cases forward.

The statistics of applications received and cases awaiting hearing attached at Annex A need to be interpreted with care. The Tribunal is at present listing for hearing all applications received. However, it is important to understand that many of these may not proceed to a full Tribunal hearing. Of the 149 cases dealt with up to the end of February no less than 122 fell into this category. If this board pattern is maintained then the 363 cases currently in the pipeline may translate into only 70 or 80 full Tribunal hearings.

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FET APPLICATIONS 1990-1992

ANNEX A

TAB 5

1990 256 registered

of those 17 heard and dismissed
 90 withdrawn
 5 conciliated
 3 heard and allowed
 3 heard but agreed between parties
 15 listed * see note below
 12 at hearing

111 outstanding

1991 214 registered

3 heard and dismissed
 42 withdrawn
 2 conciliated
 9 listed *see note below

188 outstanding

1992 76 registered

1 withdrawn

75 outstanding

* NOTE

These figures represent the 24 listed cases and the number of days taken to hear each case.

- 1 - 1 day
- 2 - 5 days
- 1 - 5 days
- 1 - 1 day
- 1 - 2 days
- 2 - 1 day
- 1 - 2 days
- 1 - 4 days
- 1 - 4 days
- 1 - 1 day
- 5 - 9 days
- 1 - 2 days
- 1 - 5 days

The office is working on the listing of 5 FEC assisted cases which will take at least a total of 20 days to hear.

employers both to assist them in fulfilling their statutory obligations and to investigate their employment practices in a "no fault" environment.

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TAB B

FAIR EMPLOYMENT LEGISLATION PROGRESS ON IMPLEMENTATION

Since the Fair Employment Act took effect in January 1990, considerable progress has been made not only in implementation of the Act but in changing attitudes to the task of actively promoting equality of opportunity in employment.

Progress in implementing the requirements of the legislation has been very encouraging. For example, monitoring has proceeded much more smoothly than expected. All employers have complied with the registration and monitoring requirements. In the first two monitoring rounds, 21 employers had to be prosecuted - far below 1% of the employers involved and far fewer than had been anticipated. While most of these companies were fined, one company, Dunellen Ltd, was disqualified briefly from receiving public contracts. This, more than anything else, showed that the legislation would have real effect and would be used where necessary to induce compliance.

From 1 January 1992, the registration and monitoring requirements have been extended to include all firms with more than 10 employees. This will bring more than 2000 further companies within the scope of the legislation. The Commission is pleased with the progress made so far in registering smaller companies.

The Commission is receiving many more enquiries both from employers and prospective complainants, suggesting that it is increasingly seen as being more approachable, more authoritative and more likely to be able to provide real assistance or concrete redress.

The recent decision by the Commission, in the face of strong and concerted opposition from politicians and employers organisations, to proceed with the publication of monitoring information has been taken by many as a demonstration of the Commission's real independence from Government, giving it enhanced status and credibility.

The Commission is in close and regular contact with a large number of employers both to assist them in fulfilling their statutory obligations and to investigate their employment practices in a "no fault" environment.

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From these contacts the Commission itself believes that it is raising its profile and its standing and credibility within the business community.

PRYCE - V - UNIVERSITY OF ULSTER

On the other hand, employers have been shown by a number of decisions by the Fair Employment Tribunal that the legislation has real teeth and that not only can employers be severely penalised if found guilty of discriminatory acts, but also that employees are being encouraged by the effects of the legislation to be more ready to pursue cases of alleged discrimination.

The Commission is actively encouraging and assisting employers to tackle the mandatory three yearly review of their employment procedures. This is seen by the Commission as giving them a further opportunity for positive and helpful contact with employers. There are indications that employers are increasingly beginning to see the FEC in this positive, rather than the former negative, light.

2. It was clear, when section 30 was examined in the light of the President's decision that the protection given by section 30 was so wide that in very many cases complainants would be unable to prepare or pursue their cases properly since they would lack the necessary information about the community affiliation of others involved. Also, employers would be unable to bring forward information to answer a complainant. The effect of this was to bring to a halt all hearings before the Tribunal.

3. The net result of all this was that an Amendment to the 1989 Act was introduced. The Fair Employment (Amendment) (Northern Ireland) Order 1991 came into operation on 25 August 1991. The Tribunal started hearing cases again on 6 September 1991.

Correct Position

4. The amendment to section 30 of the Fair Employment (NI) Act 1989 resolved the problem of the disclosure of certain kinds of confidential information to applicants before the Fair Employment Tribunal which first came to light in the University of Ulster v Pryce case.

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PRYCE - V - UNIVERSITY OF ULSTER

Background

1. In a case which came before the Tribunal in October 1990 (Pryce - V - University of Ulster), the employer resisted an application for an order for discovery on the ground that it was uncertain as to whether or not the disclosure of the information would fall within scope of the exception to section 30 of the Fair Employment (NI) Act 1989 - ie was the disclosure sought necessary for the purposes of any proceedings under the 1989 Act? In fact, proceedings relating to individual complaints of discrimination are taken under the 1976 Act and not under the 1989 Act, and thus the President decided that, as the disclosure would not fall within the scope of the exception, it would be improper of him to grant an order for discovery, because compliance with such an order would put the employer at peril of criminal proceedings under section 30.
2. It was clear, when section 30 was examined in the light of the President's decision that the protection given by section 30 was so wide that in very many cases complainants would be unable to prepare or pursue their cases properly since they would lack the necessary information about the community affiliation of others involved. Also, employers would be unable to bring forward information to answer a complainant. The effect of this was to bring to a halt all hearings before the Tribunal.
3. The net result of all this was that an amendment to the 1989 Act was introduced. The Fair Employment (Amendment) (Northern Ireland) Order 1991 came into operation on 25 August 1991. The Tribunal started hearing cases again on 6 September 1991.

Current Position

4. The amendment to section 30 of the Fair Employment (NI) Act 1989 resolved the problem of the disclosure of certain kinds of confidential information to applicants before the Fair Employment Tribunal which first came to light in the University of Ulster V Pryce case.

all.

5. The President of the Tribunal has suggested that the delay in processing the Pryce case after the legislative amendment has to be viewed in the context of:-

- (a) the backlog of cases which had arisen whilst waiting for the amendment;
- (b) the procedure for listing by the Office of Tribunals which invites the FEC to select the cases which are, in the Commission's opinion, ready for hearing; and
- (c) the capacity of the FEC to present more than one or two cases per week in the light of their commitments in the fact of the backlog of cases.

6. The FEC informed us that the case is not yet ready for hearing because in spite of the resolution of the legal problem, the University has still not made available to the Commission, which is supporting Mr Pryce, documents which it requires. In order to require that the information be made available the Commission is seeking an order for discovery of documents. To assess whether the Commission's request is reasonable the President of the Tribunal has arranged for a further interlocutory hearing to take place on 15 April. After that hearing has taken place the President may make the order for discovery.

6. We understand, from the Fair Employment Commission, that the delay of 8 months in resolving this case is entirely the responsibility of the University. The reason for the delay is not known but the University will be called upon to explain at the interlocutory hearing on 15 April.

MACBRIDE CAMPAIGN

OVERALL ASSESSMENT

While considerably fewer Bills have been tabled at State level this year to date it is probably too early to say whether this indicates a permanent loss of momentum. At city level, on the other hand, there is clearly growing interest in the potential for contract compliance measures and it remains to be seen whether corporations (eg Ford and Bombardier) which have declined to enter into accommodations with New York and other city councils (Chicago, Cleveland etc) will be made to suffer. The monitoring regime introduced in the Fair Employment Act of 1989 has made it easier for US corporations to contend with investment fund demands for information on the religious composition of workforces and, more generally, corporations appear to be much more comfortable in being able to use their stated adherence to the Act's testing requirements as the basis for deflecting demands that they adopt the ill-defined and superfluous MacBride principles. This said, it remains clear that hard-line MacBride proponents see further mileage in the fair employment issue and remain determined to keep the pressure on corporations such as Ford which are perceived as having greatest propaganda value. States and cities will clearly continue to be targeted for new or strengthened MacBride bills and, through existing legislation, corporations as a whole will continue to face the hassle of regular questionnaires and investigations, primarily through the efforts of the Washington DC-based Investor Responsibility Research Centre.

CURRENT ISSUESSTATE LEGISLATION

In Pennsylvania where a two year legislative session operates, five identical Bills, calling for monitoring, investment to reflect advance and discretionary divestment were introduced in the House during 1991.

A note was taken on three of the five Bills on 31 March. All three Bills passed and have now been referred to Senate Committees - HB314 and HB318 to the Senate State Government Committee and HB315 to the Senate Education Committee. It is the view of our lobbyist in Pennsylvania that we will be in for a difficult time in the Senate as the two Committees to which the Bills have been allocated have a high number of sponsors in their respective memberships. Pennsylvania legislature is now in recess until 4 May.

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CITY LEGISLATION

Chicago

A relatively mild contract compliance Bill was substituted on 24 February by much stronger legislation. The substitute ordinance would impose an 8% levy on the price quoted by any company with operations in Northern Ireland which refused to comply with requirements of a standard paragraph which lists 6 of the MacBride Principles and includes an undertaking that the firm will promote religious tolerance within its workforce. A hearing of the ordinance before the Chicago City Finance Committee at which Sean Neeson and Harry Coll testified took place on 24 March. At the end of the hearing, the sponsor of the ordinance, Alderman O'Connor, advised the Committee to consult further before taking a vote. The Committee is due to meet again on 13 April.

Cleveland

An amended and much weakened contract compliance ordinance was passed by Cleveland City Council on 16 March. The wording relating to company compliance now reads: " are taking lawful and good faith steps to engage fair employment practices which are relevant to the standards embodied in the MacBride Principles for fair employment in Northern Ireland".

An intensive lobbying effort (involving, among others, BP, Ford Motor Company and Sean Neeson) contributed pressure without which the revised ordinance would have been far less palatable. BP have indicated to HMG that they are able to live with the revised ordinance in its present form although they have not made any public announcement to that effect. There are indications now that Councillor O'Malley, sponsor of the ordinance has just realised the innocuous nature of the wording and may try to pass a stiffer version of the ordinance. Should this happen, BP would be prepared to take a tough line with the City Council.

COMPANY AGREEMENTS

Seventeen companies have reached agreement with New York City Comptroller's Office to "make all lawful efforts to implement the fair employment standards embodied in the MacBride Principles" and to cooperate with independent monitoring of their fair employment practices. The following companies have to date signed such

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agreements: Alexander and Alexander Services, AM International, American Home Products, Data General, Digital Equipment, Federal Express, Fruit of the Loom, Honeywell, Nacco Industries, Nynex, Oneida, Pitney Bowes, Proctor and Gamble, Sara Lee, Sonoco Products, Teleflex and Texaco.

BULL POINTS - see Annex attached.

2. US Interest

Totally committed to (Religious distribution)

Partners Ireland more radical than

Understand US values Principles seem strong

US shares objectives concerned about

3. Campaign detrimental

Campaign counter force

Shareholder responsibility (requiring acceptance interests), through boycotts, raise the wisdom of investment small part of the recent increase in legislation in a number significant developments recent years and major corporate activities.

Locations with focus may appear more active investment advisors and institutional investors Treasurers.

4. Campaign negative

No attempt by the industry to spread it (February 1972 - 1973) constructive

5. Wide ranging opposition to campaign

Those opposed include SHIP/John Ross (article in NI in terms of disrupting investments and jobs); Trade Union - Irish League of Trade Unions rejected a pro-MacBride resolution; organized Transport and General Workers Union (50% Catholic) has taken a strong line against MacBride; no US company has agreed to accept or implement the Principles.

6. Not just about fair employment

Key players in campaign include Irish National Caucus and RCNIB (IRA's registered agent in US). Only Sinn Fein among all political groups supports the campaign.

Wider political objectives a motivating force.

all.

ANNEX

MacBRIDE CAMPAIGN - BULL POINT BRIEFING

1. Government Policy

- The Government recognises problem of fair employment.
- Totally committed to equality of opportunity. (Religious discrimination already illegal).
- Northern Ireland fair employment legislation more radical than MacBride Principles.

2. US Interest

- Understand US concern and why MacBride Principles seem attractive.
- HMG shares objective of fair employment but concerned about MacBride campaign.

3. Campaign detrimental

- Campaign counter-productive to investment.
- Shareholder resolutions, State legislation (requiring monitoring and report to multiple interests), threatened disinvestment and product boycotts, raise doubts in corporate HQs about wisdom of investment in NI (possibly only a small part of the worldwide investment). The recent introduction of contract compliance legislation in a number of cities is the most significant development in the Campaign in recent years and could have a major impact on corporate attitudes.
- Locations with fewer "political" complications may appear more attractive to companies, investment advisors and private and institutional investors including State Treasurers.

4. Campaign negative

- No attempt by the MacBride lobby to attract new industry to areas of high unemployment in NI (February 1992 - 14.2%). Better to be constructive.

5. Wide ranging opposition to campaign

- Those opposed include US Government; SDLP/John Hume (critical of effect on the ground in NI in terms of discouraging investment and jobs); trade union - Irish Congress of Trade Unions rejected a pro-MacBride resolution; Amalgamated Transport and General Workers Union (50% Catholic) has taken a strong line against MacBride; no US company has agreed to adopt or implement the Principles.

6. Not just about fair employment

- Key players in campaign include Irish National Caucus and NORAI (PIRA's registered "agent" in US). Only Sinn Fein among NI political groups supports the campaign.
- Wider political objectives a motivating force.

7. ROI view

- ROI welcomed the Fair Employment (Northern Ireland) Act 1989 as a "significant step forward" in the campaign to eradicate religious discrimination and a "serious attempt to respond to the problem and to point the way forward".

8. Conflict with NI law

- Government (and US State Department) view is that adherence to some of the Principles (which appear to envisage reverse discrimination) could be a contravention of domestic law. Companies have similar advice. Would obviously put the US companies in very difficult position.

9. Situation report

- MacBride Legislation is in force in 12 States (Massachusetts, New York, Connecticut, New Jersey, Rhode Island, Maine, Minnesota, Florida, Illinois, Michigan, New Hampshire, Vermont) and over 30 cities.
- No State has been added to the list of those with MacBride legislation since May 1989.
- In 1992 Bills have emerged in 8 States: Arizona (Bill held in Committee), Massachusetts, Missouri, New York State, Ohio, Oklahoma, Pennsylvania, and Virginia (Bill died in Committee).

A Bill requiring New York City to deal only with companies which adhere to the MacBride Principles came into effect on 10 September 1991. Cleveland City Council passed similar legislation in May 1991 which was to become effective 1 January 1992. BP was the first company to be targeted by the City but the company refused to comply with the legislation even if that action meant losing substantial fuel contracts with the City. On 16 March 1992 the Council passed a much weakened version of the legislation, the requirements of which are acceptable to BP although they have made no public announcement to that effect. A relatively mild contract compliance ordinance introduced into Chicago City Council was substituted on 24 February 1992 by much stronger legislation. A hearing of the ordinance was held on 24 March 1992. No vote was taken and another hearing is scheduled for mid-April.

- Twenty-seven companies have received Shareholder resolutions in the 1992 proxy season, (compared with 34 in 1991). Of these, five have been withdrawn, as a result of an agreement with New York City Comptroller's Office bringing to 17 the number of companies which have reached such accommodations with sponsors.

April 1992

LINFIELD ISSUE

Background

1. Linfield Football Club has since January been the target of a sustained attack from Fr Sean McManus, leader of the Irish National Caucus and co-founder of the MacBride Principles Campaign, because it has no Catholics in its playing staff. Given the Club's Protestant origins and ethos and with present community divisions, the latter fact is unsurprising and would in the ordinary way have aroused little public interest in Northern Ireland. It however emerged in the context of comments to the press by the Linfield team manager who admitted the impossibility of attracting Catholic players to the Club and was picked up by McManus through his Belfast associates. Compounding the Club's problem on the playing side is the further fact that, as an employer of some 11/12 full-time non-playing staff, it has to meet the registration, monitoring and review requirements of the FE Act and is therefore under an obligation to address the problem that there are no Catholics in that group as well. This is as yet unknown to McManus. A detailed account of the Linfield situation has already been sent to Mr Fell.

Funding of Developments at Windsor Park

2. Details of projects funded since 1981 have been provided by DENI and are attached in Annex A. Two points of importance have been separately made by DENI viz:

- (i) Assistance paid to IFA is subject to the Department's normal conditions which exclude political/religious links or restrictions;
- (ii) The grant of £1 m in 1982 was under DENI's normal powers, rather than a special scheme. The agreement is with the IFA who own the stand for the duration of their lease from Linfield. The lease is for 99 years. Obviously though, Linfield have the use of the facilities when not required for international matches.

Annex B, also provided by DENI contains relevant information in respect of the Football Trust.

To: _____

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Annex A

Coca-Cola

3. Coca-Cola have never sponsored the Linfield Club. They have however for a number of years been sponsors of the IFA and, as part of the PR attaching to that sponsorship, they provided an electronic scoreboard which, although a permanent fixture in the Windsor ground, was intended primarily to signify the sponsorship relationship with the IFA. Fr McManus has of course chosen to project the scoreboard as confirming his assertion that Linfield are being sponsored and this has provided the basis for a threatened consumer boycott against Coca-Cola throughout the US.
4. Local management have had advice from DED on the MacBride issue and the approach commonly adopted by US corporations in dealing with it. Their efforts to distance themselves from Linfield have however to date had little success and their big concern is that top management in Atlanta may insist that they remove the scoreboard from Windsor Park.

Northern Ireland Sports Council

5. As a club involved in professional sport Linfield is outside the Sports Council's remit. Don Allen has however felt it incumbent on himself as Chairman of the Council to work behind the scenes in an effort to protect and uphold the non-sectarian nature of the great bulk of Northern Ireland's organised sport. DED is maintaining close contact with him and indeed recently assisted with his visit to Boston.

Comment

6. DED and DENI are working together in the preparation of an appropriate defensive strategy.

ANNEX A.

Under various schemes, eg Financial Assistance to Government Bodies of Sport and assistance to Senior League Soccer Clubs, Government has assisted capital developments at Windsor Park as follows:-

1. £45,000 grant paid ¹⁹⁷⁷ to the Irish Football Association on the costs estimated at some £99,000 of providing turnstiles, perimeter and security fencing and the reconstruction of an access road;

2. £43,000 grant paid ¹⁹⁷⁸ to Linfield Football Club for a floodlighting system costing some £82,000;

3. £1m grant approximately paid ^{1982/86} to the Irish Football Association towards the cost estimated at some £2m of a new 2-tier Grandstand (North). Other contributions to the cost of this development were £500,000 from the Football Trust, £200,000 from the Football Grounds Improvement Trust and £300,000 from the Irish Football Association - with a contribution from Linfield Football Club. These contributions were paid direct to the IFA;

4. £50,000 grant paid ¹⁹⁸⁶ to the Irish Football Association towards the cost of essential Health and Safety works estimated at £2m to the South Grandstand. Other contributions towards the cost of this development were £75,000 from the Football Trust, £50,000 from the Irish Football Association and the balance from Linfield Football Club. Again, these contributions were paid direct to the IFA;

5. current developments being undertaken at Windsor Park are associated with extending the South Grandstand, installing additional turnstiles for segregation purposes, provision of all seater facilities - as required by FIFA - and the implementation of safety and security measures as advised by the RUC. The cost is estimated at over £1m and is being supported by a contribution of some £900,000 which has been promised by the Football Trust 1990 to the Irish Football Association. Government is not involved in grant-aiding the current developments;

6. Government funds paid to the Irish Football Association in connection with capital development works at Windsor Park were secured by a Deed of Covenant and Charge completed with the Trustees of the Association;

7. in making these substantial investments in Windsor Park, Government accepted that:-

a. Windsor Park has been the Province's long standing venue for all full soccer internationals and the IFA has negotiated a long-term lease with the owners of the ground, Linfield Football Club, for use of the premises by the international team for all international events. It is essential that safe and proper facilities be provided for international soccer events in Northern Ireland;

b. in GB public funds have been made available for national facilities eg, for improvements at Twickenham Rugby Grounds. There is nothing new in Government assisting with national facilities of this kind;

CS[BAL]MCGLEENON M/2

- c. the IFA is an influential organisation in world football and it is the only major sporting body with its headquarters in Northern Ireland. Other majority sports such as rugby, hockey, cricket are affiliated to Governing Bodies which are based in Dublin;
- d. in offering grants to the IFA for these developments the Government also recognises the appeal of football has in attracting broad support from all sections of the community in the Province;
- e. moreover the offers of grant were timely because when Northern Ireland qualified for the World Cup for the first time since 1958 and scored, an unforeseen and unprecedented success giving a much needed boost to the public morale. It was considered fitting that Government should acknowledge the Province's soccer achievements by offering to contribute to the IFA's cost of long overdue improvements to the international football venue.

M. McGleenon
 M MCGLEENON 13/4/92.

Following the meeting between the Irish Football Association and the Trust's Special Media Sub-Committee on 26 February 1992 in the light of your letter and feasibility study of 22 February 1992, the Trust has considered its Sub-Committee's report of a national stadium for Northern Ireland and has agreed to contribute to the Trust is prepared to offer the Irish Football Association up to 1,000,000 towards approved expenditure on the following work associated with phase 1 of the redevelopment of Windsor Park:

- (i) the extension of the South Stand;
- (ii) the installation of additional turnstiles for pedestrian purposes including cup presentation matches involving Irish League clubs;
- (iii) the purchase of a back up generator;
- (iv) facilities for people with disabilities;
- (v) the implementation of safety and security measures required by the Royal Ulster Constabulary.

The Trust will require to see three competitive tenders covering the work. Grant aid would be available in staged payments over the course of the construction period.

Yours sincerely
Peter Keel

CS[BAL]MCGLEENON M/2