



ICTU Briefing Paper-

Achieving Equality in Practice

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Introduction

There are social, political, economic inequalities between people. Better off households are gaining more than those who are less well off.¹ Promoting equality in the workplace is fundamental to promoting equality in our society. The Central Statistics Office (2004) found that 100,500 persons reported they felt discriminated against in the workplace.

Almost 60% of persons who reported experiencing discrimination took no action (verbal, written or official complaint or legal action) in relation to the discrimination experienced. Importantly the groups reporting the highest rates of discrimination were also the groups that were least likely to take action. This is not surprising given:

- a) the reliance on individuals to address inequality retrospectively, that is, prove discrimination after the event;

combined with
- b) the lack of a positive duty, a requirement, on organisations to act promote equality in practice.

The problem is this. To prove discrimination has occurred an individual must know their rights, in an organisation that is not required to promote equality and make a complaint to an external body, that they may, or may not know about.

Equality legislation that names vulnerable groups combined with state agencies that promote equality and hear complaints of discrimination are vital. They are vital to

¹ European Union Survey on Income and Living Conditions (EU-SILC). November 2006. Cork: Central Statistics Office

publicly accountable decisions as to right and wrong, and punishment, however light. As they are constituted in Ireland they do not require action to promote equality. Organisations are free to adopt or not adopt equality policies or provide or not information on rights.

These foundations have been in place for nearly ten years now. It is time to go further and ensure all stakeholders play their role in achieving equality in practice – to prevent inequality and discrimination.

The Trade Union movement has always been to the forefront in demands for an equal society. The aim of this paper is to provide a framework for the Trade Union movement to secure the commitment and action necessary to deliver equality in practice in Ireland.

Inequality in Ireland

The percentage of the population living in enforced deprivation increased from 18.3% in 2004 to 19.2% in 2005.² 18.5%, of the population are ‘at risk of poverty’, that is, living in households where income is less than 60% of median income (known as ‘relative income poverty’).¹ Furthermore, while children under 16 years of age account for just 22.5% of the overall population they represent almost 27% of those at risk of poverty and a significantly higher, 34.3%, of persons in consistent poverty.

Income, as Sen (2005) argues, is “*one influence on our capabilities*” but the conversion of income into capability also relies on “*a variety of contingent circumstances*”. Is the environment in which we live epidemic free or prone to natural disasters? Is there political freedom? Is there cultural freedom? Does discrimination exist?

A recent National Economic and Social Forum (NESF) report stated that:

Ireland has less equality of opportunity than other European countries and this has changed little over the last decade despite a huge expansion in

² According to the eight basic deprivation indicators used in the EU Living in Ireland Survey

education and economic growth. We now have a wealthier but a more unequal society with the richest 20% of our working-age population earning 12 times as much as the poorest 20%, one of the highest levels of market income inequality among OECD countries". Own emphasis. (NESF. 2006 P ix).

The growth of inequality has been accompanied by welfare and social policies that do not address the disadvantage of sections of the population. Vulnerable groups are not getting the benefit of economic development in Ireland. (National Economic and Social Council. 2005)

Equality objectives have been realised. We have formal equality, that is, discrimination against people under nine grounds is prohibited. The grounds are age; disability; family status; gender; marital status; membership of the Traveller Community; race; religion and sexual orientation.³ In addition to the legal framework to prevent discrimination, there is an infrastructure that aims to support the promotion of equality.⁴

This approach is minimal. It relies on an individual to make a complaint, gather the necessary evidence, appear in a Tribunal and argue their case. The recommendations of the Equality Officer on hearing the evidence of both parties, are not monitored for subsequent implementation, so there is no assessment of the impact of the decisions of the Equality Tribunal, even when discrimination is found to have taken place.

In addition public policy lacks an ambition for equality, and organisations are generally found lacking in terms of their ability to promote equality. Recent legislative provisions (the 2004 Equality Acts and the Disability Act 2005, discussed later) do move towards equality in practice, but they will not generate a proactive approach to equality in the absence of a positive duty, that is, a requirement to act.

³Detailed descriptions of the grounds are contained in Appendix One

⁴ The Equality Authority was set up to promote equality and prevent discrimination and the Equality Tribunal to hear claims of discrimination.

Who experiences Inequality

Groups experience inequality in access to employment. Research by Gannon and Nolan (2006) highlighted that persistent disability is associated with a very pronounced reduction, of 42 percentage points, in the likelihood of being in employment.⁵ They also found that the onset of disability for adults of working age to be associated with a decline of about 20 percentage points in the probability of being in employment. This fall was more pronounced for women and those with low levels of education. Disability onset was also seen to be associated with a decline in household income, of the order of 15% on average. The researchers highlight that *“when an adult moved from reporting to not reporting disability in the survey there was an increase of about 7 percentage points in the probability of their being in employment, having controlled for personal and household characteristics”* (Gannon and Nolan 2006 p.9).

Negative attitudes to people with disabilities are acted on. More pervasive are the inaccurate assumptions about an individual’s ability to fulfil the often poorly defined essential and desirable criteria of the job.

Lesbian and gay couples have no guarantee of fair treatment because legally, their relationships do not exist. Same sex couples experience disproportionate burdens at times of crisis, for example, during times of serious illness or death of a partner. Groups experience inequality in health status. Research highlights that members of the Traveller Community have more than double the national rate of still births.

Women currently occupy only 13.25% of the seats in the Dáil and still earn less than men. A recent report on equality data noted the “principle of equal pay has been part of international and EU law since the 1950’s but there still isn’t a single country in the

⁵Even when a range of other personal and household characteristics was taken into account. Brenda Gannon and Brian Nolan. July 2006. *“The Dynamics of Disability and Social Inclusion”*. Dublin: Equality Authority

EU where women's wages are equal to those of men".⁶ The recent European Commission report on Equality between Women and Men – 2007 highlights the extent of the gender gap that still exists;

- The rate of employment of women between the ages of 20 and 49 falls by 15 points when they have a child, while that of men increases by six points;
- Women, especially elderly women and single mothers, are at greater risk of exclusion and poverty, the risk of poverty among women over the age of 65 is 20%, i.e. 5 points more than for men;
- Long-term unemployment affects 4.5% of women, i.e. 1 point more than men;
- Increasing demands for labour flexibility are having a disproportionately large impact on women. Almost one-third of women work part-time (32.9% in 2006), compared with just 7.7% of men;
- Fewer than one-third of managers are women, and the management boards of the 50 biggest listed European companies had only one woman for every ten men in 2005;
- The average proportion of women is 24% in national parliaments. It is 33% in the European Parliament. (COM(2007)49 P5-6)

Now we need a requirement to act. The fourth generation strategies for equality generally refer to action "*being both 'internal' – within the organisation in question as an employer – and 'external', in the 'business' of each organisation, especially in service delivery.* (O' Cinnéide P19). They must include a requirement to act.

⁶ European Commission. November 2006. "European Handbook on Equality Data". European Commission: Directorate – General for Employment, Social Affairs and Equal Opportunities.

Who Experiences Discrimination

The experience of discrimination, being treated less favourably than another person is a very serious manifestation of inequality. Despite the legal framework, the Central Statistics Office (CSO) found that 12.5% of persons aged 18 or over felt they had experienced discrimination in the two year period prior to the survey.⁷ Based on this statistic, that could mean that over 20 million people in the EU experience discrimination on a yearly basis.⁸

Persons from ‘other ethnic backgrounds’ reported the highest rate of discrimination in Ireland with over 31% stating that they felt discriminated against. Of the six forms of discrimination examined in Eurobarometer survey, discrimination on the ground of ethnic origin is perceived to take place most widely, with 57% of the respondents in Ireland believing racial discrimination is widespread.⁹ (Eurobarometer. 2007. P36) The CSO (2004) found that over 25% of those that experienced discrimination reported age as the basis for that discrimination while almost 16% attributed the discrimination to gender.

Importantly, the CSO survey found almost 60% of persons who reported experiencing discrimination took no action (verbal, written or official complaint or legal action) and the groups reporting the highest rates of discrimination were also the groups that were least likely to take action.

Almost 25% of persons who reported experiencing discrimination indicated that they have no understanding of their legal right. This is reflected at a European level. Only 32% of European Union citizens claim to know their rights should they be the victim of discrimination or harassment. (Eurobarometer. 2007. P34) Significantly, the figures show geographic variation, 65% of respondents in Finland say they know their rights

⁷ Central Statistics Office. 2004.

⁸ European Commission. November 2006. “European Handbook on Equality Data”. European Commission: Directorate – General for Employment, Social Affairs and Equal Opportunities.

⁹ Eurobarometer. Jan 2007. “*Discrimination in the European Union*”: Special Eurobarometer Report 263/Wave 65.4 – TNS Opinion and Social.

if they are a victim of discrimination and as few as 39% of respondents in Ireland claim to know their rights.

Discrimination in the Workplace

Over 100,500 persons reported that they felt discriminated against in the workplace. Over a quarter (25.4%) of those persons stated that the main focus of this discrimination was 'bullying or harassment', while one in five (19.4%) indicated that the main focus was 'working conditions'. Discrimination when looking for work ranked amongst the top four most frequently reported types of discrimination.

There is evidence that the workplace is not always a healthy environment. The ESRI survey of Reports of Bullying Experiences in the Workplace (2007) found that almost one in thirteen workers stated they were bullied. One fifth of all UK employees have experienced some form of bullying or harassment. Employees who are bullied are more likely to be depressed and anxious, to be less satisfied at work, to under-perform and want to quit.¹⁰

Attitudes to addressing inequality are worth noting. There is very broad in the European Union for adopting measures that provide equal opportunities for everyone in the field of employment, ranging from 87% of Europeans in favour of specific measures for people with disabilities and older people to 66% when it comes to adopting specific measures when it comes to people's sexual orientation. (Eurobarometer. 2007. P.82) While there is support for action, inequality persists and very few of those who report experiencing discrimination in surveys do anything about it through the formal channels that exist.

Substantial equality has not been achieved. Inequality in access, participation and outcomes still persist, even for those groups legally protected from discrimination. The absence of positive and separate but duties for the private and statutory sector is preventing the achievement of equality in practice.

¹⁰ The survey of 2,000 employees was carried out by the Chartered Institute of Personnel and Development (CIPD) in association with MORI and Kingston Business School

Responses to Inequality and Discrimination in the Workplace

The Equality Act 2004, which came into force on the 19th of July 2004 amends and consolidates the Employment Equality Act 1998 and the Equal Status Act 2000. It also gives effect to EC Directive 2002/73/EC (equal treatment of men and women), Directive 2000/78/EC (the framework equal treatment employment directive) and Directive 2000/43/EC (race discrimination). There are some limited but important positive provisions within the Equality Acts that are currently underutilised.

Section 21 of the 1998 Act provides for the insertion of a gender equality clause into all employment contracts and Section 30 similarly provides for an equality clause in respect of the other grounds. Both are currently underutilised. An information programme, providing guidance for workplace representatives, through enterprise partnership structures would address this gap.

The 2004 Act also makes provision for the extension of ‘positive action provisions’ to all nine grounds covered by the Act (ss. 24 and 33, as amended). The Act states that it is not unlawful to “*adopt measures to ensure full equality in practice and to prevent or compensate for disadvantages linked to any of the discriminatory grounds*”. The European Court of Justice have given direction regarding positive action, the measures must aim to remove inequalities not compensate for for them. In addition the rulings of the court suggest that measures should be adequate to achieve its aim and the measure must be proportionate.¹¹ De Vos (2007) argues that there is still a degree of debate as to what is permissible as regards positive action, that is equality in practice. He states that the new focus in both the Treaty and the Directives, will not lead “*to significantly altered scope for positive action*”.¹² Notwithstanding, the scope for positive action has yet to be fully developed in Ireland. It is vital to give effect to

¹¹ Mark Bell. 2007. “Positive Action – Introducing the Concept” in “Putting Equality into Practice What Role for Positive Action?”. Brussels: European Commission.

¹² Mark De Vos. 2007. “The European Community’s Discrimination Law Provisions and Practice on Positive Action” in “Putting Equality into Practice What Role for Positive Action?”. Brussels: European Commission.

the legal provisions now. Guidance on positive action, activated through the provision of a programme of supports for best practice in the workplace is required.¹³

The legal provisions relating to workers, potential workers and consumers with disabilities are the most pronounced. They require employers and service providers to be proactive in facilitating integration (rather than simply fulfilling a ‘negative’ duty not to discriminate). There is now a requirement on employers to provide reasonable accommodation (*‘the employer shall take appropriate measures, where needed in a particular case’*) for persons with disabilities subject to this not imposing a ‘disproportionate burden’ on the employer (s.16 (3) EEA).¹⁴ The Supreme Court in its decision regarding the Employment Equality Bill 1996, recognised the admirable aim of making provision for citizens with disabilities, but found that the provision was attempting to transfer the cost of solving one of society’s problems on to a particular group (employers).¹⁵ The current legislation does not state that a failure to meet the duty to reasonably accommodate amounts to discrimination, however, case law under the previous provision held that a failure to provide reasonable accommodation amounted to discrimination.¹⁶

For many years public bodies have pursued a positive action measure which set a 3% target for the employment of people with disabilities in the public service. Under the Disability Act 2005, Part V gives the 3% target legal status and goes further (ss46-47) by allowing relevant Ministers to expand the range of positive actions which public bodies must take for the employment of people with disabilities and giving a special role to the National Disability Authority (NDA) in monitoring compliance and ensuring implementation. New structures are also established to ensure greater accountability by public bodies (ss. 48-51), including the establishment of monitoring committees that must report to the NDA and the Houses of the Oireachtas. It will be crucial to monitor and publish results with regard to meeting the objectives of the

¹³ Once the Department of Justice Equality and Law Reform have clarified the necessary wording of proposed amendments.

¹⁴ In determining whether the measures would impose such a burden account shall be taken, in particular, of (i) the financial and other costs entailed, (ii) the scale and financial resources of the employer’s business, and (iii) the possibility of obtaining public funding or other assistance.

¹⁵ [1997] 2 IR 1

¹⁶ *A Complainant v. Bus Éireann* DEC E2003-04

Disability Act 2005. This must be supplemented by supportive approaches which give effect to the statutory duties, so resources for the continuation and expansion of the NDA's Excellence through Accessibility Awards is vital.

The Equality Authority is charged with working towards the elimination of discrimination, and promoting equality of opportunity. To this end the Equality Authority has a number of powers, including the authority to conduct inquiries. On completion of an inquiry where the Equality Authority is satisfied that 'any person' is involved in discrimination the Authority may serve a 'non-discrimination notice.' The Equality Authority is also permitted to carry out equality reviews, effectively audits of the level of equality that exists in a particular business or industry, and based on these develop equality plans, which consist of a programme of actions to be undertaken in employment or business to further the promotion of equality of opportunity. It is vital that the programmes promoting best practice in delivering planned and systematic approaches in the workplace, supported by the social partners, are resourced. This includes the Equality Review Programme, the Equal Opportunities at the Level of the Enterprise programme and the WorkLife Balance Committee programme. These responses demonstrate the willingness, when provided with a supportive context, on the part of employers and employees to put in place best practice measures and play their role in achieving equality.

It should be noted that the EU directives mentioned above provide that associations, organisations or other legal entities that have a legitimate interest should be in a position to enforce the equal treatment principle on behalf of complainants, with their approval. Under the *Equal Status Act 2000-2004* and the *Employment Equality Act 1998-2004* no provision is made for organisations such as Trade Unions and Non-governmental organisations (NGOs) to initiate actions. The only body empowered to initiate proceedings in its own name and in limited circumstances is the Equality Authority. The *Equality Act 2004* permits a complainant to seek representation by a body authorised by the complainant, these bodies have no right to initiate an action – section 77(11) *Employment Equality Act 1998-2004*.¹⁷ The European Commission has issued a 'reasoned opinion' to the Irish Government on its implementation of the

¹⁷ Quinlivan, S. (2004) *Report on Measures to Combat Discrimination-Ireland*
http://ec.europa.eu/employment_social/fundamental_rights/pdf/legnet/irlrep05_en.pdf

Race Equality Directive (legislation number 2000/43/CE). Five issues have been cited in relation to Ireland including a limitation of the rights of interested parties to initiate proceedings to defend the victims of discrimination. This option should be adopted.

Finally, an independent mechanism to monitor the implementation of Equality Officer decisions, at the least in cases where discrimination is found to have occurred, and assess the outcomes would prove very beneficial to building good practice.

Do we need a Positive Duty?

Concerted efforts at mainstreaming are evident. Gender mainstreaming has been a requirement of EU funding for a considerable period and the Equality Proofing Working Group of the Department of Justice, Equality and Law Reform have supported a range of activities that have yielded some, though limited results.¹⁸

A persistent problem with mainstreaming measures has been, as O’Cinneide has highlighted, the issue of “*sustainability and encouraging compliance*”. (O’Cinneide P29). He attributes this to the lack of legally enforceable duties.

Positive duties, require organisations to give due consideration to equality concerns in employment policy, service delivery and policy design. They are used in many other jurisdictions and are proving very important in the promotion of equality. There are two types of positive duty, that which requires the state in its public service provision to integrate equality into its policies, programmes and services and that which requires the private sector to implement best practice. This is a logical objective, and cannot be argued against, particularly in light of the proof of discernable business benefits arising from the presence of equality policies in the workplace. (O’Connell, & Russell, 2005: p 64 and Monks, K, 2007, p:40-42)

In Ireland we need to define a set of obligations to give effect to the requirement to promote equality in the workplace and in public services. A positive duty would force organisations to act specifically in measurable ways secure equality in practice.

¹⁸ Hegarty, Maria. 2005. “Equality Proofing Activity 2002 - 2004 Learning that guides the way forward”. Dublin: Department of Justice, Equality and Law Reform.

In an EU wide survey in June 2006 respondents highlighted that the absence of a legal requirement to engage in equality mainstreaming and the lack of an institutional infrastructure were key reasons for a lack of action. Baker et al (2005) note:

The ‘institutions of contemporary welfare states are not directed towards full equality, but do aspire to certain limited egalitarian objectives, such as the elimination of poverty and the satisfaction of some basic needs. How these institutions can be reformed to achieve these limited goals more effectively is a perfectly legitimate question for contemporary egalitarians’. (Baker et al 2005: p17)

Positive Duties in Practice

Positive duties are legally based requirements to act to promote equality. They can be directed towards the public sector as is the case in Finland and Northern Ireland for example.

Under the 2004 Equality Act, Finnish public bodies have responsibility to systematically promote equality in all their activities as well as to take remedial steps to tackle obstacles to the realisation of equality. A practical means of promoting equality of opportunity provided for by the Act is the requirement on public authorities to draw up an Equality Plan. There has been a statutory duty on public bodies to draw up a Gender Equality Plan since 1995, and the 2004 Equality Act introduced a requirement to produce a separate plan on race and ethnicity.¹⁹ This positive duty is enforced. The Helsinki City Authority was required under the 2004 Act to produce an equality plan on race and ethnic background. Internal guidelines, setting out minimum requirements, were drawn up for each of the departments by Helsinki City Authority’s Human Resource department in October 2004. Each of the six departments within the City Authority (social services, education, housing, health, employment and human resources) then drew up their own equality plans, which combined into an

¹⁹ Centre for Strategy and Evaluation Services. April 2007. “Non-discrimination mainstreaming: Instruments, case studies and way forwards - Supporting annex (case studies and survey work)”. United Kingdom: Centre for Strategy and Evaluation Services.

overarching Equality Plan for Helsinki City Authority containing 25 separate measures to mainstream equality of opportunity.²⁰

Each department must submit an annual progress report outlining progress in delivering the Equality Plan. The submission of an annual report is seen as important and valuable in highlighting areas where progress has been made and identifying areas where further action needs to be taken. Performance monitoring is largely qualitative, but there are plans to measure performance using quantitative and qualitative indicators.

In Canada, federal equality legislation imposes a “duty to accommodate” upon public and private bodies across all the equality strands. This ensures that compliance with the legislation requires proactive action. Equality strategies in the public sector complement this requirement. Legislative requirements are necessary to give any real bite to mainstreaming initiatives.

Race Relations legislation in England provided for a general duty supplemented by specific duties imposed by the Home Secretary on specific types of public authorities, that are also required to produce a Race Equality Scheme. This requires public bodies to:

- assess whether their functions and policies are relevant to race equality;
- monitor their policies to see how they affect race equality;
- assess and consult on policies they are proposing to introduce;
- publish the results of their consultations, monitoring and assessments;
- make sure that the public have access to the information and services they provide; and
- train their staff on the duties.

²⁰ Examples include the development of guidelines on how to take equality issues into account in public service provision, facilitating access to public facilities for those with disabilities and a number of awareness raising activities. The Equality Plan also includes a number of positive actions, such as furthering the equal participation of ethnic minorities and immigrants in the economic, social, cultural and political life of the City.

Listed public authorities must monitor, on ethnic lines, the composition of their staff and the ethnic make up of the pool of applicants for posts, promotion and training. Those that have more than 150 staff are required to monitor the composition of those involved in grievance, disciplinary procedures and performance appraisals, training and those who are dismissed.

The single most extensive positive duty imposed on public bodies is that provided for by Section 75 of the Northern Ireland Act 1998. This imposes a duty on specified public authorities to have “*due regard to the need to promote equality of opportunity*” across all the equality grounds, including disability, age, sexual orientation and also political belief, in carrying out their public functions.²¹ A duty to promote good relations is imposed in respect of race, religion and political belief. To give effect to this duty, all Authorities to which the duty applies are required to prepare an “Equality Scheme”. This Scheme sets out the impact assessment, monitoring, consultation, training and information access arrangements, including the preparation of equality impact assessments (EQIAs), that the Authority intends to take to implement the duty. Equality Impact Assessments are to be carried out on policy-making and the outcomes of impact assessment and consultation must be taken into account in policy design and review. Impact Assessment Statements must be published and the legislation clearly specified the information to be included in Impact Assessment Statements.

Section 75 thus obliges policy-makers to consider all policies from an equality perspective and to take proactive measures rather than merely preventing potential discrimination. The Northern Ireland Equality Commission has set out detailed guidelines for drafting Equality Schemes and carrying out Equality Impact Assessments. If dissatisfied with a scheme the Northern Ireland Equality Commission can refer the Authority in question to the Secretary of State for Northern Ireland, who can impose an alternative scheme if necessary.

The Commission can also investigate the extent of compliance with the duty or with a specific scheme, as well as investigate complaints about non-compliance. If the

²¹ See C. McCrudden, “The Equal Opportunity Duty in the Northern Ireland Act 1998: An Analysis”, in *Equal Rights and Human Rights – Their Role in Peace Building* (Committee on the Administration of Justice, 1999), 11-23.

Authority fails to respond to action recommended by the Commission following such an investigation, the Commission can refer the matter to the Secretary for State. Escott and Whitfield (2002) highlight the benefits of the statutory duty in Northern Ireland.²² They state it has helped to identify gaps in social data, and to raise the profile of gender and other equality issues.

An effective positive duty requires well resourced support and monitoring institutions. The Equality Commission for Northern Ireland has approximately 150 staff working across a full range of functions. Furthermore, consultation processes, regarded as key to the effectiveness of the statutory duty need to be well targeted and resourced to ensure that the capacity of those being consulted is enhanced.

The experience of implementing statutory duties in Wales and Scotland also demonstrate the need for guidance, support for action and monitoring outcomes. Positive duties require clear guidelines and reporting templates.

A Model of Effective Positive Duty

A statutory duty would require a public body to establish equality as a core responsibility, and require that it give “due regard” to promoting equality of opportunity (not simply comply with existing legislation to prevent discrimination). It will require resources for enforcement.²³ In addition, to ensure all stakeholders are activated, third parties such as Trade Unions and Community Groups should be able to bring enforcement actions. (*O’ Cinneide. P112*)

This must include a duty to promote Good Relations. Authorities must be required to take appropriate steps to counter prejudice and victimisation in the community at large, a duty to promote “good community relations”. This will help enact National Action Plans Against Racism and support integration.

²² Escott, K. and Whitfield, D. (2002) Promoting Gender Equality in the Public Sector, Manchester: EOC

²³ The Hepple Report suggested that this “stick” could be provided by a set of “interlocking” enforcement mechanisms, consisting of internal self-scrutiny by the bodies subject to the duty, external pressure from involved interest groups and support and, if necessary, compulsion via legal remedies, provided by the equality commissions.

Meaningful and inclusive consultation, which reaches all affected groups, is crucial to ensure the full range of equality outcomes are achieved. The results of consultation should also be genuinely incorporated into policy assessment. This in turn necessitates that organisations and the people within them are competent and capable of:

- questioning norms, traditions and assumptions;
- acknowledging cultural shifts; and
- accommodating diversity.

This requires a continual negotiation of equality objectives involving those affected, so that they have the capacity to develop, not as is the case now, to simply compete for disadvantaged positions, but to define the identity, needs and values that are to be included.²⁴

Clear and committed central leadership and co-ordination is essential to the adoption of “best practice” models. Pressure by NGOs, extensive training and an efficient exchange of information are all necessary to make sure that this proposed set of equality duties do not fall into the “process” trap.

A positive duty for the private sector would legally require organisations to promote equality of opportunity and report on outcomes. This would necessitate the same supports in terms of implementation, that is programmes to promote best practice, the production of Guidelines, Codes of Practice, training, publication of Implementation Plans, resourced enforcement mechanisms. It should allow for proportionate action, for example, allow for ground specific duties (by statutory instruments) relating to data collection on access to employment. Monitoring may be appropriate for gender or age but not so for sexual orientation or religion.

The procurement provisions of the Disability Act 2005 require public bodies to ensure that accessibility requirements are clearly stated in requests for

²⁴ An equal society provides people with the economic and social freedoms to develop their individual capacities to “*lead the kind of lives we have reason to value*” (Sen, 1999: 285). In other words, institutions must aim to support people to develop their own subjectivity for example one’s female/male subjectivity, ones national or ethnic subjectivity as a precondition for equality.

tenders/contracts/quotations, are given appropriate consideration and weighting during scoring and evaluation stages and where suppliers are asked to make presentations, accessibility should be an agenda item for such presentations. These procurement provisions could be integrated into positive duties.

Finally, resources are required to enable action. A programme to support members of enterprise partnerships involving all stakeholders in developing their equality competency to deliver positive duties, is required.

Conclusion

It is clear that the strategy we depend upon to prevent discrimination and promote equality, the minimalist legal approach, is limited in its impact. Discrimination, prejudice and negative stereotypes in the workplace affect us all – individuals are treated less favourably, the best person for the job is not selected and the quality of goods and services is diminished. (European Commission. 2007) We must be more ambitious and reinforce current provisions to provide for equality in practice and adopt positive duties.

Recommendations

Equality in practice necessitates positive duties. We need:

1. A positive **statutory duty**, to legally establish equality as a core responsibility of public bodies, and require them to give “due regard” to promoting equality in all their functions (not simply comply with existing legislation to prevent discrimination). Organisations must be required to produce Equality Action Plans. The statutory duty must be supported with resources for enforcement.
2. The content of positive statutory duties may be different, depending on the role and current strategic priorities of the public body. It crucial that the duty is flexible to facilitate **relevance of action**, clear to promote consistency of approach and independently monitored to ensure real outcomes.
3. This must include a duty to promote **Good Relations**. Authorities must be required to take appropriate steps to counter prejudice and victimisation in the community at large, a duty to promote “good community relations” and organisations must address the working environment in their Equality Action Plans.
4. **Consultation** with groups representing the nine grounds is essential to effective statutory duties. The development of programmes of support for targeted consultative exercises, which have real outreach for potentially affected groups must be addressed. The results of consultation must also be genuinely incorporated into equality impact assessments.
5. Organisations and the people within them must be **competent** in questioning norms, traditions and assumptions, acknowledging cultural shifts and accommodating diversity. These are the skills of the future. This requires equality training, to ensure that vulnerable groups are not competing for disadvantaged positions and those responsible for organisational management are able to promote equality through their Action Plans.

6. Clear and **committed central leadership** and co-ordination is essential to the adoption of “best practice” models. Pressure by Trade Unions, extensive training and an efficient exchange of information are all necessary to make sure that this proposed set of equality duties do not fall into the “process” trap.
7. A Positive Duty for the **private sector** that legally requires organisations to promote equality and report on outcomes is required. This would necessitate the same supports in terms of implementation, that is programmes to promote best practice, the production of Guidelines, Codes of Practice, training, publication of Implementation Plans, resourced enforcement mechanisms. It should allow for proportionate action, for example, allow for ground specific duties (by statutory instruments) relating to data collection for example. The development and publication of an Equality Action Plan that provides the detail is essential.
8. Individuals and interest groups such as trade unions and community groups should be able to bring **enforcement actions** for individuals who have a complaint and as part of the monitoring process.
9. **Procurement** requirements must be included in positive duties, to ensure that equality action plans are given appropriate consideration and weighting during scoring and evaluation stages. Where suppliers are asked to make presentations, equality provisions must be an agenda item for such presentations. Private sector suppliers will demonstrate and get credit for the inclusion of the positive duty requirement as a competitive advantage and the public sector will be able to apply the positive duty in practice to all their functions.
10. Activity to **support best practice** is required. Resources for the continuation and expansion of the NDA’s Excellence through Accessibility Awards and resources for programmes promoting best practice in delivering planned and systematic approaches in the workplace, supported by the social partners, are essential. This includes the Equality Review Programme, the Equal

Opportunities at the Level of the Enterprise programme and the WorkLife Balance Committee programme. A programme of activity to support members of enterprise partnerships to develop their equality competency to be involved in implementing positive duties, is also required.

Appendix One:

The Nine Grounds Protected from Discrimination in Irish Equality Law

1. Discrimination ²⁵

This is defined in the Employment Equality Acts 1998 & 2004 as being less favourable treatment. A person is discriminated against if he/she is treated less favourably than another person is, has been or would be treated in a comparable situation, on any of the nine grounds, which are;

- i. The **Gender** ground; a man, a woman or a transsexual person (specific protection is provided for pregnant employees or in relation to maternity);
- ii. The **Marital Status** ground; single, married, separated, divorced or widowed;
- iii. The **Family Status** ground; a parent of a person under 18 years or the resident primary carer or a parent of a person with a disability;
- iv. **Sexual Orientation**; gay, lesbian, bisexual or heterosexual;
- v. The **Religion** ground; different religious belief, background, outlook or none;
- vi. The **Age** ground; applies to all ages above the maximum age at which a person is statutorily obliged to attend school;
- vii. The **Disability** ground; broadly defined as including people with physical, intellectual, learning, cognitive or emotional disabilities and a range of medical conditions;
- viii. The **Race** ground; a particular race, skin colour, nationality or ethnic origin;

²⁵ All definitions are taken from the Equality Authority publication the Employment Equality Acts 1998 and 2004

- ix. The **Traveller** community ground; People who are commonly called Travellers and who are identified both by Travellers and others, as people with a shared history, culture and traditions, including historically a nomadic way of life on the island of Ireland.

The Employment Equality Acts 1998 and 2004:

- Promote Equality;
- Prohibit discrimination (with some exemptions) across nine grounds;
- Prohibit sexual harassment and harassment;
- Prohibit victimisation;
- Require appropriate measures for people with disabilities;
- Allow positive action measures to ensure full equality in practice across the nine grounds.

Aspects of employment that are covered include:

- Advertising;
- Equal pay;
- Access to employment;
- Vocational training and work experience;
- Terms and conditions of employment;
- Promotion or re-grading;
- Classification of posts;
- Dismissal; and
- Collective agreements.

The Acts apply to:

- Full-time, part-time and temporary employees;
- Public and private sector employment;
- Vocational training bodies;
- Employment agencies; and
- Trade unions, professional and trade bodies.

For more information on the provisions of the Equality Acts go to
www.equality.ie

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