



Delivering Equality

Report
from a
seminar
hosted by
the
**Equality
Coalition,**
in Belfast

The Equality Coalition is an alliance of non-governmental groups that work to ensure the equality duty is put into practice, and to increase the public profile of the equality agenda in Northern Ireland.

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Delivering Equality

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What is the Equality Coalition?

The Equality Coalition is an alliance of non-governmental groups that work to ensure the equality duty is put into practice, and to increase the profile of equality issues in Northern Ireland.

Co-convened by the trade union UNISON, and local human rights group, the Committee on the Administration of Justice (CAJ), the Coalition has had long standing members from Disability Action, the NI Council for Ethnic Minorities, Women's Support Network, the Upper Springfield Development Trust, the Coalition on Sexual Orientation, Help the Aged, Putting Children First, and many other groups representing the constituencies of interest mentioned in Section 75 of the Northern Ireland Act.

This alliance of interests came together to develop common campaigns which would respect but transcend their differences, and bring about real change on the ground for their constituencies. Coalition members are convinced that greater equality of opportunity and an end to all forms of discrimination will make Northern Ireland a fairer society for all.

contd...

The Coalition has organised a number of conferences and events looking at various aspects of the implementation of Section 75, including the process of screening and impact assessments, and how the operation of the legislation can be made more effective. The Coalition also holds regular meetings with OFM/DFM, the Equality Commission, and other policy and decision- makers.

In addition, Coalition members respond regularly on an ongoing basis to various consultation documents issued by public bodies. Recent written responses by Coalition members have covered issues such as the Procurement Review, the Senior Civil Service Review, A Shared Future, the Review of Public Administration, Water Reform, and the Investment Strategy for Northern Ireland. Coalition members have also been actively involved in challenging the introduction of Anti- Social Behaviour Orders on equality grounds, and opposing the recent cut- backs in education which have impacted detrimentally on the provision of library services and school provision of English as an additional language.

Should you have any queries regarding any aspect of the work of the Equality Coalition, please contact Tim Cunningham at tim@caj.org.uk

***Delivering Equality One Step Removed:
The Role of the Contractor and Investor***



**Alan G. Hevesi
New York State Comptroller**

Alan G. Hevesi was elected New York State Comptroller in 2002.

Under his stewardship as sole trustee, the second largest pension fund in the USA grew from \$95 billion to \$119.2 billion, a 29% gain in his first full year of office.

Alan Hevesi
(New York State Comptroller)

Thank you very much for inviting me to speak today. There are a lot of people here and I want to thank all of you for participating in this Equality Coalition event. The Coalition has made an enormous difference over time; there is a long way to go, but it has made a difference.

My assignment is to talk a little bit about what we do that correlates to what you do, and how we can be helpful even here in Northern Ireland with our activities.

I am the Comptroller of New York State and as such I am an elected official in New York State. The state has a Governor, an Attorney General who is elected, and a Comptroller, independently elected. My office is responsible for accounting, auditing, contract reviews and budget analysis for the state.

The biggest job I have is managing a \$120 billion pension fund that represents the interests of 791,000 people. A third of them are already retired and the other two-thirds will be retired at some point in the future. They are largely government employees either at the State or Local level. We are the second largest pension fund in America (there are only five in the country) and I am the sole trustee.

Most public pension funds - state, local and national - are run by Boards of Trustees made up of, *inter alia*, individuals that represent unions and other elected officials. In those funds, there is a group dynamic to decision making. When I was New York City Comptroller, with the City pension funds - which are the fifth biggest in the country - this group dynamic also existed. However in New York State I am the sole trustee and I feel it is a much better arrangement.

What we do in our investments is diversify, i.e. invest in a whole variety of financial instruments, fixed income, private equity, bonds, venture capital and so on. For example this morning we announced an involvement with Crescent Capital Fund, to invest in Northern Ireland in venture capital.

This represents the next stage in our involvement here, which is part of a larger picture that I have been asked to talk a little bit about. That is activism, equality and fairness: the notion that our public activities have to have a social purpose as well as a financial purpose. I am one of those who advocate that we have a responsibility to do this and I want to give you some examples of how we do this.

We believe in social activism but there has to be a modifier. As a fiduciary, my job under law is to produce the best return on investment with the least risk for my retirees. Any other involvements must be folded into that mandate, which is a statutory mandate. That is the bottom line.

Most financial investors and most pension fund managers have an attitude that flows naturally from their experience as professionals: that is that they have to invest, get the best return and go home to dinner – that there are no other considerations. We do not think so and the California pension system doesn't think so. Likewise the North Carolina system, the New York City system, the Connecticut system and the Pennsylvania system don't think so either...you get the idea. We think you can do well financially and do good at the same time, and doing good helps you to do well.

We are long-term investors. If we invest in a company or if we invest in a fund in some foreign location, like Northern Ireland or the Middle East or South Africa, our long-term view requires us to make sure that the behaviour of the company, or the fund, or the investment, is not damaging our long-term prospects. We want to look at the behaviour of our companies and our investments.

That means we will pursue strategies that help change facts on the ground. I believe our involvement investing in Crescent today has to be in the context of fairness, equality, inclusion of communities and recognition of the disparities. Right now the newest, most dramatic disparity is between those who have and those who do not have – whether Protestant or Catholic. The gap is widening even as the economy in Northern Ireland improves. The economy improving is largely because of the peace process, albeit an incomplete peace process that is running into bumps. The peace process has changed a really weak economy into a growing economy although there are still problems.

If the government, whoever that may be, does not address affirmatively these issues – if they pay lip service to what we have accomplished by way of putting into law some principles – then it will all fall apart.

If they fail to do this, disenfranchised communities over time get more and more frustrated in the face of someone else's prosperity. If everybody is poor, everybody is miserable, but if the person next to you is gaining unfairly, and you are not because of your politics, religion or ethnicity, or whatever, that breeds a kind of frustration for which there is an historical response: violence, end of a peace process, end of our investment, and end of hopes for the future. I do not mean to overstate this, but that is the reality.

Therefore, we want to play a role by building into our investment understandings with Crescent that this is going to be an investment that is going to be applied fairly, that is going to be helpful to all communities, that is going to create wealth, create prosperity, in the long- term, and be inclusive.

Now this is long- term because venture capital is long- term. These are ten- year investments, and where the money is deployed in the first five years we may not see a return for a while, but then we expect very dramatic returns. Hopefully that is what we are going to get here.

But the point is that the gain has to be more than financial. We are not just interested in the financial deal. We want the best deal that creates an environment of peace, security, fairness and equality because these need to be built on in building the economy.

We believe deeply in this and we do it in New York via a number of programmes. For example we have a business development programme that provides loans to small businesses because we want to encourage small business. That programme ensures that a third of those loans go to female owned business and minority owned business. America's problems are not Catholic/Protestant, they are racial. We have an awful history of American apartheid, slavery, reconstruction and then the terrible, terrible legacy of bigotry; of African- Americans, treated as fourth- class citizens, 20,000 blacks in the 20th Century lynched because they were "uppity", because somebody spoke out and said "I want the vote".

That is America in my lifetime. We are still paying for that legacy in that the African- American community, women, and others face inequality. I believe that they should not face such inequality and so, we have affirmative programmes to try to address this.

In my experience as NY City Comptroller I worked to ensure that we do not exclusively use the biggest firms. I insisted on including female owned and minority owned firms that have the expertise. This is the way to increase your base and I believe that this is critically important.

This is not simply a social good, it benefits all of us. If you widen the pool of experts in every arena, more people will compete to make the best product, and this will give you quality at a better price.

We are very active in monitoring the behaviour of our companies. For example seven years ago the Texaco company was sued by its African- American employees for a pattern of bigotry including no promotions once people reached a certain level, and racism in the workplace. We went to Texaco and reinforced to their leadership the consequences of a lawsuit against us as shareholders. We told them to settle the case before it went to court as a jury finding would result in a billion dollar verdict which our shareholders would have to pay out because of the company's bigotry. They agreed and settled the claim for \$18 million.

In Bible belt middle America - in southern states such as Tennessee - the Cracker Barrel company thought it appropriate, as a reflection of middle- class values, to sack every gay or lesbian worker for no reason other than their sexuality. Again we approached the company with very strong objections to this policy, both for the workers involved, and the implications of boycotts, demonstrations, and litigation to our shareholder value.

Another example is Exxon Valdez who failed to take precautions to prevent an oil spill in Alaska which caused incredible damage to the whole bay, killed huge numbers of animals, and cost

shareholders \$1 billion in settlements. We created an environmental programme for companies to make them environmentally alert, and prepared with some small up-front investment for the consequences of any catastrophe. The next logical move is to join the movement to redress global warming to have our companies prepare for potential catastrophe.

In the US there have also been many cases of corporate fraud during the boom with companies collapsing. As shareholders we do not agree with business leadership in America, where corporate democracy means a Chief Executive Officer can act as a dictator, and that the Board of Directors is made up of nieces and nephews of the Chief Executive, who do whatever he tells them, and that shareholders have no role. In these situations scandals occur.

We believe that the behaviour of our companies is critically important, and as shareholders we have a right to pursue specific issues, and we will continue to pursue them.

An example of this occurs in South Africa where there is a problem in trying to sustain democracy given the unfair distribution of wealth that occurred as a result of the apartheid system. We are told that progress means that every ten blocks we now have a telephone. People can leave their homes and only walk five or six blocks, and if they have a coin to put into the telephone they can make a call. That's how they measure progress between the owners of the gold mines, and other resources in South Africa

where there is huge wealth, and the workers. The difficulty is that they have a first class economy of 40 to 50 million people with only 10% of them benefiting from that economy.

What the government are doing is creating an economy in which a non- coercive black empowerment programme is in place saying to every wealthy company, you have got to help us make change. Twenty- five percent of the population benefiting from a first class economy should be your goal, to include your suppliers, your directors, your partners etc. If you cannot do this with your directors because you are an international company or American company, then do it with your customers to change this whole environment.

Some international companies are involved in computer training and training people who were completely illiterate. Black children in school were not permitted to learn a foreign language or science. This policy was to ensure they would never have any skills beyond being domestics or labourers or gold miners.

Thanks to affirmative action programmes by the government, along with our investments, this situation has changed. We cooperate because we believe this is directly tied to helping long-term change, and if it fails it will be detrimental to millions of people and our investments as well.

The result of all these experiences is that we believe creating equality laws in Northern Ireland are a good thing. However creating the law is not enough. The question is how to implement and enforce it. You have to creatively pursue strategies that will help the people who need to be helped.

You have to enforce the law and provide resources for people who feel they are being discriminated against and want recourse via the regulatory, administrative, or the court process.

The bottom line is that there is growth in Northern Ireland with the unemployment rate dropping dramatically. However, this figure is misleading in a lot of ways and does not give a clear picture of the actual situation in Northern Ireland. It does not include people with disabilities or people who cease looking for work for other reasons. We have the same system in America and our unemployment rate is equally misleading. The trend however is improving and there is optimism about the future. Our investment is a sign of that optimism.

The Republic of Ireland has experienced the most dramatic economic boom in Europe. They have slipped to a 6% growth but averaged 9 or 10% growth through revising their economic policies. Twenty years ago they established a social contract between trade unions, farmers and employers. They put limits on salary increases for a period of time because of the need to reduce massive debt. They dealt with this in a smart political way where everybody sacrifices for a common goal.

The economy of the Republic of Ireland has grown dramatically in the last 10- 15 years. The aim should be the same for Northern Ireland. What is needed is a sustained peace process, with the delivery of fairness and equality so that all the people can feel an investment in this success. If people can forget their hatreds and mechanisms are in place to compensate for the problems of the past, there is a huge future for Northern Ireland. We want to be part of it and our investment reflects this.

We are with you and we want to be helpful. You are doing extraordinary work to change the mind- set in the Northern Ireland and I congratulate you. Thank you very much.

Questions and Answers

What sort of system do you have in the States for knowing whether a business is minority owned?

We have a procedure that sets standards to ensure they are minority owned firms. Sometimes companies will employ someone from a minority group to be the Chief Executive Officer but in name only and this is a practice we need to be alert to.

What pressure do you come under from your beneficiaries and stakeholders as a result of your ethical investment policy? Do they agree with your policy?

Our legal construct gives me the authority as sole Trustee to make these determinations. Our tradition, if you like, regardless of who the Comptroller is, is to pursue social goals that add to our bottom line. Depending on the Comptroller, it can be done to a greater or lesser extent. But the decision is mine alone, under law. I have that authority. So, I don't have an employer who gives me grief, but I do have 20 million voting constituents.

Questions & Answers

Questions & Answers

Failing to implement equality principles in the contracting process is a terrible failure. Moreover, if you are trying to avoid the problem of implementing equality principles by contracting with private businesses, that's just a way of skirting your responsibility and stalling the end result. But that is why the rules have to apply to contracting as well. If they're fair rules, they have to apply to contractors, and as government, you're allowed to do that. You can set conditions on the contracting competitive process in which you determine who will sell you goods and services.

But there's a wider point here. Putting into law some basic equality principles is a big step, and implementing them through the relevant government agencies is important. That clearly hasn't quite happened here yet to the satisfaction of a lot of people.

You sound like a very strong advocate of contract compliance. In terms of fair employment legislation, how much of a change in effect do you think that would have, if we moved in that direction more energetically?

I think a dramatic change. But you have to have laws and you have to have democratic

representation to implement those laws. Also you need an independent court system that will enforce the laws. Historically I understand that was pretty hard to achieve in the Northern Ireland environment. But that's the goal.

I believe the reason why the MacBride Principles did not have the effect we expected, was the result of no legislation being brought into play which would make all those affirmative action programmes reality.

Well, what the MacBride principles required of others and me was to convince any company in which I have an investing relationship in Northern Ireland to participate in the fair employment process. From my first visit here in 1994, about two- thirds of the companies that we pursued, at least in principle, have agreed to the MacBride Principles.

We helped a little bit on the outside and made it an issue that had to be discussed and this resulted in fair employment legislation being introduced. The difficulty then became implementation.

Questions & Answers

Questions & Answers

The implementation process is an arduous process because of all the resistance that is built in by a bureaucracy that does not want to see change and to ensure people take it seriously.

Your work about threading social activism through your investment strategies seems to be based really strongly on a set of values that recognise discrimination and unfairness in the past and seek to affirmatively change that. How do you and your staff persuade people who have a different set of values and who perhaps do not recognise that there was past or present unfairness?

Well, it depends on the arena. For example, the greatest resistance will come from individual corporations in which we own shares. The vehicle for us changing their minds is forming coalitions with other shareholders and then presenting the proxy resolutions that identify our goals and forcing a vote at their annual meetings.

In other words, raising consciousness. It's a democratic process but raising consciousness to the need for corporate reform or social issues. Of course we have failures but we also have successes.

A good example is the Disney Company, which had performance issues and internal reform issues. So, we participated in a global assault by moving to remove all their Directors! Normally, when there is that kind of activism if you get 5% or 10% of the shareholders, you know, you have done well. We got 45%! Give us another month, and we would have had a majority vote. The end result was that Disney changed its structure, separated the Chair from its CEO, and brought in independent directors. This has dramatically improved the performance. So, we got results.

With Cracker Barrel we had a different tactic of civil disobedience, in which we tried resolution after resolution and demonstrations along with the leverage of our shares.

We were involved very directly in Holocaust restitution, starting with the Swiss Banks. It was a three-year campaign to get them to make restitution with historical commissions. We only divest as a last resort and that's almost an admission of failure. We prefer to stay involved with the power of our shares and advocate for change. The experience in Switzerland showed the value of shattering people's long standing myths and self-deceptions so that progress could be made.

Questions & Answers

Questions & Answers

One of our other techniques is our “Comptroller Letter” where we don’t throw down the gauntlet and we don’t do obnoxious things like take people to court.

For example, we’re shareholders in a communications company and one of their properties is Hot 97 Radio in New York. That’s an African- American rap programme and they put had put out some obnoxious anti- Asian material, basically lyrics in a rap song about cheering the tsunami. It became a big issue.

Even some of the newspapers said “Hevesi go after them!” Well, the way we did it was to write them a letter, not accusing, not being hostile, but posing about 30 questions. These included, are you familiar with what happened? How is this good for the company? What do you predict the share value will be 3- weeks down the road? How do you think you should respond? Have you lost any advertisers?” You know, just asking the questions. And, we got a response. And they changed their behaviour. They fired some people, by the way, because it was really ugly and awful.

We had a publication recently by the Northern Ireland Statistics and Research Agency which

demonstrates that structural inequality and discrimination is not being resolved or addressed. There is a huge flaw in the argument that the economy here in the North has recovered and that these issues of structural inequity are being addressed.

Three of the key job creation agencies, the Strategic Investment Board, Invest Northern Ireland, and the Department of Enterprise, Trade and Investment, have produced corporate strategies and they take a long-term view setting out 10-year programmes. But, none of these have been subject to an equality impact assessment, despite the Equality Commission's guidance that all such policies should be. What in your view, is the way in which we can actually hinder or progress the equality agenda bearing in mind that Invest Northern Ireland is one of your partners in the venture that was announced this morning?

I would need to be more familiar with the situation before I could advise you, but there should be a series of strategies to address the failure to focus on the equality issues as you pursue an investment strategy or a growth strategy.

Questions & Answers

Questions & Answers

In America, if an administrative agency left out these components and they were important to us, we would find ways to lobby, to pressure, to involve our elected representatives. In court you could sue them for their failure to implement the law, force them to settle, and to do what they should have done in the first place - follow the law. Whether that's relevant to Section 75 or not, I don't know. Government agencies don't have to be enthusiastic they just have to do what the law tells them to do.

But wherever you are operating it is important to be strategic, targeted and persistent.

Inez McCormack - Vote of thanks

Thank You Alan! I want to thank you not just for what you have said but taking the time to come here. I first met Alan about 15 years ago when I went to meet him and ask for his assistance to make interventions in the place where we live that showed that asking for change and challenging unfairness was something which was normal and healthy, not unhealthy and subversive.

I think what he has done is to tell us today what he has done for the last 15 years, which is not only to look at the figures and ask for the change but also to say that it's healthy to have a debate in which you can confront what is necessary to change, without that being regarded as confrontational.

The requirement to make change is ultimately most important with the powerful, and the reason his continued intervention and his commitment to stay involved in Northern Ireland is so deeply important is that he has the external power to give a voice to the questions and issues coming from the powerless. I believe this society will truly change when the same manners and respect given to Alan when he comes here are given to someone from a deprived area when they ask a question.

I would like to thank him in lots of ways - professionally and personally. Working on these issues has its traumas and stresses and exhaustion, as everyone knows. Working with Alan is enjoyable; it's funny and good.

Alan is one of a number of highly important global players who are intervening in order to ensure that economic growth takes place alongside social justice. He is one of an extremely small number of such players. But, what he has done both in Northern Ireland and elsewhere takes enormous ability: to turn your moral conviction into a business case which is unassailable with those who do not believe either in moral purpose or social practice.

He has managed to enter this world and show that to make social change is good business. Setting that precedent and breaking that ground is enormously smart & hard business. He has made it sound easy, but I know that he has taken a lot of ground.

What I want to say to him, as a friend, a colleague, and someone who is ensnared in here for the next 10 years, is that he has helped to make this a more decent place to live in. What we need from him now is to ask questions about how decency and fairness is translated into changing the figures that are published in government documents showing levels of poverty and deprivation in Northern Ireland - the people who are not tasting fairness and justice but watching it happen to other people.

What we all need from Alan is not help in ensuring this is possible, but the pressure, if necessary, to make sure it does happen.

Thank you very much.

Panel discussion

Fergus Devitt,
Central Procurement Directorate,
Department of Finance and Personnel



*“Implementation of Chapter Five of the
Procurement Review”*

Evelyn Collins,
Chief Executive,
Equality Commission for Northern Ireland



*“The Role of the Equality Commission in
promoting Equality in procurement”*

Equality Coalition

*Implementation of Chapter Five of the
Procurement Review*

Fergus Devitt

I am going to try to provide some clarification on how public procurement can be used to further local social, economic and environmental objectives, including equality and anti-discrimination measures within the context of EU and international law, which will relate to procurement.

I want to briefly mention a little bit about policy and legal backgrounds. Within policy one always has to remember that there are Ministers, and as Maggie Thatcher famously once said, 'I don't mind how much my Ministers talk, so long as they do what I say.'

In 2002 there was a review of public procurement policy, which was then approved by the Assembly. A Procurement Board was established to develop and implement that policy. The Procurement Board is made up of the Minister of Finance and Personnel, all the Permanent Secretaries, two external observers, and a couple of others, one from the Northern Ireland Audit Office, and one from the Department of Finance and Personnel.

The Central Procurement Directorate in which I work was then established to take that policy forward and to support the Procurement Board in developing and implementing the policy.

Public procurement policy in Northern Ireland applies to all central government departments, agencies, NDPB's [non- departmental public bodies], public corporations and local Councils. The overall aim of the policy is to achieve best value for money in the procurement of goods, works and services. Within this definition the policy allows for the integration of social, economic and environmental considerations, which together are known as sustainable development, and, they have to meet the test of need, affordability, and cost effectiveness, as well as comply with the UK's EC and international obligations.

The government is also delivering a number of strategies which follow the sustainable development agenda. We are working very closely with colleagues in other departments to support the implementation of these strategies.

I think it is important to put a legal perspective into this as well. There are new EU consolidated directives, which will come into operation in January of 2006. They provide clarification based on case law about what contracting authorities can do to incorporate social, economic or environmental consideration into public procurement.

Contracting authorities must satisfy the fundamental principles of transparency, fairness and non- discrimination between contractors from other Member States. This simply means that if we are advertising a public sector contract it has to be equally open to companies from Lisburn and Lisbon. It has to be equally applicable across the whole of the European Union.

UK Public Procurement Policy Regulations set the legislative framework within which all public sector procurement must be conducted. The Regulations do not make the integration of sustainable development a mandatory requirement on contracting authorities, but they do offer the possibility for them to meet social, economic and environmental needs through public procurement.

Chapter 5 of the Procurement Review forms an integral part of procurement policy, and sets out a series of actions that will be taken forward across the public sector to further the sustainable development agenda.

Integration into the procurement process allows a contracting authority to specify contract requirements aimed at the achievement of these objectives and administrative action to ensure compliance, both for public sector organisations and in respect of anti-discrimination legislation for suppliers.

We are also working on delivering sustainable procurement to contribute to the achievement of the four overarching sustainable development objectives, which are:

- ✍ Social progress which recognises the needs of everyone;
- ✍ Effective protection of the environment;
- ✍ Prudent use of natural resources; and
- ✍ Maintenance of high and stable levels of economic growth and employment.

I think it is interesting that all the speakers today have spoken about the environment as well as the purely social objectives, and we are also encouraging Small and Medium- size Enterprises and the Social Economy Enterprises to compete for Public sector contracts to bring wider benefits to the economy.

We have issued guidance notes on integration. We have issued one on evidencing best value for money, which provides direction on criteria for and methods of satisfying the twelve principles of public procurement policy. One of those principles is integration and that allows for the inclusion, as appropriate, of social, economic and environmental goals into the procurement process.

We have also produced guidance on the integration of wider equality and social considerations and public procurement, which provides procurement practitioners with a range of possibilities for integrating such considerations into public procurement.

Finally we provide guidance on the most appropriate methodologies for integrating environmental considerations into public procurement within the procurement rules.

There is for example a special contract arrangement scheme, which in Northern Ireland is administered by the Department for Employment and Learning, aimed at assisting employers of several people with a disability to compete for contracts with public sector bodies.

The new consolidated directives recognise that employment and occupation are key elements in guaranteeing equal opportunities for all, which can contribute to integration in society. From the 1st January 2006, organisations which have special contract arrangements to compete for public sector contracts, have to be in competition with special contracts' suppliers from across the EU. We cannot just restrict that to Northern Ireland.

We have issued two very important guides. One for small and medium- sized enterprises (SMEs), and one for social economy enterprises. The guide for SMEs was launched by the Minister of Finance last year. It provides information on accessing and competing for public sector contracts for SMEs which are seeking to widen their business base across Northern Ireland.

We also published a companion guide for purchasers which highlights the perceived and real barriers faced by SMEs in doing business with the public sector and which suggests measures that purchasers might take to reduce or eliminate these barriers.

In terms of social economy enterprises, we are represented on the Social Economy Forum Public Procurement Joint Working Group and we published a guide earlier on this year, which is aimed at providing social economy enterprises with advice and direction to increase their understanding of public procurement, and enable them to compete for public sector business. There have been four meetings and about 150 people have attended those from across the social economy enterprises.

All public sector organisations are required to include an equality clause in all contracts, which places a mandatory requirement on contractors in relation to the fair employment and anti-discrimination legislation. This clause requires the contractor to use best endeavours to ensure that in employment policies and practices, and in the delivery of the contract, there should be no unjustifiable inequality of treatment of the categories listed in Section 75.

The inclusion of this clause enforces the obligation on public authorities to have due regard to the needs to promote equality of opportunity in carrying out their functions.

There has also been an unemployment pilot project, which has been introduced to assist the long-term unemployed gain worthwhile employment. The aim is to test the cost-effectiveness of creating employment and/or training opportunities for unemployed people through public sector construction projects.

The project encourages employers to recruit and train unemployed people to work on significant public sector contracts. A number of people have already been employed through the pilots. It is due to be completed very shortly and the potential effectiveness of that initiative will be assessed with a view to mainstreaming it, if appropriate.

The Department of the Environment is working on a sustainable development strategy aimed at creating a step change in public procurement to contribute to the pursuit of sustainable development in Northern Ireland. There are a number of issues in which we are working jointly with the Department to move the agenda forward such as, market stimulation and transformation, how best to specify green products and to purchase sustainable products, and how our economic activities effect the environment.

We are also working with the Department for Employment and Learning to develop an essential skills strategy, which will provide details of possibilities where the procurement community can integrate the skills policy into the procurement process. For example, there may be an opportunity where a contractor is awarded a contract in which the Department for Employment and Learning works with them to offer basic skills training, to people working in catering or construction. The only cost to the employer would be to release those people for the training because the Department would provide the training free of charge. These are the sorts of initiatives that we are trying to work with.

On the issue of how social considerations can be dealt with within the context of the public procurement policy, there are two separate schemes I would like to highlight. One is "Build Safe", which is about trying to reduce death, and injuries on building sites, which I think is a social agenda. The other is called the Independent Private Sector Inspector General, which is about

trying to reduce paramilitary activity and extortion on building sites, which again is a social issue.

To summarise, we have to do some work in trying to get evidence on how we are taking these issues forward and how they are being introduced and managed across the whole of the public sector. In Northern Ireland £1.8 billion a year is spent on public procurement. We are committed to delivering efficiencies of £250 million over the next three years on that spend. I actually think that that money can be put towards the social objectives of delivering and improving front line services and that is the key message that I would want to emphasise.

Thank you very much for inviting me here today. And, I am looking forward to working with many of you in the future to try and ensure that public procurement supports and addresses the needs of our future generations in a fair, equitable and sustainable way. Thank you.

***The Role of the Equality Commission in Promoting
Equality in Procurement***

Evelyn Collins

I want to congratulate the Equality Coalition for hosting this event and really beginning to raise awareness and debate around the importance of addressing equality issues through public procurement. I was asked to speak about the role of the Equality Commission in promoting equality in procurement and decided to focus on the issue of public sector purchasing power and equality.

Alan Hevesi already talked about the role of his pension fund so I am not really going to talk about investments from shareholders, but very much focus on what government has committed to do, and what it ought to be doing.

The Equality Commission understands the importance of the use of public sector purchasing power as a powerful tool and a powerful complementary tool to strong anti-discrimination legislation to encourage change, particularly in employment practices where we have had a particular interest.

Since fair employment legislation was first introduced in 1976, there has been potential for public sector purchasing powers to be used as a means of encouraging those in receipt of public funds, or hoping to receive such funds, to implement policy or

practice which they may not otherwise do. We have seen it very much as an essential complementary mechanism to an approach which relies upon these sanctions created by the anti-discrimination legislation.

So long as businesses complied with anti-discrimination legislation then they were eligible for contracts. It was not particularly well enforced until early in the 1980's when Government said it planned to strengthen the provision by introducing from April 1980 a policy that tenders for government contracts would not normally be accepted from firms within the scope of the Act unless they had an Equal Opportunities certificate. We then saw a significant increase in the number of firms signing up to the declaration of principle and intent.

That itself was much criticised and led to discussions about strengthened fair employment legislation through the 1980's and this interest very much fed into reports like that of the Standing Advisory Commission Human Rights, work by the Committee on the Administration of Justice, and so on to eventually strengthen provisions.

Some were disappointed ultimately in the form the 1989 legislation took, which is essentially a form of grant denial as opposed to the rather more positive set of contract compliance measures that we see, for example, in the United States.

The 1989 Fair Employment Act set out conditions under which businesses shall be considered “unqualified” to enter public contracts with a public authority. Where businesses were in default of their obligations to register with the Commission, failed to make a monitoring return, failed to comply with an Order of the Tribunal or would have a notice served on them by the Commission, then they were “not qualified”.

I also wanted to point out that while operating under very different legislation in the 1990’s, the Equal Opportunities Commission did a general investigation into the impact of competitive tendering on women’s employment, in particular in the health and education services. That report produced a series of recommendations, including asking government to abandon the Compulsive Competitive Tendering Policy.

This is a demonstration of the detailed assessment of the impact of the purchase of services that was in question then, which identified adverse impact, and set out a series of recommendations about how that could be addressed.

We now have Section 75 of the Northern Ireland Act, 1998. This is a very important and potentially very powerful tool to ensure that equality considerations across nine strands are mainstreamed clearly into the delivery of public policy. We have been absolutely clear from the outset that procurement and public procurement is covered by these duties, and that this is a welcome addition to the rest of the framework that is in place.

Following the announcement by the Northern Ireland Executive in early 2002 of a working group to look at public procurement generally, many of us commented on the review of the working group, welcomed the connection between social considerations and the importance given to the integration of social considerations, including equality, into public procurement. Indeed, we welcomed the focus of the pilot on unemployment, which Fergus mentioned.

Only one firm has been disqualified under the Fair Employment Act 1989, back in 1991- 92. This is interesting because, of course, there are very, very high levels of compliance with the duties that employers are to comply with for the purposes of being considered qualified under the Fair Employment Act, 1989.

We also have section 75 the equality duties where public authorities are obliged to pay due regard to the need to promote equality of opportunity. There is a clear need for public authorities to assess the impact of their policies. You all know and are familiar with the 7 steps, in terms of the Practical Guidance on impact assessments set out by the Equality Commission.

One of the issues that we have had to come back to public authorities about, on a number of occasions, including in relation to procurement, is the importance of giving genuine and meaningful consideration to the measures which may mitigate any adverse impacts identified, alongside looking at alternative policies which may produce better equality of opportunity.

We are beginning to see public authorities use the tool, although not necessarily in a whole-hearted way across the public sector. Unfortunately we are still not seeing evidence of sufficient attention being paid to areas where there is an adverse impact identified, so other alternatives can be considered. I think that is a very important framework in the context of our discussions on procurement.

Consultation is very important especially to gain information and ideas. All of us, the Equality Commission, the equality constituencies, and all the interested parties need to ensure that the process finds ways to ensure consultation works effectively.

In all the different areas, all the public bodies - from DFP through to the Strategic Investment Board, DETI, and so on - need to be conscious and focused on making sure that the high level commitments that were set out in the policy in 2002 get implemented in practice through the outworking of the policy. We all have an opportunity to shape and influence that, through, for example, commenting on consultation documents and so on.

The PPP Working Group was established to prepare guidance on the integration of social considerations into Public/Private Partnerships (PPPs), which is an important element of public procurement. We have accepted and indeed are a member of the Working Group. As a consequence of discussions at those

meetings, we have agreed within the Equality Commission to lead work to develop draft guidance on bringing equality considerations into the PPP process and aligning it with public authorities' Section 75 responsibilities. Now, a detailed discussion of how we intend to approach this is on the agenda for the second meeting of the PPP Working Group.

It is clear in terms of being effective that that work will certainly need to draw on the practical experience of those involved in procurement processes over the last few years.

We have published a report on the implementation of Section 75 duties, and it is clear that a number of public bodies have sought to undertake EQIA's on procurement policy. I have done a comprehensive review of these and we were quite selective in the EQIAs we looked at in detail. I am very interested in any comments you may have around the detail of EQIAs that you have looked at on procurement.

Our own review of the effectiveness of Section 75 duties is due this year and we have said that we will publish terms of reference and a programme. We have given some signals already as to what that review will be looking at. We will be looking at an independent element to consider the extent of compliance by public authorities with their Section 75 duties.

We certainly want to be looking at the adequacy of the enforcement powers given to the Commission in relation to that. We want to draw on experiences from elsewhere. Since Section 75 came into being we have also had the experience of the Race Relations Amendment Act in Britain, and the clear focus by the Commission for Racial Equality arguing that government ensure that equality considerations are built into public procurement.

The Commission has a role in terms of trying to influence the development of public policy and this is one area where we will continue to try and focus our energies. We have a role, certainly, in terms of advice and assistance to public authorities and others, in terms of Section 75. I am very hopeful that our guidance on PPP fits neatly into that area.

We also have, of course, a role in terms of investigations of alleged breaches of Equality Schemes and as part of that we want to be looking at both complaints and investigations.

My final comment is, that we are committed to using every available means to have equality mainstreamed into public policy through Section 75 and other avenues as a means to address the inequalities which continue to act as a barrier to social inclusion in Northern Ireland.

Thank you very much.

Questions & Answers

Questions & Answers

[To facilitate debate, audience comments and questions were grouped together]

1. *I think the issue is not so much about transparency or fairness but about outcomes.*

My experience is that there have been quite a few tenders issued for research into ethnic minority issues. Some of these have been won by universities and some by consultancies, however in most cases the recommendations resulting from the research have not benefited the ethnic minority community itself. Those who won the tenders did not have sufficient expertise about racial equality issues and instead merely used focus groups etc to carry out their work.

If tendering is done you should consult with the sector first before putting the tender out and then we could signpost the experts in the area. I would like to emphasise that in Britain there have been 35 years of policies on racial equality issues, which means things there are further ahead on race than in Northern Ireland. There are lessons that can be learnt from Britain without reinventing the wheel in Northern Ireland.

2. *I want to direct a couple of fairly straightforward questions following on from a previous question to Alan Hevesi, related to the whole issue of government departments and agencies failing to carry out equality impact assessments.*

We have been doing some work in that area and have discovered many examples of equality impact assessments not being carried out. DETI, in relation to their Economic Vision and their Corporate Plan, Invest NI in relation to their Corporate Plan, the Strategic Investment Board, in relation to the Investment Strategy, and DFP, in relation to the draft Budget and Priorities. So there are five strategic documents that were not subjected to Equality Impact Assessments. So, I would like to ask what the Equality Commission has done in relation to this issue, and whether they have taken this issue up with the departments and bodies concerned? I would also like to ask whether the Strategic Investment Board's Equality Scheme has been agreed yet by the Equality Commission?

3. *In relation to the Central Procurement Directorate, to what extent would it see itself as an organisation that is there to disseminate information, or to what extent would it see itself as having an oversight enforcement role?*

Questions & Answers

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We were delighted when we saw the new procurement policy - we had made submissions to the Review, and while we did not get everything we wanted, we were very pleased with the result. The question is however, where is the enforcement? What happens to those who do not want to play ball?

Unlike Alan, we do not have \$120 billion to use as an enforcement mechanism, we have to look to others. Similarly, in relation to the Commission, how they would see their enforcement/sanctions role in relation to this, particularly in relation to Section 75?

.....

Fergus Devitt:

In terms of the Central Procurement Directorate, yes, we are there, in conjunction with the Procurement Board, to develop policy, disseminate policy and ensure it's being implemented. We are just about to commission a round of information gathering across departments to assess the extent to which the equality clause is being implemented and other aspects around social policy.

We are starting to do that and I would imagine then that if there are defaults around that, it will come back to the Procurement Board, which, as I mentioned earlier, is quite a powerful body, to examine why those particular issues are not being taken forward. So that is certainly how I would see that particular issue.

In terms of the first question – it is difficult for Central Procurement Directorate to anticipate what the outcome of any particular tendering exercise might be. We place the adverts on behalf of the departments which commission them, and it is up to them to draw up the specification for a particular tender or exercise.

As I mentioned, we do have to be very careful that we operate within EU legislation. We cannot set aside particular pieces of work for particular organisations. If organisations tender and they meet the best value for money, then we will award them that contract. But, we cannot set aside any particular contracts for particular organisations, apart from the special arrangements that I mentioned earlier for employers who have a specific number of disabled people.

Questions & Answers

Questions & Answers

Evelyn Collins:

The Commission has expressed concerns that a number of the bodies mentioned had said that they were not going to subject the policy to equality impact assessment.

Just to pick up the particular example of the draft Budget and Priorities. We not only made written comments, but also Joan Harbison and I met the Head of Civil Service and a number of senior officials, saying that we really wanted to make sure there was a clear and demonstrable commitment by government to subject its policies, and its high level policies, to equality impact assessment, notwithstanding the fact that the budget and priorities is not just one policy but a series of policies being brought together. Officials from OFM/DFM and the Commission have been working together over the last while in relation to trying to explore improvements to the draft Priorities and Budgets process for the next period.

As part of that, and I am sure it is no secret, we have also agreed with the Head of the Civil Service that we will have contact with senior civil servants who have responsibilities across the departments for ensuring implementation of Section 75. A meeting between the Senior Civil Service and

Equality Commission NI is taking place early in July so we can, in the light of experience over the last while, get to grips with what the issues are and provide recommendations.

Similarly, in relation to the Strategic Investment Board, we have raised issues about the importance of ensuring that their high level policies are subject to equality impact assessments. I have not got the detail of whether we said the same to the DETI Corporate Plan or not. But we are certainly very focused on some of the big, key issues

Going on to the question of what happens when someone does not obey the law, you are all aware, as we are, of the extent of the provisions of Schedule 9 in respect of complaints and investigations. You will know that we have powers under both paragraphs 10 and 11 of Schedule 9 to carry out investigations into alleged breaches of schemes and where that potentially can go. I said quite clearly, that in terms of the review of the effectiveness of Section 75, that this is one area that we want to be looking at.

In the interim, we will obviously be dealing with any complaints or targeting investigations as we think fit against a set of priorities over the next

Questions & Answers

period. We will be looking to see what we can achieve through the kind of advice/encouragement/assistance role recognising also that we do not have a huge amount of public sector purchasing power. We take our role as guardians of Section 75 very, very seriously in that respect.

We want to work with public authorities to make sure that the intention that was behind the legislation that so many of us worked so hard to get into the Northern Ireland Act actually is played out in practice. I think that is very important.

.....

Questions continued

4. Every time I see a presentation from the Central Procurement Directive it becomes increasingly clear that there has been some really good work done.

It also becomes clear that it is getting blocked somewhere. So, for example, I know that I have not seen the draft equality clause circulated to

the public bodies I am dealing with. I know I have not seen the three Guidance Notes in general circulation, or sent to people I am directly dealing with. So, it is getting blocked somewhere in the system.

The trouble with all of this is there comes a point in time where you cannot backtrack in order to rectify what is wrong, because it is governed by contract law. So, once bad mistakes are made, particularly mistakes around equality, it becomes very hard to put them right.

I am wondering, at the moment, if there are mechanisms whereby complaints can be made to Central Procurement Directorate, to say, we know that 'X' public body is not following your guidance, something needs to happen very quickly to put the equality dimension in place. Is that something that does currently exist? Can it be utilised? If not is it something that we would instead turn to the Equality Commission to put it right before the damage is irrevocably done?

Fergus Devitt:

Two very quick things. First of all it is not a draft equality clause, it is an equality clause, which is in

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operation in contracts from July of last year. In terms of accessing the guidance notes – they are on our website, which is www.cpdni.gov.uk and there is a lot of other information there as well, particularly about forthcoming contracts and tenders and those sorts of issues.

In terms of complaints, we do have a formal complaint system. Again, it is on the website. I happen to know that the nominated officer within CPD for complaints is a very honest and open guy, because it is me! I am the main person to whom complaints about contracts can be made, and there have been a number made since I have been in post. They have come from a range of organisations and individuals.

I would say without trying to deluge myself with work that if anyone has genuine issues about how particular contracts have been let or any issues of compliance within them, then that is the mechanism that you can use. Although, I would say that if there is a specific issue about a specific contract, try and resolve that with the operational side of CPD first. If that does not resolve anything, then I am the named person to complain to.

Evelyn Collins:

That is very useful information from Fergus but if information about what is happening on the ground comes to the Commission's attention we will clearly look at it also. We have, as I already said, specific responsibilities in terms of investigation and complaints governed specifically by Schedule 9. So that obviously shapes what we can do. We certainly, in terms of information gathering, are keen to hear evidence of what is happening on the ground.

Questions & Answers

Appendices

Biographical notes

Alan G. Hevesi was elected New York State Comptroller in 2002. Under his stewardship as sole trustee, the nation's second largest pension fund grew from \$95 billion to \$119.2 billion, and as of March 2005 had reached \$126.1 billion.

Some of the Comptroller's responsibilities include managing and protecting the state pension fund, auditing the spending practices of all state agencies and local governments, reviewing the New York State and City budgets, reviewing and approving all state contracts, and administering the State Oil Spill Fund.

Comptroller Hevesi initiated a campaign to expose problems at state public authorities such as the Metropolitan Transportation Authority, the Long Island Power Authority and the Canal Corp., and laid the basis for fundamental reform and increased accountability of these organizations. He has also been a leader in fighting fraud and corruption in state government. For the first time within the State Comptroller's office, he established a Division of Investigations that has uncovered fraud and corruption in school districts, and municipalities statewide. Comptroller Hevesi has also undertaken efforts to boost the upstate economy by setting aside additional funds for a private equity program aimed at investing in New York businesses and for the first time, including economic development within the Division of Local Governments.

Fergus Devitt, is Deputy Director of Central Procurement Directorate, Department of Finance and Personnel. The Mission Statement of the Central Procurement Directorate is to support the Northern Ireland public sector in the delivery of better public services through maximising value for money for the taxpayer. The CPD also aims to promote best value procurement, and provide Departments with specialist expertise on construction matters. CPD also leads establishing best practice in legal and policy matters relating to procurement; helping Departments demonstrate accountability; and in openness of the way they do business. The CPD summarizes this as “adding value through expertise”.

Evelyn Collins, is Chief Executive of Equality Commission Northern Ireland which is an independent public body established under the Northern Ireland Act 1998. The Equality Commission took over the functions previously exercised by the Commission for Racial Equality for Northern Ireland, the Equal Opportunities Commission for Northern Ireland, the Fair Employment Commission and the Northern Ireland Disability Council. The general duties of the Equality Commission include working towards the elimination of discrimination; promoting equality of opportunity and encouraging good practice; promoting affirmative/positive action; promoting good relations between people of different racial groups; overseeing the implementation and effectiveness of the statutory duty on public authorities, and keeping the relevant legislation under review.

**Delivering Equality One Step Removed:
the Role of the Contractor and Investor**

31st May 2005, Belfast

AGENDA

- 1.50 Opening and Introductions, chaired by Maggie Beirne & Patricia McKeown CAJ & UNISON (Equality Coalition co- convenors)
- 2pm Keynote address: ***“Delivering Equality One Step Removed: the Role of the Contractor and Investor”***, Mr Alan G. Hevesi, New York State Comptroller
- Vote of thanks (Inez McCormack on behalf of Equality Coalition)
- 2.25 ***“Implementation of Chapter Five of the Procurement Review”***, Fergus Devitt, Central Procurement Directorate, Department of Finance and Personnel
- 2.35 ***“The Role of the Equality Commission in Promoting Equality in Procurement”***, Evelyn Collins, Chief Executive, Equality Commission NI
- 2.45 Open Forum
- 3.30 Closing Remarks

List of Participants

Adamson, Jackie	Dept of Employment & Learning
Archbold, Clare	Office of the First Minister/ Deputy First Minister
Armstrong, Alf	North Eastern Education & Library Board
Auld, Jim	Community Restorative Justice Ireland
Babington, David	General Consumer Council
Barr, Carolyn	Dept of Finance and Personnel
Bates, Evan	Royal Victoria Hospital
Beirne, Maggie	Equality Coalition
Blacklock, Joanne	Belfast Education & Library Board
Bray, Patricia	Disability Action
Bunting, Mary	OFMDFM
Callaghan, Paul	Equality Commission
Campbell, Jennifer	NI Local Govt Officers Superannuation Committee
Campbell, Beatrix	Journalist & writer
Casey, Patricia	NI Assembly
Collins, Evelyn	Equality Commission (SPEAKER)
Collins, Maeve	Dept of Foreign Affairs
Cook, Barbary	Artis Consultancy
Corr, Steven	Falls Community Council
Coyle, Philomena	
Cunningham, Tim	CAJ - Committee on the Administration of Justice
Deehan, Terry	NICEM
Deery, Jim	Ashton Centre

Devitt, Fergus	Central Procurement Directorate, Dept of Finance & Personnel (SPEAKER)
Dooley, Pamela	UNISON
Doros, Michail	NI Fire Service
Dowey, Robert	Newry & Mourne District Council
Drinan, Padraigin	Solicitor
Enright, Terry	Upper Springfield Development Trust
Farr, Alison	North & West Health & Social Services Trust
Francey, Hazel	Belfast City Council
Gibson, Linda	Dept of Employment & Learning
Gillespie, Una	West Belfast Economic Forum
Gilmore, Aideen	CAJ
Gresham, Julie	Office of the New York State Comptroller
Haughey, Eilis	SDLP
Hevesi, Alan	New York State Comptroller (SPEAKER)
Hinds, Bronagh	Institute of Governance, Queens University
Johnson, Luann	Diversity Matters
Kearney, Jarlaith	Daily Ireland
Keegan, Ron	Equality Commission
Laird Lord John	Equality Commission
Lavery, Eileen	Equality Commission
Law, Liz	Equality Commission
Livingstone, Dawn	Waterways Ireland
Lynch, Seamus	Help the Aged

Maconachie, Fiona	NI Housing Executive
Magwood, Aldrina	NI Fire Service
Mahaffy, Thomas	UNISON
McAuley, Chrissie	Sinn Fein
McCabe, Gerry	NI Public Service Alliance
McCandless, Frances	NI Council for Voluntary Action
McCanny, Dominic	Armagh Council
McCausland, Fiona	Old Warren Partnership
McConnell, David	Age Concern
McCormack, Inez	Equality Coalition
McGibbon, Concepta	Laganside Corporation
McGowan, Linda	Belfast Education & Library Board
McKeown, Patricia	Equality Coalition
McLaughlin, Mitchel	Sinn Fein
McMurrin, Lucinda	NI Federation of Housing Associations
McTigue, Thad	Office of the New York State Comptroller
Meadows, Joanne	NI Policing Board
Moira, John	Old Warren Partnership
Muller, Janet	Pobal
Mulligan, Gerry	OFMDFM
Murphy, David	NILGOSC
Ni Choighligh, Alma	Irish Department of Foreign Affairs
O'Hagan, Dara	Sinn Fein
O'Neill, Peter	NI Human Rights Commission
O'Neill, Nicola	Diversity Matters
Parsons, Lorna	Local Government Staff Commission
Quinn, Dennis	Police Service NI

Ritchie, Mike	Coiste na n-Iarchimi
Service, John	North & West Health & Social Services Trust
Shore, Richard	Transitional Justice Institute
Sides, Mrs Janet	NI Audit Office
Stone, Liam	Upper Springfield Development Trust
Strain, Natalie	Children's Law Centre
Truesdale, Lila	Office of Communications (OFCOM)
Yu, Patrick	NI Council for Ethnic Minorities

The Equality Coalition is an alliance of non-governmental groups that work to ensure the equality duty is put into practice, and to increase the public profile of the equality agenda in Northern Ireland

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