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FROM: C P SALTERS
PS/SIR DAVID FELL
20 JUNE 1996

Mrs McAuley
Mr Deven
LD 24/6

cc PS/PUS (B)
Mr Gray
Mr Blackwell
Mrs Brown



PCC MEMBERS

MEETING OF PCC: 28 JUNE 1996

The next meeting of PCC has been arranged for Friday 28 June 1996 at 9.30 am in the Conference Room, Stormont House.

The agenda will be as follows:

- (i) Fair Employment (Section 31 Review) 1995 (Paper PCC 96/32 enclosed);
- (ii) Future Promotion Arrangements in the NICS following the McCausland Ruling (Paper 96/31 enclosed) and;
- (iii) Relations with the NI Audit Office (Paper PCC 96/23 - circulated previously).

CP Salters

CLARE SALTERS

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DR/41583

PCC PAPER FROM THE DEPARTMENT OF FINANCE AND PERSONNEL

FUTURE PROMOTION ARRANGEMENTS IN THE NICS FOLLOWING THE
McCAUSLAND RULING

1. This paper:-
 - (i) reports on the further work commissioned by PCC following its consideration last year of the implications for the NICS of the FET ruling in the McCausland case;
 - (ii) critically examines the acceptability of that work as a viable, cost-effective, operational response to the McCausland ruling; and
 - (iii) sets out the options for the NICS and seeks PCC approval to the preparation of a submission to Ministers on this issue, including the preferred way forward, as a preliminary to opening consultation with the FEC, EOC and TUS.

Background

2. As PCC will recall, the McCausland decision drew attention to the problem that where the operation of internal promotion procedures gives rise to disproportionate impact against any one of the four equal opportunity groups (men or women, Protestants or Roman Catholics) there is a risk of challenge under fair employment or sex discrimination legislation as appropriate. From the analysis undertaken at the time, it was our firm conclusion that, while the specific case may not have been an ideal one, the principles which it exposed were of direct concern to the NICS. Thus, the validity of the formula used to assess disproportionate impact was not in doubt, nor were the legal principles involved. Moreover, analysis of the NICS workforce against relevant outside comparators confirmed vulnerability to challenge from both external and internal complainants.

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3. There was of course a recognition that justification of the requirement or condition giving rise to disproportionate impact is a defence. However, the conclusion of the examination of this issue was that justification arguments in favour of continued use of internal promotion are respectable but not cast iron. The arguments in respect of service-wide competitions appear stronger than those for departmental competitions but operational considerations, including cost and lack of sensitivity to Departmental/Agency business need, are significant negative factors in respect of service-wide competitions. (The justification arguments for service-wide and Departmental competitions are summarised at Annex A).
4. The clear import of these conclusions was that more defensible arrangements for filling vacancies were needed. Work was therefore undertaken to find the appropriate way forward. The main options were a move to fully open recruitment, which would remove vulnerability to internal and external challenge, or the abandonment of Departmental promotion in favour of service-wide internal promotion, which would remove vulnerability to an internal challenge and would be respectably robust in terms of justification. It was considered that there was no "do nothing" option.
5. In looking at the possible options, other imperatives confronting the NICS - equal opportunity pressures, agentisation/delegation and the Civil Service management reform agenda - could not be ignored. There was concern that equal opportunity considerations appeared to be exerting a strong centralising pressure whilst delegation policy, other management reform proposals, and business imperatives were taking the Service in the opposite direction. There was also concern about the practicability of managing large numbers of candidates within a Service-wide promotion scheme and about the potential responsiveness of such an arrangement to the business needs and pressures facing individual departments and agencies.
6. The pros and cons of internal service-wide competitions and open competition, and benefits common to both these options were considered

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with departments. Having weighed the arguments, the judgement of PEOs was that participation in a service-wide promotion pool offered an opportunity for wider choice without the need to resort to full open recruitment and the option of fishing in the service-wide pool was likely to be more easily managed within a corporate NICS approach to promotion and recruitment than within a fully delegated regime.

7. PEOs were also attracted to a mixed economy approach embracing a combination of open competition and internal promotion within arrangements which would give departments/agencies with vacancies a significant role in the organisation, operation and outcome of a particular competition. The mixed economy approach was seen as maintaining the concept of a career Civil Service, removing the risk of internal challenge, reducing the risk of external challenge, and providing a measure of ventilation of the Service. It was also consistent with the key elements of NICS equal opportunity policy and with the flow of GRI and Civil Service management reforms.
8. This analysis and PEOs' views on the way forward were subsequently endorsed by PCC in May 1995. PCC agreed that a project group representative of departments, agencies and CPG should develop and cost revised operational arrangements for filling vacancies based on a mixed economy approach operated on a corporate basis.

Working Group Proposals

9. In discharging its remit the Working Group was inevitably influenced by the developing dynamic of the NICS, including the momentum of agentisation, continued resource pressures, the programme of management reforms and the increasingly evident desire on the part of Departments and Agencies for less prescription and greater autonomy in personnel matters. It was also recognised that growing disparity of grading and of ethos or skills across Departments and Agencies as a result of delegation could significantly affect the viability of service-wide selection to common grades.

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10. The practicability of managing a large number of candidates within a Service-wide promotion scheme and the potential responsiveness of such an arrangement to the business needs and pressures facing individual Departments and Agencies were further concerns. Working Group members made it clear that Departments and Agencies would want to make their own decisions on how to fill posts, including the use of trawls, taking responsibility in terms of cost, efficiency and vulnerability. They would also want to retain the right to make level transfers in order to meet particular staffing needs.
11. Sticking closely to its agreed brief, the Working Group considered that the following model offered a theoretically workable service-wide solution to the McCausland dilemma:-
- (i) where a job or group of jobs at the same grade level require specialist qualification/skills which cannot be quickly acquired on the job, require previous job-related experience which can be justified as a selection criteria, or are in disciplines where the size of the Service-wide candidate pool would not justify use of the alternative arrangements at (ii) below the post might be filled by Service-wide trawl or open competition;
 - (ii) in grades or levels where similar broad-based competencies are required (eg general service grades, typing grades and high volume specialisms such as junior scientific or engineering grades) a two stage process of external or service-wide selection would apply. Stage one would be run on a service-wide basis and would be designed to provide a pool of candidates for jobs at a particular level or grade which arise over a given period whereas stage two would be departmental/agency specific and would allow individual departments and agencies to either draw direct from the service-wide pool in merit order or to run a secondary selection process using additional job specific selection criteria as appropriate;

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- (iii) posts at AA, AO and Staff Officer level and Management Trainee posts would be filled by open recruitment. The use of open competition or internal promotion for posts at Grade 6 level and above would be considered on a case by case basis. Other posts would be filled by internal promotion except where open recruitment is already a well established practice, eg in certain non-general service occupational groups, when open recruitment would remain an option.

In putting this model together, the Working Group became increasingly aware of the difficulties of seeking to introduce a Service-wide solution in the current climate of delegation and business-specific personnel practice. The model was therefore put forward as the best possible response to the remit given to the Working Group by PEOs and PCC. Details of the model and associated costings are available in Departments.

Departmental/Agency Reaction

12. The Working Group's deliberations were discussed at ASEOM in March 1996. Most Departments/Agencies accepted that the model could be made to work but there were serious reservations about its viability and cost effectiveness. Criticism centred on its complexity and manageability, its financial and resource costs, its ability to ensure corporate ownership and deliver a service acceptable to Departments and Agencies. Several Departments made it clear that they would prefer to make their own assessment of how best to fill vacancies and would not want to be locked into a Service-wide arrangement of such complexity - particularly as it only reduced vulnerability to a McCausland challenge and did not remove it entirely. There was also a strand of opinion that a centralised/Service-wide approach to filling vacancies did not sit comfortably with delegation and the changing personnel management climate in the present day NICS and there was some expression of the view that the NICS should face up to a McCausland-type challenge as and when it arose.

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13. Not all departments rejected a corporate response to McCausland. For example, NIO/PANI considered that their compositional profiles were such that left to their own devices they would need to widen their candidate pool either by opening up vacancies across the Service or moving to open competition, both of which would put their staff at a disadvantage compared to other Departments whose profiles might be more defensible.
14. The lack of consensus among Departmental/Agency personnel staff on how Departmental vulnerability to McCausland-type challenge should be addressed confirmed that despite considerable effort it had not proved possible to devise a response to the McCausland ruling which was compatible with the broad flow of other key personnel-related initiatives in the Service, including the Government's Civil Service reform agenda and its agentisation programme and which commanded support across Departments/Agencies. Departments and Agencies agreed that further work in seeking to square this circle was unlikely to be productive and that a decision was needed on which of the competing policy considerations - the need for a defensible corporate approach to the McCausland vulnerability and the management of NICS equal opportunities problems, or the robust application of autonomy and delegated freedom for Departments and Agencies to manage their own business activities - should take precedence.
15. In order to move matters forward, and to assist Departments and PCC consideration of the main options and their possible implications, CPG summarised the work to date (as reflected in paras 2-13 of this paper) and set out the key arguments and the main options in a draft PCC paper which was put to PEOs/ASEOM and discussed at the ASEOM meeting on 7 May. The arguments and main options, and ASEOM reaction to them, are dealt with in turn in the remainder of this paper.

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The Management Of Equality Of Opportunity Within The NICS

16. The first point to make is that, since the Equal Opportunity Policy Statement was first introduced in 1984, there has been a strong corporate drive to NICS equality of opportunity policy and practice. The Policy Statement applies throughout the Service and this is supported by a central Equal Opportunities Unit and centrally managed monitoring and reporting arrangements. NICS monitoring returns to the FEC are submitted on a corporate basis and the Section 31 Review is likewise a corporate NICS return. Major policy initiatives such as the Code of Practice on the Employment of People with a Disability, the Action Plan on the Employment of Women, guidance on the establishment of a harmonious working environment, on combating harassment and in managing complaints have also been centrally co-ordinated, with Departments and Agencies taking responsibility for the day to day implementation of action flowing from such initiatives.
17. This approach has stood the Service in good stead over the years. The Service has been able to secure recognised improvements in equality of opportunity and to establish itself as a leading equal opportunities employer. The corporate approach has also allowed the Service to resist attempts to isolate and expose individual parts of the organisation and to address compositional balances on a broad front. It has also meant that the constituent parts of the NICS have contributed to the Service's equal opportunities effort in a broadly consistent way and that differential practices which might lead to critical comparisons between Departments have been largely avoided.
18. Against this background, there is a strong case for a corporate approach to the search for a remedy to McCausland vulnerabilities which limits exposure of individual Departments and Agencies and which can be applied uniformly across the Service. It is clear, however, that a corporate approach which locks in all Departments and Agencies would cut across the interests of Departments and Agencies in having the freedom and flexibility to manage their own promotion arrangements.

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19. On this latter perspective, there is a substantial view around the NICS that Departments and Agencies should be free to take their own decisions wherever possible. It is apparent that previous reticence in terms of assuming greater delegated responsibility for personnel matters has now been replaced by an appreciation of the need for greater management autonomy in meeting business objectives, particularly at a time of tight resource constraints.

20. Taken to the extreme this would mean that the corporate approach to equal opportunities within the NICS would need to be reviewed. This may not necessarily be a bad thing. The corporate approach has been effective in dealing with compositional balance on a broad NICS front but inevitably this has meant that the compositional profile in individual Departments/Agencies has been relegated to a secondary issue. As the interest in fair employment issues becomes more sophisticated and more intrusive, this is increasingly difficult to defend; indeed, the FEC has made it clear that it will wish to follow through on departmental profiles as part of the current Section 31 review. Departmental composition has also come to the fore as part of SACHR's review of Departmental performance and PAFT. We can therefore expect to come under pressure to give more attention to tackling the differences in departmental compositions, quite apart from any McCausland implications. It is difficult, however, to see how this can be achieved without Departments/Agencies taking greater direct responsibility for managing their own equal opportunities agenda rather than be constrained by the current Service-wide approach

21. There are, of course, some problems inherent in such a disaggregated approach. Fair participation assessments, for example, could vary considerably across a range of occupational groups if undertaken on a Departmental basis. This is certainly the case with legal grades and there is some evidence of a similar position in P&T grades. This would have knock-on implications for positive action advertising statements. The same

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might also apply in General Service terms. Thus, for example, it would be sensible for NIO/PANI/Prison Service to have a PAA statement welcoming Roman Catholics when recruiting AAs or AOs, even on a temporary basis, but this would be unhelpful in terms of the overall profile of the NICS. It would also be the case that Departments and Agencies would need to have their own religious monitoring data. Taken to its logical conclusion Departments and Agencies would become responsible for monitoring and making returns to the FEC, including undertaking their own Section 31 Reviews. For this to happen there would have to be an amendment of the Fair Employment (Specification of Public Authorities) Order.

22. Under such delegated arrangements each Department and Agency would be free to promote from within their own organisation or to recruit in the open market. It would be open for an Agency or Department with a pressing need to fill vacancies to act immediately provided it could stand over the decision. Whilst independent action of this nature carries a risk of regular recruitment or trawl competitions across the length and breadth of the NICS, with a multiplicity of applications across a number of Departments/agencies, in practice decisions taken by Departments/agencies will be governed not just by legal requirements and relevant equal opportunity or other policy considerations but also by business needs, including the need to control overheads. It would be for Departments and Agencies to weigh up the McCausland considerations, other business and policy factors, and available justification arguments when determining whether to go external or remain internal.
23. As already mentioned, existing Departmental and Agency profiles do not all satisfy the McCausland test and a move to more delegated arrangements for filling vacancies would not remove or reduce vulnerability per se. In practice, therefore, Agencies and Departments are likely to be driven down the road of open competition or some ad hoc alliances if they feel unable to mount a respectable argument for remaining internal. In the real world business need is likely to be qualified by the need to control overheads and to act lawfully,

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and a planned and collegiate approach to recruitment acceptable to the parties involved may yet emerge as delegation arrangements shake down. The crucial consideration is that it would be for each individual Agency and Department to decide what is in their own best interest, in contrast to an agreement under which Departments and Agencies are obliged to participate in a Service-wide system.

24. There is no guarantee of course that this arrangement would necessarily reduce the interest taken in the overall position and approach of the NICS.

The Options

25. The available options appear to be for PCC to decide that Departments/Agencies should co-operate in the sort of corporate arrangements discussed earlier despite their current unease, or that they should continue with the status quo or that they should pursue a fully delegated approach to filling vacancies.
26. On the first option, the reservations of Departments and Agencies are centred around the practical difficulties of managing Service-wide arrangements and the increasing wish to take greater control of their own arrangements. Nonetheless, it is clear from the compositional profiles that there would be considerable vulnerability to challenge in some Departments and Agencies and the use of this option would place the NICS as a whole and individual Departments and Agencies on a stronger footing in seeking to avoid such challenges. It would also avoid the need to change the legislation or require Departments and Agencies to assume responsibility for monitoring, review and reporting under the Fair Employment legislation.
27. The status quo has obvious appeal, in that it requires the least possible change. It does, however, involve significant risk. The vulnerability of Departments and Agencies is already known and the justification arguments available may not be sufficiently persuasive to rebuff an adverse judgement.

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The FEC have also shown interest in the NICS reaction to the McCausland ruling and might make some play of a decision to stick with the status quo. Nonetheless, having examined the potential vulnerability, considered justification arguments and researched possible alternative arrangements, the Service could take the view that the cost to the organisation (in business and resource terms) of introducing new arrangements is so substantial as to justify retention of the status quo. We would need to be prepared to have this argument tested in Tribunal or the High Court if challenged but this might be considered a risk worth taking, if only to clarify the parameters of the McCausland decision. There could be some political downside to this option, particularly in the context of the SACHR review, but Ministers may consider the issues raised by the McCausland decision to be sufficiently contentious to justify a further "test" case. According to a note of a recent NIC/ICTU meeting with the Secretary of State at which Jim McCusker outlined his understanding of the position on McCausland, the Secretary of State thought that some of the implications of McCausland were extraordinary. The Secretary of State may, therefore, be sympathetic to a fairly robust line on McCausland.

28. The final option would involve a more marked degree of delegation than has been the case to date. This would line up with current policy whereby Departments and Agencies are encouraged to take greater delegation of responsibility for their own personnel practices, including the filling of vacancies. Under this scenario, Departments and Agencies would determine their own approach to staffing their organisation to best meet their particular needs within whatever broad central guidelines or parameters which would necessarily apply and would take responsibility for ensuring that they meet the legal, policy and practical requirements designed to secure equality of opportunity and fair participation. Departments and Agencies would become more visible in equal opportunity terms and would take responsibility for handling monitoring data in respect of their staff. They would also be obliged to answer for their own performance in equal opportunity matters, though it would still be the case that Departments would remain legally answerable for

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the actions of Agency staff. Decisions on the approach to be adopted and the risk of challenge would be matters for Departments and Agencies.

29. Such a change would obviously represent a considerable shift from the current approach to the management of equality of opportunity within the NICS. The relationship between Departments (and their Agencies) and DFP would have to be re-examined, including how the Service would comply with the existing monitoring and Section 31 Review provisions in the 1989 Act. The logic would be that Departments and Agencies should take the full responsibility for this approach and should separately be accountable under the fair employment legislation and should undertake their own monitoring and make their own returns. A less radical alternative would be that the Head of DFP could retain legal responsibility for the monitoring and review returns on behalf of the NICS with Departments and Agencies taking de facto responsibility.
29. A key consideration in earlier discussion of a NICS response to McCausland was the heavy preponderance of women and Roman Catholics in the middle to lower levels of the NICS when compared to the external workforce and the possible advantage in being able to draw on this pool in seeking to fill vacancies at the more senior levels, rather than opting for a policy of open recruitment. The McCausland analysis and the Section 31 Review suggest that continued reliance on internal promotion to fill vacancies at higher levels would perpetuate apparent disproportionate impact and a perceived lack of fair participation on the part of men and Protestants in the middle to bottom half of the organisation. On the other hand experience of open competition at the senior level has shown that the level of representation of women and Roman Catholics in the actual applicant field is often lower than the anticipated external pool and lower than the eligible internal pool. Taken in the round, therefore, it could be argued that reliance on internal promotion is more likely to deliver a more competitive, predictable, pool of Roman Catholic and female candidates for the most senior posts in the Service and that this could be put at risk under delegated arrangements where the choice of

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internal promotion or open competition would be left to Departments and Agencies in the light of their own particular circumstances. The reality is, however, that it would be reasonable to expect that whatever arrangements apply, in-Service candidates will be among the best candidates from whatever source and so there may not be much force in this argument in practice.

30. It is also the case that given the limited movement in staff terms in recent years the current compositional profile in the lower to middle grades will remain a potent influence on the composition at senior level for some time to come, as will the intake from Management Trainee competitions and other open competitions. On this scenario, therefore, a move to a more delegated approach to promotion and recruitment and the management of equality of opportunity and fair participation may not necessarily be particularly detrimental to the Service's objectives, especially as Advisory Panel will continue to have an overview role in relation to the balance of representation in the Senior Civil Service.

The Way Forward

31. Having considered these further arguments and options ASEOM was not attracted to the more disaggregated/delegated approach to the management of equal opportunities, including the McCausland issue as set out in paragraphs 20-23 and 28-29 above. Equally it did not consider that a Service-wide approach to promotion was a practical or sensible option at this point in time, essentially because of the perceived lack of sensitivity to Departmental/Agency business needs and the problems in dealing with the large numbers likely to be involved. Instead, the consensus view of ASEOM was that the NICS should continue to retain the option of Departmental promotion, to be used as and when appropriate but should be prepared to contemplate refinements and changes in practice, and be prepared to operate on a co-operative/corporate basis in individual competitions, where an

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assessment of the issues so dictate. In reaching this view ASEOM took comfort from Mr McCartney's opinion that in the event of a challenge the substantial body of work undertaken by the Service in the last 2 years, including the examination of the practicability of a Service-wide approach to promotion, could be deployed as part of the Service's justification arguments in support of the retention of Departmental promotion.

32. There was understandable anxiety on the part of certain Departments (NIO/PANI in particular) that their compositional profile was such that they would be isolated and forced into open competition to the disadvantage of their staff as compared to the rest of the NICS.

33. In response to these concerns ASEOM was supportive of an NIO suggestion that a number of Departments with vacancies at Grade 7 level should fill them on a Service-wide basis subject to approval being granted for a Grade 7 competition and common rules/guidelines acceptable to all Departments/Agencies being agreed. The lessons learned from this experiment could then be used to inform the Service's justification arguments for retention of Departmental promotion or to provide a platform for further co-operative experiments in other grades, possibly moving on to a larger scale Staff Officer competition later in the year. Work on Service-wide Grade 7 arrangements is now being firmed up. An outline framework to be discussed with Departments is at Annex B.

34. Although Departments/Agencies are opposed to a more delegated approach to equal opportunities monitoring this issue is unlikely to go away completely and may have to be revisited in the context of follow-up work arising from the Section 31 Review.

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Implications for Other Employers

35. In commissioning further work on possible operational models PCC was conscious that final NICS decisions in this area might have read across implications for other employers, including the Home Civil Service. DFP was asked to consider this in reporting back to PCC.

36. It is difficult to come to a firm view on read across. Employers' circumstances and requirements differ. Very few mirror the NICS in terms of size, structure or diversity, nor do they necessarily face the same mix of policy pressures. We are aware, however, that the Local Government Staff Commission have essentially opted for a mixed economy approach retaining elements of internal promotion but introducing open recruitment at at least one further level. The FEC and EOC, and TUS, appear content with this. Many private and public sector organisations already make more extensive use of open recruitment, particularly at the senior level, than the NICS.

37. So far as the Home Civil Service is concerned OPS believe that the less homogeneous nature of HCS Departments in NI, their more specialist staffing, the lack of strong relationships with each other and more disparate management practices, restrict direct read across. OPS appear willing to take the risk of a case against an HCS Department.

Conclusions

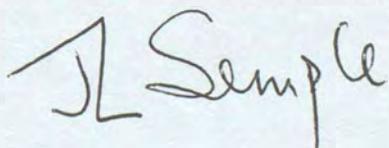
38. Having considered all the options and arguments the clear weight of opinion among senior personnel staff is that the most sensible course of action for the Service in relation to the McCausland ruling is to seek to retain a measure of Departmental promotion within arrangements which are robust in terms of other aspects of the FEC/EOC Codes of Practice and which take account of

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particular risks which may be identified in the context of particular competitions. In practice this is the current position. It was recognised that this option could be difficult to defend to the FEC and would carry a high risk of a Tribunal case and the possibility of adverse publicity. Its success would depend on the Service's ability to mount a convincing justification case.

39. PCC is asked to:

- (i) Note the work undertaken on the McCausland issue and the options considered;
- (ii) note ASEOM's preference for a continuation of a Departmental dimension to internal promotion and to confirm whether PCC is content to proceed on this basis;
- (iii) agree that a description of the issues arising from the McCausland case, together with PCC's conclusions on the preferred way forward, should be cleared with Ministers prior to DFP opening discussions with the FEC/EOC and TUS (the issue will surface in the context of the Section 31 Review in any event);
- (iv) agree that CPG, Departments and Agencies should liaise on the practicalities of giving effect to the preferred option, including the proposed experiment with a Service-wide Grade 7 board.



J L SEMPLE
18th June 1996

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JUSTIFICATION ARGUMENTS IN RESPECT OF A CHALLENGE BY A NON-CIVIL SERVANT - AN EXTERNAL CHALLENGE

1. To justify the continued use of internal promotion the Service needs to demonstrate that such an arrangement makes better business sense than the alternative of open competition in terms of the effective operation of the organisation, when set against Government and managements agenda for the Service. In the NICS context, the rationale for retention of a structured, merit-based, internal promotion system is that it is more likely to result in a committed, principled, customer-sensitive, efficient and cost-effective organisation with the necessary knowledge, experience and expertise to meet the challenges facing the NICS, and that it facilitates a planned approach to the achievement of a balanced workforce.
2. It can be argued that the development and promotion of existing staff deliver substantial benefits to the organisation in terms of retention of experience, expertise (both at strategic and operational levels), familiarity with the Parliamentary process, public and Parliamentary accountability in relation to the use of public money, and the maintenance of NICS core values and ethical standards, including political neutrality and objectivity in the provision of advice and services. It is also a significant factor in relation to the maintenance of staff productivity, efficiency and effectiveness.
3. Internal promotion contributes to the cohesiveness and commitment of the organisation and helps underpin the sort of continuity and stability necessary to accommodate the smooth transfer of power within the democratic process. In personnel terms, internal promotion complements the Service's efforts and investment to increase efficiency via the STP process, Investors in People and the Continuous Improvement Programme and is important in terms of morale and motivation and the maximisation of staff performance.

In addition to these constitutional, ethical and operational arguments there are a number of cost considerations in favour of continued use of internal promotion. First, open competition will result in higher advertising and processing costs. Second, the efficiency of externally recruited candidates is likely to be lower during the initial settling in period, which carries a cost to the organisation. Specific induction training may also be required. Finally, increased redundancy costs are possible as a result of excess capacity in internal feeder grades consequent on vacancies being filled by non-civil servants through open competition.

5. The third leg of a possible NICS justification case in favour of internal promotion is that reliance on the internal field facilities a strategic and structured approach to tackling compositional imbalances within the organisation. A significant shift to external competition would create uncertainty as to who will come forward, and what type of pool will be created, possibly prejudicing the achievement of goals and timetables at the senior level which are based on anticipated flows through the grades. Experience of open competition at senior level has shown that the level of representation of women and Roman Catholics among applicants is often lower than in the anticipated external pool and in the eligible internal pool.
6. The above arguments are essentially enterprise rather than job-related and relate to the overall business of the NICS (the cost-effective delivery of a quality service to Ministers and the general public within the normal constitutional conventions and standards expected of the organisation). As such they operate better in relation to a challenge against a Service-wide competition. That is not to say that the same arguments would not be capable of being successfully deployed against an external challenge to a

Departmental competition, but this is by no means certain. Realistically, the equal opportunities argument is only viable on a Service-wide basis.

7. On the basis of the preceding paragraphs it is possible to mount a respectable case for retention of a career civil service and a system of internal promotion. But there are some weaknesses. Some of the arguments put forward, particularly those on standards of behaviour, skills requirements, experience etc apply with equal force to the rest of the public sector, and presumably also to the private sector. In addition, the fact that the Service is prepared to go to the open market in certain circumstances, and is prepared to privatise or contract-out functions hitherto undertaken by civil servants, is an admission that non-civil servants can do many of the jobs hitherto the preserve of civil servants. Reliance on internal promotion could be represented as a self-indulgent restrictive practice which denies the NICS access to the widest possible range of talent, internal and external. The Service could be accused of overlooking some very good candidates possibly even the best.

8. A further area of weakness and an argument in favour of open competition, is that while the NICS might regard reliance on internal promotion as the best route to delivering increased Roman Catholic and female representation in the senior grades, the level of Roman Catholic and female representation down through the grades, particularly in the general service group, is such that Protestant and male representation in the lower and middle levels is getting increasingly out of line with labour availability data. The likelihood is that continued reliance on internal promotion will result in increased over-representation of Roman Catholics and women (or put another way, an apparent lack of fair participation on the part of Protestants and men) at the middle to lower levels of the Service. Labour availability data suggests that open competition would offer

a better balanced pool at every level. It would also put the service beyond a McCausland type challenge.

9. It is important to recognise that whilst a Tribunal may be prepared to concede that internal promotion should remain a valid option, the particular circumstances of individual cases (including management's handling of the issues) may be less easy to justify. Individual cases are likely to be lost, or will have to be settled, through lack of compelling justification arguments in respect of the particulars of the case. A number of such losses could weaken the Service's case for the continued use of internal promotion generally.

JUSTIFICATION CASE IN RESPECT OF CONTINUED USE OF DEPARTMENTAL AND GRADE REQUIREMENTS - AN INTERNAL CHALLENGE

A Departmental Requirement

10. Possible arguments in justification of a Departmental/Agency requirement are:

- (1) The need for candidates to possess corporate, ie Departmental/Agency knowledge and experience. There maybe instances where familiarity with or knowledge specific to the Department/Agency can be shown to be essential but this argument is undermined by existing procedures eg equalisation of promotion, redeployment and the method of senior postings across Departments.
- (2) The large number of potential candidates eligible for individual Service-wide competitions would create difficult administrative problems. This is an administrative convenience argument to which a Tribunal may be unsympathetic.
- (3) Central promotion procedures are potentially slow and cumbersome and could undermine the ability of Departments and agencies to effectively carry out their

business. This is probably the strongest argument in justification of the Departmental promotion system. The recent Working Group findings are relevant here.

- (4) Cost. Service-wide boards could be more costly, at least initially but may be more cost-effective on a longer timescale. Again the Working Group findings are relevant.
- (5) There are currently different reporting cycles between Departments which militate against centralised promotion procedures. A Tribunal is likely to regard this as an administrative inconvenience which could be overcome by synchronising reporting cycles.
- (6) Difficulties involved in identifying selection criteria acceptable to all Departments. This problem could be overcome by establishing clear core job or grade competences, an approach which is inherent in the recruitment and promotion procedures recommended in the FEC Code of Practice.
- (7) The difficulties in handling the existing different reporting systems and standards. Insofar as the NICS argue that it is a coherent body with largely common standards (which it may want to do in response to an external challenge) a Tribunal is unlikely to be impressed if it seeks to argue the reverse in a Departmental context.
- (8) The Departmental promotion system encourages staff to identify with the aims and objectives of their Department, fosters morale and facilitates the retention of a team spirit, with consequential efficiency benefits. There may be validity in this argument but it is weakened by the emphasis given to a corporate NICS identity in the justification arguments

for internal arrangements as against an external challenge.

11. Legal advice is that it is not at all certain that the above arguments are sufficiently robust to prevail against a complaint of indirect discrimination.

A Grade Requirement

12. Experience has shown that grade is no longer a comprehensive or accurate indicator of job competency. There will also be instances where the competences etc needed to carry out a job could be held by staff below the grade level in question.
13. In two post-McCausland NICS trawl competitions the use of grade as an essential eligibility requirement has been challenged. Legal advice was that the exclusive use of grade in those cases was unsustainable.
14. In addition, a system which claims to be imbued both with an equal opportunity ethos, and with a strong business orientation, can hardly afford to exclude officers from competing for posts for which they appear well qualified, on the narrow ground that they do not meet the grade requirement, particularly where grade is not a good indicator, or at least not an exclusive indicator, of the skills required. Given its vulnerability to challenge, it is clearly unsafe for grade to be used as an exclusive eligibility criterion and individual members of staff outside the grade who possess the necessary specialist qualifications, skills and/or the relevant degree of experience should be eligible to apply to enter the competition. There is a need to develop specific job related criteria in terms of skills, competencies, experience and qualifications.

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PROMOTION TO GRADE 7: FRAMEWORK PRINCIPLES AND PROCEDURES FOR SERVICE-WIDE BOARD

1. The rationale for a Service-wide approach is twofold: first to allow qualified staff across all Departments an opportunity to put themselves forward for consideration for promotion to this level and second to help inform the Service's consideration of the feasibility of a more general move to Service-wide promotion in the context of the Service's consideration of the McCausland issue.
2. The proposed selection arrangements are outlined in paragraphs 3-11 below. The arrangements are experimental and will be subject to review in the light of experience of the process. Subject to agreement on numbers Departments will use the arrangements to fill current vacancies and those which might arise as a result of the current Senior Civil Service competition.
3. The Service-wide arrangements envisaged will be in two stages. The first stage is designed to identify which of the eligible applicants possess the required competencies for Grade 7 and who therefore meet the basic standards for the grade. Those adjudged to have the necessary qualities to operate effectively at Grade 7 will be eligible to apply for specific promotion opportunities at that level (Stage Two).

Stage 1

4. The first stage of the selection process will comprise a Departmental interview using common Service-wide competencies for Grade 7 as developed in the context of earlier pilot Grade 7 Assessment Centre work. Subject to legal advice and discussion with Departments this stage of the competition will be open to General Service DPs who have a fitted for promotion to Grade 7 marking.

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5. Invitations to self-nominate will be issued by the parent Department. Staff who have moved within 6 months of the closing date for self-nomination may choose which Departmental sift board they wish to appear before.
6. The self-nomination forms will be based on the format used for the recent Senior Civil Service entry level competition and will require staff to give examples of experience and attainments which demonstrate the extent to which they meet the core competencies. These competencies will then form the basis of a structured interview.
7. Steps will be taken to ensure that the core competencies are rigorously and consistently applied. Departmental interviewing panels are expected to include a representative from another Department. Panels will receive advice and training on structured interviewing, scoring, pass standards and the need for fair and objective selection against agreed standards.
8. Panels will place candidates in one of three categories: strongly recommended, recommended for interview, not recommended. Candidates will be informed of their ranking.

Stage 2

9. Under the second stage of the process Departments with a promotion opportunity at Grade 7 will seek self-nominations for consideration for the post through a vacancy notice which will be circulated only to staff adjudged to have the required competencies for promotion to Grade 7. Depending on the numbers involved circulation may be limited to those strongly recommended or extended to include those in the recommended category. Vacancy notices will also be open to those in the grade and analogues. Assessment will be on merit against key job-related criteria as set out in the vacancy notice.

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10. The second stage of the selection process will be carried out by interview and Departments will comply with good selection practice. This stage will provide an opportunity for line managers to be involved in the selection process.
11. There will be an appeals procedure based on existing provision for officers who have self-nominated for the Departmental board, or in response to a vacancy notice, but who are not called to interview.
12. The target date for the launch of the proposed Grade 7 selection process is outlined above is September 1996. The expectation is that the arrangements will run to end-1997. Candidates unplaced at the termination of these interim, experimental, Grade 7 promotion arrangements will have to resubmit to a fresh competition.
13. Looking further ahead, consideration is being given to the viability, in cost and operational terms, of introducing an Assessment Centre stage into the Grade 7 promotion process.
14. The effectiveness of the arrangements in practice will be carefully assessed to inform the way ahead in the wider McCausland context.

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