



Fair Employment Agency

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Chairman: Bob Cooper

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Mr. R. Wilson,  
Department of Economic Development,  
The Arches Centre (2nd Floor),  
13 Bloomfield Avenue,  
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Your ref:

Our ref:

Date: 14th March, 1986.

Dear Reg,

I enclose a copy of the opinion which the Agency has now received from Michael Lavery, Q.C., about the McBride Principles.

The opinion accords with the Agency's own view that any company adopting the McBride Principles in toto would run the serious risk of a finding of discrimination being made against them in relation to individuals from that section of the community which has the majority of the labour force.

In addition, the Agency takes the view that the adoption of the Principles by a company could require the Agency to take action under Part 2 of the Act and would of necessity place that company's Equal Opportunity Certificate in jeopardy.

Yours sincerely,

R. G. COOPER,  
Chairman.

RGC/cd

RE: McBRIDE PRINCIPLES

OPINION

It is quite clear in my view that the 1976 Fair Employment Act does not permit "reverse discrimination". The Act may be considered under two broad headings. Firstly, there are provisions which are designed to ensure that all individuals in Northern Ireland have an equal opportunity of obtaining employment. Secondly there are the provisions for enabling individuals to obtain redress for cases of discrimination against them on religious or political grounds. The first part is educational/consultative and directive. The object, however, of this part of the Act is to create a situation which will naturally lead to a representation in all industries which bears a closer relationship to the proportions of the various sections of the community than may at present pertain.

The emphasis must be, however, upon the word "naturally". It is therefore not possible, for example, to increase the representation of Catholics in a given industry if that involves discrimination against individual Protestants which seems to be implicit in some, at least, of the McBride principles.

Dealing therefore in detail with the McBride principles, my views are as follows. Principle No.1 is acceptable provided this is not done by appointing less well deserved individuals from the Catholic community than from the Protestant community and provided also that there is no diminution in the equality of opportunity of Protestants as a whole. Nos. 2 and 3 would be acceptable.

No. 4 would be acceptable where the special recruitment schemes were made to redress any existing inequality of opportunity. Indeed, there may be circumstances calling for such efforts because of the obligation to afford equal opportunities to all sections of the community. Special recruitment, however, ought not to be carried to the lengths where it

would result in depriving individuals and other sections of the community of their equality of opportunity.

No. 6 is acceptable. With regard to No 7 I do not think that it would be acceptable under our legislation to attempt to develop a training programme that would not be equally open to all sections of the community. Otherwise, if it were confined to Roman Catholics, Protestants could complain with justification that they were not having equality of opportunity since these Schemes were denied to them. Principle No. 8 is subject to the same general observations to equality of opportunity as the earlier Principles that I have questioned. In addition here, the recruitment of any individual ought not to be at the expense of a Protestant who is applying for the job and would be discriminated against. With regard to No. 9, as I have already made clear, affirmative action which almost by definition would imply reverse discrimination is not permissible.

It is also clear that any company attempting to apply the McBride principles in full would render themselves liable to claims from individuals who might claim that they were discriminated against. The fact that the McBride principles had been expressly adopted by any employer could in some circumstances provide potent evidence of discrimination against individuals in a section of the community that the McBride principles were not benefitting. In addition, the adoption of these principles might well require the Fair Employment Agency to take action against them under Part 2 of the Fair Employment Act. This might involve removal from the Register referred to in Section 7 which could, among other things, result in such a firm being unavailable for Government work. A finding in favour of an individual under Section 24 of the Act could lead to a similar result. Accordingly, it seems to me quite clear that under the present state of the law in Northern Ireland, it would be unlawful and imprudent for any employer to adopt without modification the McBride principles. It follows from that, that in the case of a Body Corporate that any such adoption would be ultra vires.