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DEPARTMENT OF ECONOMIC DEVELOPMENT
18 MAR 1997
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cc Mr Loughran) Annexes
Mr Gibson) B & C
Mr King) only
Ms McGivern)
Press Office)
MC)

18 March 1997

TO: 1. PS/Baroness Denton (DED & I)
2. PS/Secretary of State

FROM: W D A Haire
Industrial Relations and Equality Division

19.3.
*cleared
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SECRETARY OF STATE'S MEETING WITH CHAIRMAN AND CHIEF EXECUTIVE OF THE FAIR EMPLOYMENT COMMISSION (FEC) - 10AM, MONDAY, 24 MARCH 1997 AT STORMONT CASTLE

Introduction

1. In order to monitor the Fair Employment legislation and the work of the FEC there are a series of 6-monthly meetings with the Chairman, Mr Bob Cooper. The last meeting took place in December 1995 but Baroness Denton also visited the Commission in September 1996. These meetings provide an opportunity to discuss progress, how the legislation is being used, as well as any factors which may be inhibiting the FEC from achieving its objective. Mr Cooper will be accompanied by the Commission's Chief Executive, Mr Harry Goodman.
2. The meetings usually take the form of a report by Mr Cooper, followed by a discussion on the issues raised, as well as any other issues which the Minister may wish to discuss with Mr Cooper. The minutes of the last meeting are attached at Annex A.

*by fax
cleared + sent to SoS by fax (Arlene Neill).
They do not require hand copy. Fmc 20.3.97.
copy of FEC document ~~to be~~
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Fair Employment Issues

3. Mr Cooper will give an over view of developments in the Fair Employment field. From a Departmental perspective, the work of SACHR in Employment Equality is of major significance, and Mr Cooper, as a member of SACHR has been devoting considerable time to this work. He is however acutely conscious of the anomalous nature of his role, since it is the work of the FEC which is a central part of the review. He is likely to remain fairly guarded in his comments. However all comments to date suggests that SACHR's main interest is PAFT and TSN, and while they may make a number of legal recommendations which will prove problematical, this will not be the main focus of their work.

4. A second area of current concern is sectarian harassment in the workplace, with cases such as the Bloody Sunday commemorations in Desmonds, and the continuing issue of UCM. The DANI case has also raised the profile. Bob Cooper takes a balanced line on the issue in public. He points out that the actual level of harassment is probably on the decline. What is happening is that people now feel able to report incidents. He is however concerned on how one can advise employers, fearing for example that the wearing of poppies may become a sensitive issue this year. It would be useful to draw Mr Cooper into discussion of this issue, and seek his views on how the issue can be tackled.

5. One final issue is the relatively high level of settlements now being experienced. Employers are often settling where they judge they face difficulties in defending a case. In some respects this removes the



pressure on the Tribunals and the public purse, avoiding legal fees, but it would be useful to seek Mr Cooper's views on this issue, and whether our system does not encourage too frequent a settlement of cases.

6. At the time of preparing this brief, Dr Gudgin's views on illegal discrimination against Protestants have been made public, but Dr Gudgin has not produced detailed analysis. If we can gain sight of this in the near future we will brief prior to the meeting. I should note that in the week commencing 24 March the FEC will produce new monitoring figures for 1996. They will demonstrate a continuing trend of growing Catholic participation in employment.

FEC Effectiveness

7. During a visit to the FEC on 11 September 1996, Baroness Denton raised the continuing need for all the public sector to strive for value for money in light of the tight Public Expenditure round. If Mr Cooper raises resources, it would be useful if the Secretary of State could emphasise the need for an effective use of resources. The final outcome of the 1996 PE Survey reduced the FEC's overall budget of £2.95m by 2½% (£75K). Of equal importance for an organisation 60% of whose budget goes on salaries is the fact that they will be required to finance future pay from a capped staff budget, which under present pay arrangements means that they will need to reduce staff costs by about 4-5% per year. (More extensive briefing on this issue is included at Annex C.)
8. The key message which needs to be conveyed to Mr Cooper is that like the private sector - and the rest of the public sector, which has undergone such pressures for a number of years, the FEC has to learn how to use their staff and other resources more effectively. They



need to prioritise their work, and find new ways to work. The argument in Mr Cooper's press release at the time of their annual report, which implies that less resources could indicate a lessening of commitment on the part of Government, needs to be countered. He was quoted as saying:-

"the effectiveness of that response and the ability to sustain the very significant gains over the past six years will also be governed by the level of resourcing in the whole area of fair employment. Like all public bodies, the FEC must operate within the constraints of finite public funds but it must always be remembered that the issue of inequalities in employment has major social and political consequences. The recent survey in the Belfast Telegraph indicated that there is a growing recognition of the importance of working to combat those inequalities and clear government commitment, with all that that implies, is needed now as much as before".

9. The Secretary of State might also suggest that closer co-operation with the EOC on programmes and with EOC and LRA on sharing common services costs are issues worth considering in the light of financial constraints and the need for efficiency. The Department has recently raised the issue formally with the Chairs of the smaller NDPBs which the Department sponsors. A meeting has been arranged for 20 March to discuss the matter further.
10. Briefing material and "lines to take" on the issues which the Secretary of State may wish to specifically mention at this time, are attached as follows:

| | |
|--------------------------------------|---------|
| Report on Fair Employment Activities | Annex B |
| Effectiveness of the FEC | Annex C |
| FEC Annual Report 1995/96 | Annex D |

Backgr



Press Release

11. It has not been the practice to issue a press release following these meetings which are essentially working meetings between Ministers and the Commission.
12. David Gibson will attend the meeting and, if required, can brief the Secretary of State prior to the meeting.

W D A Haire

W D A HAIRE

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ANNEX A



cc Mr Loughran
Mr Gibson
~~Mr Moore~~
Diary Secretary

NOTE FOR THE RECORD

MEETING WITH BOB COOPER, CHAIRMAN, AND HARRY GOODMAN, CHIEF EXECUTIVE, FEC, NETHERLEIGH, 14 DECEMBER 1995

1. Baroness Denton met with Mr Cooper, Chairman, and Mr Goodman, Chief Executive of the FEC at Netherleigh on 14 December, for their bi-annual meeting.
2. Mr Cooper updated the Minister on current Fair Employment issues; he saw Fair Employment culture now more deeply embedded in Northern Ireland, and for the first time most Americans were accepting the current system and legislation. There was, however, still a deep resentment by many employers of complaints which were being made.
3. The Minister enquired whether there was a risk of the Commission being seen as a monitoring/audit body, rather than one designed to promote FE as a principle. Mr Cooper did not necessarily share this concern; resentment was perhaps felt by smaller employers who only saw the FEC in connection with the pursuit of complaints - however most employers did appear to recognise the Commission's full range of responsibilities.
4. Mr Cooper reported that the Commission was concerned at the number of 'nuisance' settlements, and the costs which these incurred, to small businesses in particular. The FEC felt also that its decisions not to support certain cases would become increasingly subject to legal challenge.
5. Baroness Denton was concerned about the legal costs incurred by the FEC. Mr Cooper agreed that the legal budget was difficult to control, although the Commission was putting downward pressure upon it by using their own solicitors and paying fixed fees to barristers. Unlike, for example, the EOC, the FEC was expected in many quarters to support individual complainants and pay their legal fees.
6. Mr Cooper outlined how he saw that perceptions in America had been able to change: it was very difficult to argue that Northern Ireland's legislation was inadequate; there was a backlash in the US against their own affirmative action legislation; the figures for the black/white unemployment differential were worsening in America; and, Irish-American militants had called an "economic ceasefire".



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7. Mr Gibson enquired whether changing Tribunal law, to require the losing side to pay full costs, would end "nuisance" cases. Mr Cooper felt that this would simply end all cases independent of those supported by the FEC, although as the FEC won the majority of its cases, it would have a net positive effect on legal costs.
8. Current FEC legislation was perceived to be making employers make "safe" recruitment decisions, selecting the candidates with the best record on paper, rather than making more "imaginative" selection of slightly less experienced, although potentially more able, individuals.
9. The Small Business Unit of the FEC was performing very well, with its services over-subscribed.
10. Baroness Denton was concerned that tribunal members did not appear to her to be representative of business. Mr Cooper thought that this would inevitably be a problem, as no businessman who was currently active could make the necessary time commitment.
11. The Minister stressed to Mr Goodman that a sound corporate plan was needed in order to measure the FEC's performance. Mr Goodman appreciated this; he was confident that the Commission's costs were tightly under control.
12. The Minister was grateful for the Commission's hard work. She was keen to accept Mr Cooper's offer to visit the Commission's offices.

G. Mallon

GERRY MALLON
Private Secretary

28 December 1995



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REPORT ON FAIR EMPLOYMENT ACTIVITIES

The FEC's Annual Report and Accounts for the year 1995/96 was laid in Parliament on Thursday 28 November. Progress on activities is described in this document as follows:

Section 11 Reviews

Under Section 11 of the 1989 Act, the Commission is empowered to investigate any employer at any time for the purposes of ensuring that equality of opportunity and fair participation is being afforded, and also to assess the employers' recruitment practices and procedures. This year the Commission obtained detailed information from the 116 concerns with more than 250 employees to enable it to assess how many had religious imbalances in their workforce. Overall, 77 showed some imbalance. The Commission has made recommendations on affirmative action to all of these concerns and 24 have agreed formal affirmative action programmes, including goals and timetables.

Section 31 Reviews

Under Section 31 of the 1989 Act, all registered employers are required to review their employment practices and procedures at least once every three years and to introduce affirmative action measures if necessary. The Act does not require employers to submit the results of these reviews to the FEC, but by the end of the year under review, the Commission had obtained reports from 934 registered concerns which represent some 83% of the monitored workforce.

Enquiries

The number of enquiries relating to actual or potential complaints of discrimination during the year ending 31 March 1996 was 1,381, a decrease of 47% on the previous year's figure of 2,027. While the number of enquiries decreased, the number of new proceedings lodged - 229 - showed a 55% increase on the previous year's figure of 148.

Fair Employment Tribunal Cases

Of the cases submitted to the FET which were supported by the FEC, 4 were upheld and 3 were dismissed. Settlements were achieved in 74 cases, an increase of 30% on the previous year's figure. A total of £732,196 in compensation was recovered by complainants assisted by the Commission.

At the end of March 1996, the FEC had 330 ongoing cases on its books (this compares with 278 at the end of the previous financial year).

Line to Take

We may wish to ask Mr Cooper what measures are the Commission taking to reduce its backlog of cases.

What measures are the Commission taking to encourage appropriate conciliation?

ANNEX C

1. THE EFFECTIVENESS OF THE FEC

Resources

Government has continually emphasised its commitment to fair employment and to the work of the Commission; the resources allocated to the Commission (£2.95m in 1996/97) are a demonstration of the level of this commitment.

As a result of the 1996 PE Survey, the FEC's overall budget has been cut by 2.5% (£75K) in 1997/98. In addition, the Department has advised the FEC that the salary budget must be fixed at the 1996/97 level for the next three years, which means a 4-5% downward pressure in staff numbers.

Mr Cooper may claim that cuts of such magnitude will prevent the Commission from being able to carry out its statutory functions, while any restriction in its budget will force it to reduce its staffing numbers, thereby reducing the quality of its service. He may also claim that he was given assurances that sufficient funding would always be made available to the FEC for the delivery of its statutory duties and that if the Commission cannot provide assistance under section 24 of the 1976 Act as substituted by section 50 of the 1989 Act, this could lead to a judicial review.

It is the Department's view that support under section 50 is only part of the FEC's business and that the Commission will be able to identify sufficient resources from within its programme expenditure to absorb the cut in 1997/98. They have legally trained staff who could do some of the cases themselves, as opposed to using Barristers. Their publicity budget can also now decline, since businesses know the basic law after 6 years. However, it will be extremely difficult for the FEC to identify the necessary savings in subsequent years without clearly defined priorities, increased co-operation between our NDPBs and increasing the delivery time of certain services. The fixed salary budget in the longer term could lead to redundancies which are likely to prove difficult for the FEC. However, these are issues which the Department can take forward with NDPBs which will need to stop recruitment and seek to maximise natural wastage.

Corporate Plan

The Department is broadly content with the draft of the FEC's Corporate Plan for the years 1996/99 with the exception of Objective 2's reference to the unemployment differential and officials are in discussion over a difference in legal opinions. The Corporate Plan is not however particularly exciting.

The importance of meaningful performance targets and measures which will indicate the extent to which the FEC is meeting its objectives, has been strongly emphasised to the Commission. The FEC, although slow to take this on board, is beginning to respond by measuring outputs rather than activities but some continuing work is required on this issue. The Division organised a seminar on performance measurement for all NDPBs for 13/14 March to address this.

Structural and Staffing Review of the FEC

BDS have completed a structural and staffing review of the FEC, following one of the recommendations of review by our Internal Audit and continuing pressure from that Department. The terms of reference of the review are "to ensure the correct organisational structures are in place and that there are resources to carry out the functions and objectives of the Commission". In addition, at the request of the Department, the FEC has agreed to ask BDS to report separately on prioritising the Commission's work in the event of budgetary constraints. In short, we have sought to ensure that the FEC management has in place a report which tells how to use their staffing more effectively. Mr Goodman passed a copy of the report to the Department on 20 February.

Annual Report

The FEC's Annual Report for the year ended 31 March 1996 was laid before Parliament on 28 November 1996. While the structure of the report itself is focused and business-like, it is made extremely lengthy by the inclusion of multiple appendices. The Minister, in clearing the report, commented that it may be more effective if presented in a shorter, more readable style and requested the inclusion of a sentence to this effect in the letter issuing from the

Secretary of State to Mr Cooper. The Department and the Minister on a previous visit have expressed concern at the length of the report and suggested that, if desired, a separate document containing details of settlements, might be produced. This is however ultimately a matter for the Commissioners, not the Department.

Line to Take

In line with current pressures on Government, the Commission must be able to demonstrate that it is meeting its objectives and that it is achieving value for money. We have been able to protect our smaller NDPBs, such as the FEC, against budgetary constraints imposed on all other Government Departments; however, as we have advised you, this can no longer be the case given the increasing pressure to reduce public spending. Further good management can find ways of achieving the same results with gradually diminishing resources. The private and public sectors have proved that, and no doubt so can the FEC. One area which clearly should be tackled early is overheads, such as personnel and finance, and it would seem sensible for the FEC to work closely with EOC and LRA on this. The meeting on common services should address this.

The Commission must be capable of demonstrating the impact it is making. It should be able to measure its performance in terms of outputs as well as activities, and increasingly, will have to think how it can achieve those outputs with perhaps less resource, working in new ways to achieve the same end.

It is essential that the Commission produces its Corporate Plan and keeps on refining its Operational Plan so that the investment of public money in the organisation can be seen to be justified. We appreciate the work done on this planning. Any reference to the legal vires of the Corporate Plan should be avoided.

Appointments to the Commission

At present, there is one vacancy on the Commission, following the resignation, due to business commitments, of Declan Morgan. Mr Cooper may raise the delay in appointing new members to the Commission.

Line to Take

Should Mr Cooper raise this issue, we will wish to refer to delays resulting from the establishment of new procedures arising from the Nolan recommendations. Following Ministerial intervention, the decision was taken in December to advertise the Morgan vacancy. The closing date for applications has now passed and information packs have been issued to all those who have expressed interest. It is hoped that a new member will be appointed by 1 April depending on the timing of the general election. Two new appointments, Mrs Margaret Elliott and Mr Uel Adair were made on 1 October 1996. Mr Cooper's need for new Commissioners is fully appreciated.