



An Chartlann Náisiúnta National Archives

Reference Code:	2016/22/2213
Creation Dates:	16 June 1986
Extent and medium:	11 pages
Creator(s):	Department of Foreign Affairs
Accession Conditions:	Open
Copyright:	National Archives, Ireland. May only be reproduced with the written permission of the Director of the National Archives.

McBride Principle file
20/6/86
ECONOMIC, SOCIAL AND DISCRIMINATION AGAINST
NATIONALISTS IN NORTHERN IRELAND

ECONOMIC DISCRIMINATION

1. There has traditionally been a high level of discrimination in employment against Catholics in Northern Ireland. This arose from a number of factors but mainly related to the unwillingness of Unionists in government and in business to employ Catholics or to locate new industry in Catholic areas.

PRESENT UNEMPLOYMENT

2. In February 1986 unemployment stood at 126,307 or 21% of the workforce. The Northern Ireland Economy can be classified as a Public Sector economy with 45% of the workforce, (208,000), employed in the Public Sector out of a total figure of approx. 463,000 in employment. In addition, a large number of other non-government jobs are supported indirectly. As Public Expenditure is not expected to grow in significant terms in Northern Ireland in line with published British Government expenditure plans up to 1988-1989 and with a modest outlook for growth elsewhere in the Northern Ireland economy, the prospect for increased job opportunities in Northern Ireland looks particularly bleak.

The Davy Kelleher McCarthy Ltd. (DMK) analysis on the Northern Ireland Economy commissioned by the New Ireland Forum, forecast an unemployment figure of 166,000 by 1993. This figure was on the basis of a number of factors (which still hold reasonably fast) i.e. present levels of British Government expenditure would be maintained in real terms up to 1988 that there would be some growth in the growth in GDP. DMK over the period 1984-1989 forecast relatively

little change in numbers employed, an increase of 14,000 in the Public Sector, an increase of 3,000 in the self employed sector and a decrease of 10,000 in the private sector. The main impact in the employment market would be the growth in the labour force of 53,000 over the period in question.

The DKM projections on the increase in the labour force are in tune with the forecast in the Cooper and Lybrands Review and Prospects for the Northern Ireland Economy published in January 1986. The Cooper and Lybrand Study forecast an increase in the population age group (15-59) of 30,000 and 51,000 respectively for the period of 1984-1994, on the basis of emigration of 5,000 and 7,000 per annum respectively from Northern Ireland for the period in question.

UNEMPLOYMENT COMPARISON BETWEEN BOTH COMMUNITIES

3. The PPRU Monitor of June 1985 which is published in advance of the main report on the 1984 Continuous Household Survey, is based on a sample survey of the general population. The monitor establishes and reveals well known trends on unemployment between both Communities in Northern Ireland.

	<u>Unemployment in %</u>	
	<u>Catholic</u>	<u>All Protestant</u>
Male	35	15
Female	17	11
All	28	13

In respect of structural long-term unemployment those unemployed for more than 2 years, the respective percentages are Catholic: 44% and Protestant: 33%.

The Cooper and Lybrands Report states that with unemployment at around 21% of the workforce, the north is well on the way to becoming a "dual society" and that such a reality already exists in certain parts of the Province as illustrated by the following:

Male Unemployment Rate for November 1985

Strabane	48.9%
Cookstown	39.4%
Newry	38.2%
Derry	38.1%

All areas of Nationalist Majorities.

REGIONAL AND HISTORICAL FACTORS AFFECTING EMPLOYMENT

4. Unemployment in Northern Ireland has traditionally been higher than the United Kingdom. A number of reasons can be advanced to explain this phenomenon:
 - (i) The structure of industry in Northern Ireland has changed considerably with a marked decline in industries such as textiles, shipbuilding, aircraft manufacture and agriculture.
 - (ii) Northern Ireland is peripheral in location to the mainland Britain - making it less attractive due to higher transport costs.
 - (iii) The high level of population living in rural areas - this tends to militate against industrial development. The 1971 census showed that 78% of the population in England and Wales lived in urban administration areas compared to 70% in Scotland and 55% in Northern Ireland.

- (iv) The higher birth rate in Northern Ireland especially among Catholics.
- (v) The impact of the troubles.
- (vi) The international economic recession and the levelling off in British Public expenditure programme. The dependence of N.I. on public expenditure is such that the 1985-86 public expenditure total of £4,250 million represents 77% of probable GDP and is responsible for direct employment of 45% of the workforce and, indirectly a high additional proportion of non-government employment.

EQUALITY OF OPPORTUNITY: LEGISLATION

5. Fair Employment Act 1976 incorporates four fundamental recommendations of the Report and Recommendations of the Working Party on the discrimination in the Private Sector of Employment (Van Staubenzee Report 1973). The recommendations of the report were also applied to the public sector, namely:
 1. A voluntary approach to the eradication of discrimination to be supplemented and supported by legal machinery.
 2. Legal redress provided through civil law procedures rather than criminal.
 3. The establishment of an Independent Regulatory Agency.
 4. The Fair Employment Agency, in addition to having the power to investigate and determine complaints of unlawful discrimination, was also (envisaged by paragraph 67 of the Working Party Report) provided with wider power to take constructive action to help rectify such inequality of opportunity as may have arisen in the past.

6. The FEA has been criticised for having no teeth. Gerry Fitt in the House of Commons in 1979 described it as "useless". Some of the reasons advanced for its ineffectiveness have been:

- (i) The FEA is not perceived to be totally independent of its funding Department (the Department of Economic Development). Besides appointing the Board members, the Department also decides on the level of funding to be provided to the FEA. The FEA has to look for additional staff or monies from the DED.
- (ii) The FEA's underfunded position - the explanatory memorandum to the Fair Employment Bill envisaged the Agency growing to have a staff of 40 and a budget (in 1975 prices) of £280,000. In its last published report 1985 the FEA received a grant of £258,000 and, including its chairman, staff numbers including secretarial staff amounted to 16 persons.
- (iii) The difficulty in proving cases of discrimination and the restrictive judgement of the County Courts in its judgements of cases which have come before it.
- (iv) The low success rate of the FEA in proving cases of discrimination has clearly undermined public confidence in it from the nationalist community.
- (v) The fact that only seven district councils in Northern Ireland out of 26 have subscribed to the Agencies - Declaration of Principle and Intent. Also other statutory bodies such as Education and Library Boards has also failed to subscribe to the above mentioned Declaration.
- (vi) The anomolous position that while District Councils need not have signed the Declaration of Intent - that contractors carrying out work for District Councils must hold Equal Opportunity Certificates.

- (vii) The painstaking process undertaken by the FEA and the long time interval before the FEA reached conclusions on its deliberations. Each step of the process provides for a conciliatory result to be achieved.
- (viii) The key role of the Department of Economic Development in preparing the guide to Manpower Policy and Practices as provided in Section 5 of the Fair Employment Act. The FEA and the Standing Commission on Human Rights are only consulted on its contents. The guide which is a central document places no legal obligations on employers.
- (ix) The holding of equal opportunities certificates by employers is perceived to be of little use, as there is little or no monitoring on a systematic basis of holders of such certificates. There appears to be no set procedures or fixed follow-up procedures on employers after the initial investigation carried out on them and controls to check if firms investigated have adhered to the guidelines of the affirmative action programmes which they have adopted. It is not clear how often, when and by whom such monitoring is carried out.
- (x) The restrictive nature of affirmative action programmes adopted by the FEA in most cases. Critics of the FEA claim that the Chairman of the FEA is too conservative in his approach to positive action and feel that his interpretation of affirmative action programme is too restrictive. They point out that the Van Stauben-zee distinguished between affirmative action from reverse discrimination as follows:

"Affirmative action rejects quotas and benign discrimination. It does, however, involve deliberate programmes under which equality of

employment opportunity may be achieved. It sets out consciously and systematically to create this equality".

Mr. Cooper, Chairman of the FEA has been criticised for his cautious approach. This led to the much-publicised resignation of the Deputy Director of the Agency, Mr. A. O'Keefe, in late 1979. (Mr. O'Keefe presented a long memorandum to the Board members of the FEA on his reasons for resigning).

7. A particular critic of the FEA since the early 1980's is John McCrudden, Lecturer in Law, Lincoln College, Oxford. McCrudden has written a number of published articles on discrimination and since 1985 is a member of the Northern Ireland Standing Advisory Commission on Human Rights. He has concluded in one article on the FEA that -

"the experience of the legal enforcement of the Fair Employment Act is therefore, a depressing picture of a massive task, of the possibility of change, but of an Agency which has failed to meet that challenge. A complete overhauling of the FEA is necessary. Agency procedures, structures, and policy must all be rethought before the type of forceful role for the legal process in the eradication of inequality of employment opportunity, envisaged by the van Straubenzee Working Party, is even remotely possible".

In the context of the failure of the FEA to establish itself as a vehicle for ending job discrimination, the McBride Principles are interpreted by some commentators as providing the necessary clout and basis to tackle discrimination in employment in Northern Ireland on a meaningful basis.

On the McBride Principles McCrudden gave an opinion to the New York City Employees Retirement System (NYCERS) and stated inter alia -

"None of the MacBride Principles is unlawful in itself nor do they together require an employer to act unlawfully under the law of Northern Ireland.

A number of the MacBride principles reaffirm current legal requirements under the Fair Employment Act, (Principles 2, 5 and 6). Other Principles require an employer to do more than is required under the legislation but do not raise even an arguable violation of the legislation (Principles 3 and 9). The remaining (Principles 1, 4, 7 and 8) may reasonably be interpreted as stating the positive remedial duty which corresponds to the negative provisions of the Act. The Act and the MacBride principles can be seen as but two sides of the same coin.

An employer may voluntarily adopt an affirmative action programme in order to remedy a situation where the employer has assessed himself not to be providing equality of opportunity, or in order to prevent inequality of opportunity arising in the future. Provided the employer does not unlawfully discriminate, the adoption of such a programme is lawful.

This is not, however, to say that all action taken by an employer which would conform to the MacBride Principles will necessarily be lawful under the Fair Employment Act.

An employer may breach the Act in carrying out the MacBride Principles. As with most affirmative action programmes of this type what is crucial is the way in which it is operated in practice. The MacBride Principles do not however on the face require anything which is contrary to the law of Northern Ireland".

SDLP

8. The SDLP formulated their policy position on the FEA for their Party Conference in November 1984 (Annex). It would appear that following the Magerha meeting of their Central Executive on the 10 May 1986 that views are hardening on their approach to fair employment and that at grass roots level there is a drift towards acceptance of the McBride Principles. Recent comments by Mr. Seamus Mallon and Mr. Eddie McGrady on discrimination have also heightened expectation in the Nationalist Community as well as a recent statement by Bishop Cathal Daly.

PROOF OF INEQUALITY OF OPPORTUNITY

9. FEA investigations in the public private and industrial sectors confirm the generally held views that Catholics have not been offered equal opportunity in the job market place and that in particular the greatest disparities of opportunity against Catholics exist at higher management or skill levels.

The attached tabular statements drawn from FEA reports on -

- (a) The Civil Service
- (b) The Principal Bank and Building Societies
- (c) Engineering Industry

give an across the board indication in the different sectors (public and private) of the scale and dimension of the problem.

10. The Local Government Staff Commission established by Section 40 of the Local Government Act N.I. 1972 evidently operates on a non-discriminatory basis - the Staff Commission

however only recruits for certain categories of post e.g. town clerk level) more junior appointments are made independantly by Council themselves. In effect, therefore, there is a greater opportunity for Councils to select their own candidates.

OVERVIEW

11. The FEA has since its creation 10 years ago made little impact in remedying discrimination in employment. The Chairman of the FEA in his 82/83 report hinted at their own ineffectiveness in referring to the depressed employment market by stating:

"In present circumstances, therefore, where it is indeed more likely that firms are reducing their workforce rather than increasing it the effectiveness of the Agency is diminished".

There are however a number of ways which could be suggested which might improve the operation of the FEA:

- (i) Increased substantial resources being made to the Agency, incorporated with a renewed mandate and management structure. Increased resources would be a line with the original role of the FEA.
- (ii) Compulsory reaffirmation by employers at regular intervals of their affirmative action programmes as a condition of remaining on the Registrar. (Section 27).
- (iii) Introduce a limited amount of reverse discriminations particular in the training field. [The sex discrimination act provides that employers, training bodies trade unions may operate a very limited additonal system of reverse discrimination.] New legislation would be required to enable this.

- (iv) The adoption of effective affirmative action programmes is the Civil Service and Public Bodies.
- (v) The requirement by employers to show a break down of staff by religious denomination. [A great deal of the FEA time is taken up in establishing prima facie cases.]
- (vi) FEA should formally request to have an impartial observer present at all interviews where there is a substantial intake of staff e.g. N. Ireland Electricity Board, Harland and Wolf, Shorts, Mackies.
- (vii) The FEA should have to report to the NIO rather than a home department this would copper-faster its independence.
- (viii) An expansion of the powers of the Local Government Staff Commission.

B Scannell,

B. Scannell.

Anglo-Irish Division.

16 June 1986.