

**2ND
DRAFT**

**COMMUNICATION WORKERS UNION
GUIDE TO
EQUALITY
PROOFING**

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SUMMARY

Chapter 1

This chapter briefly outlines some of the many positive steps the CWU has taken to raise equality awareness throughout the Union e.g. “Harassment and Bullying helpline”, equality training targeted at under represented groups and “CWU Equality Officers Handbook”.

Chapter 2

After laying the principle of equality proofing, the chapter gives examples of how to equality proof agreements. The chapter suggests pertinent questions that the negotiator/s need to bear in mind when entering into agreements. For example, the impact such an agreement could have on a disadvantaged group – “Will it be possible for each of the disadvantaged groups to comply with the requirements of the agreement?”; “Does the signing of this agreement impact adversely on some from a racial minority Group? What, if any, is the adverse impact?”

Chapter 3

Chapter 3, gives an overall policy aims and objectives of the CWU, for example to “provide an excellent service for all its’ members” “to protect, advance and serve the interests of its members throughout the communications industry”. In carrying out its policy aims and objectives, the CWU is fully committed to Equality of Opportunities. To demonstrate its’ commitment to equality of outcome, the General Secretary has put in a number of measures, e.g. consultation, review of the CWU structure, which should go some way in overcoming inherent bias in the system.

Chapter 4

This chapter serves as a reminder of anti-discrimination legislation. The chapter gives a synopsis of equality legislation, together with forthcoming anti-discrimination legislation.

CHAPTER 1

THE BARGAINING AGENDA

The CWU has actively supported civil and human rights within its organisation and society for many years. As a union – both as an employer and as representing members – the issue of equality is paramount to having a successful union. As part of that process, the CWU is seeking to promote equality of opportunity throughout its bargaining agenda. And by the bargaining agenda, we mean terms and conditions of employment impacting on CWU membership. These would include personnel procedures such as training and promotion and non-personnel procedures such as health and safety and the impact of privatisation on CWU membership.

The impetus for equality proofing came as a result of conference decisions and from the leadership of the Union. As a Union, we should be seeking to raise the level of equality on a regular basis - both implicitly and explicitly - wherever the occasion requires it. So while the bargaining agenda is paramount to the securing of equality of outcome, it is by no means the only place in which such issues should be raised. Therefore, we are not looking to protect the interests of distinguished groups, rather we are trying to eliminate discrimination in its various forms, but especially where discrimination results in an adverse impact on disadvantaged groups.

Over the past two years, the CWU embarked on a number of equality issues. Some have resulted in a number of publications, while others have taken different forms such as training and the setting up of helplines. Listed below are a sample of achievements to date:

- ◆ Equality training targeted at under represented groups
- ◆ A Review of Delivering Equality
- ◆ CWU Equality Officers Handbook
- ◆ Women in the British Trade Unions

- ◆ CWU Maternity Packs
- ◆ Real Families
- ◆ Harassment and Bullying Helpline
- ◆ Disability Helpline
- ◆ Regional Women's Committees

Mainstreaming Equality

Mainstreaming equality into all aspects of negotiations by means of equality proofing will help to identify needed changes. It will act as a catalyst for the future and will signal to members that as a Union, the CWU is committed to its objectives. Likewise it will signal to members that Equality of Opportunity is not a paper exercise but an 'embryo' that is being brought to life. To a life not sustained with inequality of outcome, but where each individual is able to perform according to his/her ability.

Equality Proofing of agreements is now a requirement outlined both in "a Review of Delivering Equality" and the CWU 2001 Annual Conference¹. It is for these and other reasons that the CWU is committed to the delivery of service in an appropriate manner to all CWU members.

At the heart of delivering equality of outcome is the principle of fairness. Fairness is not always easy or straightforward to deliver because often there are a range of, sometimes hidden barriers. Barriers, which require committed negotiators to fully assess and evaluate the likely impact. Here again, it is not a simple task, but the key word is commitment to moving forward. This takes time, energy and effort. The objective of an equality proofing policy is to develop an understanding and awareness of those barriers and act to eliminate them.

A good, high quality service recognises the diversity of its members and customers and respond to their needs. Equality Proofing and Equality Strategy is about recognising diversity and acting to ensure fair treatment. It is about providing appropriate services to members and end users. It is about meeting real needs.

¹ CWU Annual Conference motion No. 92

CHAPTER 2

HOW TO EQUALITY PROOF AGREEMENTS

WHY A NEED FOR EQUALITY PROOFING

The CWU and society as a whole are more conscious than ever that having good equality of opportunity policies does not always result in equality of outcome. Further, the CWU and many people in society are aware that there are hidden barriers, which prevents equal access. Nevertheless, as part of its overall strategy, the CWU is committed to moving forward on equality issues, and that is why at this time, it is appropriate for the CWU to issue this booklet to all its negotiators as an aid in bringing about equality of access and outcome.

The CWU represents a diverse workforce where people come from different social, economic, religious and ethnic backgrounds. These differences should be welcome because the whole group will be richer for the diversity of experience and culture which individuals contribute. Learning to live together in tolerance and understanding will help ensure that every individual contribute to the maximum of their potential and feels valued.

A diverse team is made up of “everyone in the team”². They come from an environment in which no-one feels bigger or better or more important than anyone else, because every member believes that what is most important is the group of which they are part.

² Civil Service Cabinet Office diversity website – March 2002

What diversity is not

Diversity is not about reducing standards, “using” the right words or “political correctness”. It is not about removing our prejudices – only about recognising that they exist and questioning them before we act”.³

EQUALITY PROOFING DEFINED

The concept of equality proofing was highlighted in the Final report of Activities of the Group of Specialists on Mainstreaming (EG-S-MS (98)S (Strasbourg: May 1998). This definition is developed from the concepts, which they outlined.

Equality proofing involves incorporating an equality perspective in all aspects of policy development. In order for this to happen, all the people involved in policy development must be aware of and committed to equality.

For equality to become a reality all negotiators and everyone involved in policy development must be aware of where discrimination is likely to occur and which groups are likely to be marginalised.

Negotiators and policy developers must ensure that such groups are provided with the means and resources to participate in the workplace and in society as equal citizens.

From the above definition it can be seen that there are two distinct aspects of equality proofing, namely:

- ◆ The development of equality proofing mechanisms
- ◆ The development of equality agencies and institutions to implement an equality proofing process.

³ Ibid

Tools that can be used to implement equality proofing include:

- ◆ Legislation
- ◆ Constitutional reform
- ◆ Codes of practice
- ◆ Sanctions and enforcement procedures
- ◆ Equality audit and monitoring mechanisms
- ◆ Policy proofing procedures.

The objective of equality proofing is to promote equality and diversity. The purpose of providing this booklet on equality proofing is not for it to operate as a checklist to avoid discrimination. Neither is the information contained in this booklet intended to eliminate or to ignore differences. The main objectives of the guidance is in assisting negotiators to:

- ◆ Eliminate any possible disadvantages or discrimination that could occur during the bargaining agenda against individuals and groups because of their identity;
- ◆ Promote full and effective equality by ensuring that groups experiencing inequality are given the necessary resources to participate equally;
- ◆ Be conscious of equality of access to all members in terms of equal rights to participate;
- ◆ Work towards achieving inclusion for all groups:
- ◆ Value rather than discriminate against differences.

An important principle of equality proofing is that the needs and interests of target groups are taken into account in the policy-making process and in the ongoing evaluation and implementation of policy.

HOW TO EQUALITY PROOF

Equality proofing is considered a good practice by many employers in bringing equal opportunities to the forefront of any agreement. Equality proofing requires a commitment to equality of opportunities from the highest level. For these reasons it goes beyond a consciousness of established legislative requirements, but take a position of how agreements are going to impact on groups susceptible to inequality of treatment. Thus, at the start of negotiating an agreement, equality proofing will seek to assess, monitor and redress, if necessary, any perceived inequality of outcome for all the disadvantaged groups.

To assist in carrying out that task, listed below are a number of possible problem areas:

- ◆ Selection for Job Interview
- ◆ Eligibility and application for promotion
- ◆ Success rates at each stage of the promotion process
- ◆ Payment of performance – related pay and bonus payment
- ◆ Career development
- ◆ Filling of new vacancies
- ◆ Changes to terms and conditions of employment
- ◆ Personal Review (including appraisals)
- ◆ Selection for Redundancy
- ◆ Resignation rates
- ◆ Staffing arrangements
- ◆ Transfer terms
- ◆ Seniority lists
- ◆ Shift working Patterns
- ◆ Hours of Work
- ◆ Patterns of Work
- ◆ Flexibility of working arrangements
- ◆ Treatment of pregnant workers

Having considered the above list, negotiators should now assess what is the likely impact of the agreement on:

- ◆ People suffering from a disability
- ◆ Age
- ◆ Gender (including maternity)
- ◆ Racial groups
- ◆ Religious groups
- ◆ Part Time Workers
- ◆ Family Friendly policies
- ◆ Same Sex partnership

If the result is a disproportionate impact or results in a difference in treatment on any of the above, then it is possible that discrimination is taking place. The key word is “**difference**” in treatment and can the difference be objectively justified.

In attempting to ascertain whether or not there is a difference in treatment which results in an adverse impact that cannot be objectively justified, listed below are a number of questions to consider:

IMPACT

- (a) What impact will this agreement have on each disadvantaged group?
- (b) Will it be possible for each of the disadvantaged groups to comply with the requirements of the agreement? For example will it be possible for a person suffering from a disability to comply or will a woman be able to comply with the requirements of the agreement?
- (c) Does the signing of this agreement impact adversely on someone from a racial minority group? For example engineering duties requiring the wearing of a helmet. Will it be possible for a Sikh, who due to their religious

practices of having to wear a turban able to comply with the requirement?

- (d)** What, if any, is the adverse impact? For example are less women able to comply with the agreement compared to the number of men affected? Are persons from a racial minority or religion able to comply with the requirements?
- (e)** Is a pregnant worker able to comply with the requirement or condition laid down in the agreement?
- (f)** Does the signing of this agreement impact adversely on someone because of his or her sexuality? For example agreements covering pension schemes, is the CWU member able to nominate their partner as a recipient of the Pension Scheme irrespective of his or her sexual preferences?
- (g)** Will it be possible for a part time worker to comply with the agreement? For example training schemes that could exclude part time workers or promotion to a higher grade, which requires full time working.
- (h)** Are the requirements of the job such that a young person is unable to comply and is the requirement objective i.e. several years' experience?
- (i)** Does the signing of this agreement exclude older workers? For example the requirement for a certain age group e.g. 25 to 35?
- (j)** Are adjustments necessary? For example will it be possible for a disabled person to access the building or work area to carry out his or her duties without being put at a disadvantage?
- (k)** If work is being transferred from one office to another what impact will it have on racial minorities For example if work is being transferred from an office/area where there are a large number of ethnic minority staff to an office/area which is predominantly white, is it possible that racial minority groups are unable to comply with the requirement/condition? What will be the

impact for the racial minorities? Will it be loss of employment? Will it be isolation?

If the impact results in adverse differences, how can these differences be accommodated? Do I need to consult the member concerned or do I need assistance from Headquarters? Can I get assistance from an outside organisation such as the Disability Rights Commission?

EQUALITY PROOFING OF AGREEMENTS - POSSIBLE PITFALLS!

It is the aim of the CWU to establish a process whereby each outcome can be measured and assessed for any possible pitfalls. In practical terms, a list of possible problem areas is given with examples of how these can be avoided.

1. PERSONNEL PROCEDURES

All personnel procedures should be carefully examined for any likely adverse impact on disadvantage groups. Under this section, the guide examines some of the personnel procedures susceptible to discrimination.

(a) Attendance Procedure

The attendance procedure⁴ is one of the main areas where agreements can fall outwith legislation, particularly for people suffering from a disability and pregnant women.

For people suffering from a disability, there is a clear difference in law between absence on the grounds of sickness and absence as a result of a disability. Negotiators should be aware of the difference between the two types of sickness.

The DDA protects employees from discrimination with regard to time off for rehabilitation and treatment on the grounds of persons' disability. It would be discriminatory to treat a disabled person's sick absence in

⁴ The principles also applies to poor performance, long term illness, late attendance etc

the same way as someone not suffering from a disability. If a disabled person's sick absence is treated in the same way as a non-disabled person's sick absence, then the employer risks being taken to a tribunal under the DDA.

Sick absences solely related to a disability would not normally be used to address poor attendance or poor performance procedure. In other words, employers should have regard for the disability-related sickness. For negotiators, the impact of any agreement as to be assessed individually by establishing how the DDA applies in a particular case. Thus, it may be possible to make adjustments to accommodate the disability, by:

- ◆ Making adjustments to the physical premises
- ◆ Allocating some of the duties to another
- ◆ Transferring the individual to an existing vacancy in another department
- ◆ Altering the individuals' working hours
- ◆ Moving the individual to a different place of work
- ◆ Allowing the individual to be absent during working hours for rehabilitation, assessment or treatment
- ◆ Giving the individual training to do another job
- ◆ Acquiring and modifying equipment
- ◆ Modifying instruction/reference manuals
- ◆ Modifying procedure, suggestion or assessment
- ◆ Providing a reader interpreter and
- ◆ Providing supervision

Pregnant Workers

Pregnant workers are protected in a similar way to disabled workers in that they should not be discriminated against as a result of a pregnancy-related absence. Since pregnancy cannot be used as a reason for dismissal, employers should not take any periods of sick leave incurred as a result of

pregnancy complications into account in assessing irregular attendance. Similarly a pregnant worker should not receive a warning because of sick absence as a result of pregnancy related complications. In addition, an employer has the duty to carry out risk assessment and the possibility of transferring a pregnant worker to less hazardous duties, which may include shift working.

(b) Appraisalment

When negotiating the appraisalment procedure, here again it is the objective criteria that are required: The test or criteria should be clear and easy to understand. The agreement should not impact adversely on disadvantaged groups: Such adverse impact could take the form of :

- Assessing the person on their accent and not on ability to do the work
- Assessing the requirement for English at a higher level than required to do the job.
- Withholding access to a sign language interpreter in the case of a profoundly deaf person who requires this.

(c) Promotion Procedure

Selection for promotion should be based on clearly defined criteria resulting in the selection of "the best person" for the job. Selection for promotion to a higher grade should include:

- Access to good training
- Objective criteria
- Test papers that have been evaluated for any inherent bias against disadvantaged groups

(d) **Recruitment and Selection**

The recruitment and selection process should be based on **objective** criteria and not the person. Such objective criteria could include skills, relevant qualifications and aptitude for undertaking the job under consideration.

The concept of a preferred candidate should be avoided, as should promotion on the basis of social contact.

Criteria that should be avoided include:

- A certain age range (as this would exclude younger and older workers capable of doing the job)
- Friends and family (this could debar people from an ethnic minority or women)
- Seniority - This could adversely impact on people with disability, women and ethnic minorities because of not having the required length of service in order to comply.

(e) **Retention**

Negotiators need to consider retention agreements as to whether or not they impact adversely on disadvantaged groups. For example, a person becomes disabled as a result of a road accident and now has difficulty carrying out his or her day to day activity. However, the member could be kept in employment if reasonable adjustments are made such as working from home, modifying the existing work environment or is it possible transfer the member to another job. This may be less costly than retiring the person.

CWU members with a certain sexual preference may be discriminated against where redundancies occur. For example, a manager who has a dislike for

gay or lesbian members chooses a person for redundancy, instead of using the objective criteria for redundancy. Negotiators can protect such members by making sure that where redundancy agreements exist, they are based on objective criteria.

(f) Seniority

It is a widely held practice within the CWU to operate a seniority rota resulting in preference being given to the most senior member in the allocation of annual leave; overtime; duty rota and many other related areas. Seniority taken singularly is not in itself discriminatory, but it may impact adversely when other considerations are taken into account. The negotiator needs to ascertain whether for example, it impacts adversely on women, disabled persons or ethnic minorities. Will it be possible for them to apply or will it exclude the vast majority from disadvantaged groups. If the answer is yes, then it is possible that discrimination is taking place as a result of operating a seniority rota. It is sensible, therefore, that flexibility is used where seniority lists apply. However, ability to do the job must be a key factor.

(g) Training

Negotiators need to ensure that the way in which training is provided does not unjustifiably deprive disadvantaged groups of basic job skills training or suitable opportunities for development. For example negotiators can take the following steps when making agreements:

- Specific training is available e.g. for part time workers or someone suffering from a disability;
- Provision of course material in a format that is accessible to those attending the course
- Provision of an interpreter, if necessary for persons with a disability or language difficulty;
- Additional training, if necessary (e.g. for a disabled person)

2. OTHER RELATED TERMS AND CONDITIONS

(a) Pension Schemes

An area of concern in pension schemes is related to partnership issues. There is currently no legislation against discrimination in pension schemes against same sex partnership, however there are some good schemes operating in some parts of the postal sector and BT. Negotiators should ensure that agreements do not discriminate against:

- Same sex partnership
- Co-habiting partners
- Unmarried relationship

(b) The Wearing of Uniform

The UK as a multi-cultural society carries with it different forms of dress code, in many cases because of religious practices. Most of the businesses for which CWU has trade union representation rights have members originating from the various cultures and religious practices. It is important therefore, that agreements accommodate different dress codes. For example, some Muslim women are required to wear a hijab when they are in the public arena. Similarly, Sikhs are required to wear a turban. Negotiators, should be mindful of these differences so that any agreement involving a certain dress code does not discriminate against this section of the membership. For example, an agreement may require an employee to wear a helmet. However, for Sikhs this would discriminate against them as a racial minority religious group. Negotiators mindful of this, can accommodate Sikhs members so that they are allowed to wear their turbans.

(c) Prayer Rooms

There are many religious practices in the UK apart from western Christianity. To name a few, there are:

- ◆ Hindus
- ◆ Eastern Orthodox
- ◆ Sikhs
- ◆ Muslims
- ◆ Jews
- ◆ Confucians
- ◆ Buddhists

Due to the religious diversity, negotiators should be aware that each religion might have its discrete religious days and practices. For example, the Chinese have a different new years' day to that practised in most parts of the Western world. Under the Human Rights Act, individuals have the right to practice their religious beliefs without being discriminated against and negotiators should be aware of this.

As a Union working towards good equal opportunities practice, negotiators should try to accommodate members with different holy days by:

- ◆ negotiating holy days off

It is also important to provide access to a prayer room for faiths requiring such a facility.

At the time of writing, only in Northern Ireland is there specific law to outlaw discrimination on the grounds of religion. However, the Employment Framework Directive, which was agreed in Luxembourg on 17th October 2000, covers religious discrimination. The UK government proposes to bring in a new law to make religious discrimination illegal by 2003.

3. FAMILY FRIENDLY POLICIES

There are a number of family friendly policies, which exist under current UK legislation. These include Parental leave; time off for dependants, carers leave and maternity leave. All of the aforementioned leave are well documented⁵ elsewhere. This section will therefore, examine Special Leave and how discrimination could work against disadvantaged groups.

Special Leave

The Maternity and Parental Regulations published in December 1999 details new rights established in the Employment Relations Act 1999. The qualifying conditions for Parental Leave is set out in Regulations 13. Eligible employees can have up to 13 weeks' (maximum) leave in respect of each child to be taken in short or long blocks depending on what is agreed at the workplace. Where there are twins or multiple birth, each parent gets 13 weeks' leave for each child. The leave lasts until the child's fifth birthday.

The key aspects of the right are as follows:

- ◆ The maximum leave that an employee can take (over five years) per child is 13 weeks;
- ◆ The right is an individual right, so both parents are entitled to parental leave;
- ◆ The employee's rights to take the leave will last until the child's fifth birthday or – in the case of adoption – until five years have elapsed following placement of the child with the parents;
- ◆ Parents of disabled children will be able to use their leave over a longer period. The Regulations provide that in their case parental leave can be taken up to the child's 18th birthday. Whether a child is disabled or not determined by whether the child is entitled to disability living allowance.
- ◆ The employee will remain employed while on parental leave; some terms, such as contractual notice and redundancy terms will still apply
- ◆ At the end of the parental leave the employee is guaranteed the right to return to the same job as before, or, if that is not practicable, a similar job which has the

⁵ Information can be obtained from the CWU's Equality Department at Headquarters

same or better status, terms and employee will be entitled to go back to the same job.⁶

◆ In negotiating agreements involving special leave it is important that no group is disadvantaged as a result of an agreement. For example, negotiators should access the agreement to ascertain whether:

- (a) Same sex partnership are likely to benefit
- (b) Unmarried partnership are likely to benefit
- (c) Co-habiting partnership are likely to benefit

If there are disadvantages to some groups then before an agreement is made, it is important that any disadvantages that is perceived is eliminated.

⁶ Please refer to Chapter 5, "CWU Equality's Officers handbook for a more in depth discussion of the subject.

CHAPTER 3

CWU POLICY AIMS AND OBJECTIVES

YOUR UNION

The Communication Workers Union (CWU) represents approximately 300,000 members from a wide range of diverse culture, religion, society, and family make-up. In attempting to provide an excellent service for all its' members, the CWU is conscious of the need to have policies and practices in place that reflect and represent its diverse membership base and the CWU's core beliefs. In so doing, the CWU has embarked on a number of initiatives e.g. A Review of the Union Structure, specific training, "CWU Equality Officers Handbook" amongst other things to achieving its objectives.

CWU's OBJECTIVES

The CWU's main objectives are:

The CWU exists to protect, advance and serve the interests of its members throughout the communications industry. In pursuit of its aims, the Union will seek:

- ◆ To provide first class collective and individual representation for all its members;
- ◆ To offer security of employment for all members;
- ◆ To offer individual membership services of the highest quality;
- ◆ To expand trade union membership services throughout the Communications Industry;

- ◆ To promote, by industrial and political means, the success of the industries in which our members work;
- ◆ To campaign against all forms of discrimination;
- ◆ To further these objectives by promoting the influence of the Union throughout the National and International community.

Central to the main objectives of the CWU is the issue of equality. The CWU is committed to:

1. No discrimination in relation to race, sex, marital status, any disability, religion, sexual orientation, political affiliation, ethnic or national origin or age in accordance with CWU Rules and specifically 2.1(d). This list is not intended to be exhaustive.
2. Promotion of policies designed to ensure that any barriers or disadvantages arising intentionally or unintentionally from items listed in (1) above are overcome as far as possible. This will apply equally to physical and non-physical causes of the barriers or disadvantages.

The following rule agreed at the Rules Revision Conference 2000 sets out the CWU's position with regard to equal opportunities.

New Rule Agreed by Rules Revision Conference MARCH 2000

Rule 2.1(d)

*“To actively oppose racism and sexism, and all forms of discrimination based on race, creed, religion, age, political affiliation, disability, marital status, sex or sexual orientation in industry, the Union and society in general. To this end, the CWU will actively oppose any organisation, political or otherwise, whose aims are racist or fascist. The CWU will also **actively identify any cause or barrier** to enable it to eradicate institutional discrimination within its own organisation. This will include elements of positive discrimination in favour of women and racial minorities until such time as the Union is satisfied that its structure reflects and supports the gender and racial balance of the members which it represents”.*

Like many Unions who are working towards achieving equality throughout its structure, the CWU is conscious that well-intentioned policies do not always translate into best practices. As a consequence the drive toward achieving greater equality within and throughout the CWU structure is a continually developing process. Those processes are integral to Union policies, driven from the highest level downwards.

EQUALITY PROOFING

The Communication Workers Union is committed to Equality of Opportunities within and outside its organisation in order to achieve fairness in society and to combat the various forms of discrimination, which are not objectively justified. In attempting to bring forward this task, the CWU leadership commissioned DLA Consulting to carry out work on a “Review of Delivering Equality”, both as an employer and as a trade union representative. The findings of those two reports were published in 2000.

One of the recommendations of the Report – “Equality Review Within the CWU” – was that agreement should be equality proofed. Following on that recommendation, Annual Conference 2000 (motion 138) and Annual Conference 2001 (Motion 92) instructed the Equal Opportunities Department to Equality Proof all major agreements. Motion 92, carried at Annual Conference 2001 is reproduced below:

“This Conference welcomes the carriage of motion 138 during Annual General Conference 2000, instructing the national officers to equality proof all major agreements. However, Conference believes that all the information from the equality proofing must be available to the Regional Secretaries for circulation to all the relevant branches. “The NEC is instructed accordingly”.

As a result of the carriage of Motion 92, at the 2001 CWU Annual Conference, this document aims to act as a guide in assisting National Officers and CWU representatives involved in negotiating agreements affecting membership of the CWU. To simply ask one officer to equality proof all final agreements will not achieve the objectives of the two motions e.g. motion 138 carried at Annual conference 2000 and motion 92 carried at annual conference 2001. The aim is to bring equality issues to the centre by raising negotiators awareness that by carrying out certain simple checks, the impact of inequality can be greatly lessened.

This guide is not intended to be exhaustive, but should go a long way in raising awareness of equality issues in major agreements. Similarly, the guide is intended to act as a manual so that negotiators can use when the need arise. Nevertheless, all negotiators should feel free to contact the Equal Opportunities Department if they require assistance in equality proofing.

Equal Opportunities proofing is widely recognised as good practice that should be continuous and carried out regularly. It is about trying to measure the effect if any, the particular procedure, policy/agreement has on groups susceptible to discrimination. Similarly, equality proofing means that all policy decisions have taken full account of the needs of different equality groups and consider the possible impact that the agreement/policy has on them. In other words, negotiators should consider any possible differences or effect that a policy/agreement is likely to have

on equal opportunities - is there an adverse impact? To do this, a negotiator has to bear in mind current legislation on equal opportunities practices and what is good equality treatment. The adverse impact can be determined by monitoring and analysing data, which is collected. In the absence of good data, the following pages act as a guide to negotiators when entering into agreements affecting CWU members.

CHAPTER 4

EQUAL OPPORTUNITIES AND ANTI-DISCRIMINATION LEGISLATION

1. EQUAL OPPORTUNITIES

In the UK, there are a number of anti-discriminatory legislation, which have proved useful in combating discrimination, e.g. The Equal Pay Act 1970 (and amendments); The Sex Discrimination Act 1975 and the Disability Discrimination Act 1995. Nevertheless, there are some areas where discrimination occurs on a regular basis e.g. because of ones' sexuality and age, but for which there are no current UK legislation outlawing such discrimination. Needless to say, all forms of discrimination, which cannot be objectively justified, must not be tolerated.

One of the CWU's objectives is to "protect, advance and serve the interests of its members throughout the communications industry". Putting that objective into practice will result in valuing a person as an individual, with his/her own unique personality. Each personality contributes to a diverse workplace and consequently to the wider society. Therefore, whether or not there is legislation outlawing unjustified discrimination, all CWU negotiators and policy makers should be conscious of the need to provide a service which results in equal and fair access to all.

2. TYPES OF DISCRIMINATION AND HOW TO LESSEN ITS ADVERSE IMPACT

Discrimination, discussed here are those which are illegal under present UK legislation e.g. Disability, Sex and Race. However, there is impending legislation which are due over the next few years, particularly those dealing with:

- ◆ Religion
- ◆ Age
- ◆ Sexuality Orientation.

These will also be outlined below to show how an adverse impact can take place on any of the above groups..

It is important to remember that for some, each form of discrimination is not discrete but is inter-related. For example, it is possible for someone to be of a certain gender, suffer with a disability and come from a particular racial group. In such cases, there are a number of issues not mutually exclusive. Where such cases occur, the negotiator should be examining the situation as a whole. The negotiators' task is to ascertain whether or not each issue has a bearing on a particular situation.

Turning now to the various anti-discrimination legislation e.g. Disability, Race, Part Time workers and Sex, the following pages will give a synopsis of the meaning of discrimination under each legislation. Following upon the current legislative framework, the guide will briefly set out proposed anti-discriminatory legislation namely those based on Religion, Sexual Orientation and Age.

(A) Definition of Disability

A person is disabled under the 1995 Disability Discrimination Act (DDA) if he or she has a “*physical or mental impairment, which has a substantial and long term adverse effect upon their ability to carry out normal day to day activities*”. In other words the following conditions must be satisfied:

- ◆ The person must have an impairment that is either physical or mental;
- ◆ The impairment must adversely affect “ability to carry out normal day to day activities”
- ◆ That adverse effect must be a “substantial” one;
- ◆ That adverse effect must be “long term”. In other words if you are suffering from a medically recognised condition which has lasted 12

months or more, or is likely to last for 12 months or more, which is serious and affects your daily life in more than a minor way, you will have a disability for the purposes of the Act.

Physical impairments affect the senses, such as sight and hearing. The question to ask is does the impairment affect the applicant's ability to carry out normal day to day activities and does it have an adverse effect. In other words the Act is concerned with a person's ability to carry out activities **but** the fact that a person can carry out such activities does not mean that his ability to carry them out has not been impaired.

Mental impairments including learning disabilities and mental illness (if it is recognised by a respected body of medical opinion. Mental impairment includes an impairment, which results from or consists of a mental illness provided that the mental illness is "clinically well-recognised".

Discrimination under Section 5 (1) of the DDA relates to "Less favourable treatment". Discrimination occurs if an employer discriminates against a disabled person if...

".. (a) for a reason which relates to the disabled person's disability, he treats him less favourable than he treats or would treat others to whom that reason does not or would not apply"

Section 5(3) of the DDA provides that less favourable treatment of a disabled person for a reason which relates to the disabled person's disability will be justified "if, the reason for it is both material to the circumstances of the particular case and substantial". The Code of Practice says that "this means that the reason has to relate to the individual circumstances in question and not just be trivial or minor". So far as "material" is concerned, the defence under the Equal Pay Act requires the employer to show that a variation in pay is genuinely owing to a "material" factor.

The following case helps to identify who the non-disabled comparator should be when seeking to establish less favourable treatment:

In the case of *Clark v TDG Ltd t/a Novocold Ltd* (1999) IRLR 318, Mr. Clark was dismissed after being off sick following an accident at work. It was established that a disabled person should be compared with a non-disabled person doing the job, rather than a sick, absent or incompetent employee who would also have been dismissed. The case also showed that the employer could not use the lack of other difficulties caused by the disability as the reason for the dismissal, while ignoring the fact that the absence from work is a result of the disability.

(b) Discrimination based on Race

The Race Relations Act 1976(RRA) and the Race Relations (Amendment) Act 2000 applies to Great Britain (England, Scotland and Wales). There is a separate Race Relations Order, which applies to Northern Ireland (and a Separate Equality Commission for Northern Ireland).

The RRA gives two types of discrimination plus victimisation, which are unlawful under the Act.

- (i) **Direct Racial Discrimination.** This occurs when you are able to show that you have been treated less favourably on racial grounds than others were in similar circumstances. To prove this, it will help if you can give an example of someone from a different racial group who, in similar circumstances, has been treated more favourably than you. Racist abuse and harassment are forms of direct discrimination. An example where this could occur is in pay systems where white employees are doing exactly the same job as black members, but members are being paid considerably less than their white counter-part for

doing the same job.

- (ii) **Indirect Racial Discrimination.** This occurs when you or people from your racial group are less likely to be able to comply with a requirement or condition, and the requirement cannot be objectively justified. For example, a requirement that all female employees wear a dress/skirt in the carrying out of their duties would exclude practising Muslim women, who are required to have their legs covered.
- (iii) **Victimisation.** This has a special legal meaning in the Race Relations Act. It occurs if you are treated less favourably because you have complained about racial discrimination or supported someone else who has.

(c) Part Time Workers

The UK Government uses two definitions to describe a part timer as follows:

- (i) Someone who works less than 30 hours a week. This is the standard used by the Government to calculate the number of part time workers in the UK labour force.
- (ii) Someone working less than the standard hours for that particular workplace.

The Regulation aim to ensure that part time workers are treated no less favourably in their employment conditions than comparable full-timers, unless this is justified on objective grounds.

This means that part timers must receive (pro rata where appropriate) the same treatment as comparable full-timers. This will include no less favourable:

- ◆ Rates of pay (including overtime pay, once they have worked more than the normal full time hours)
- ◆ Access to pension schemes and pension scheme benefits;
- ◆ Access to training and career development
- ◆ Holiday entitlement
- ◆ Entitlement to career break schemes, contractual sick pay, contractual maternity, parental pay; and
- ◆ Treatment in the selection criteria for promotion and transfer, and for redundancy

An example where discrimination occurs to part time workers is in meeting and training times are outside part timers normal working hours. If accommodation is not made to include part time workers to make meeting and training times accessible, then discrimination could possibly be taking place.

(d) **Sex Discrimination**

The Sex Discrimination Act 1975 as amended by the Sex Discrimination (Indirect Discrimination and Burden of Proof) Regulations 2001⁷ gives two types of discrimination plus victimisation, which are unlawful under the Acts.

- (i) **Direct Discrimination.** A person discriminates against a woman...”if, on the grounds of her sex, he treats her less favourably than he treats or would treat a man”.... This could result in pregnancy related absences whereby a pregnancy related absence is used for poor attendance. This would be discriminatory and negotiators should be aware of this.
- (ii) **Indirect Discrimination** A person discriminated against a woman where a woman is subjected to the same requirement regardless of gender or marital status but the proportion of one group that meet the requirement is smaller than the other. A person discriminates a woman if..”.... he applies to her a provision,

⁷ Came into force on 12th October 2001 in Great Britain

criterion or practice which he applies equally to a man but which is such that it would be to the detriment of a considerably larger proportion of women than of men and which he cannot show to be justifiable irrespective of the sex of the person to whom it is applied..." An example of this is seniority rota whereby less women are able to comply compared to men.

The new definition of "indirect" discrimination encompass a "provision, criterion or practice" rather than merely a "requirement or condition". The Regulations also provide that the burden shifts to the employer to disprove sex discrimination once an applicant has proven that there is a case to answer.

(e) **Fair Employment Law (Northern Ireland)**

The Fair Employment Acts 1976 and 1989 of Northern Ireland makes it illegal to discrimination in employment on the grounds or religion or politics. These are two types of discrimination:

- Direct Discrimination
- Indirect Discrimination

In addition, a person has redress to the law should they be victimised as a result of assisting someone else who has taken a discrimination case against their employer. A booklet on the Fair Employment Tribunal is obtainable from the Office of Industrial Tribunals and Fair Employment Tribunal.

PROPOSED ANTI-DISCRIMINATION LEGISLATION

(a) Sexual Orientation and the Legal Position

UK law currently provides lesbian and gay men at work with little legal protection. However, The Employment Framework Directive was agreed in Luxembourg on 17th October 2000. The aim of the Directive is to make it illegal for most UK employers to discriminate against employees because of their age, **sexual orientation**, religion or any disability they

may have. The UK Government propose to introduce new laws preventing employees from being discriminated against because of their sexual orientation by 2003. An example of where discrimination could occur is in pension schemes, where same sex partners are excluded.

(b) Religious Discrimination and the Law

Only in Northern Ireland is there specific law to outlaw discrimination on the grounds of Religion. The Fair Employment (NI) Act 1976 and 1989 makes it unlawful in Northern Ireland to discriminate in employment against any person on the grounds of religion or politics. There is also a Code of Practice, which accompanies Fair Employment. However, it does not have the status of the law but it will be taken into consideration by the Fair Employment Tribunal where considered relevant.

The Employment Framework Directive was agreed in Luxembourg on 17th October 2000. The aim of the Directive is to make it illegal for most UK employers to discriminate against employees because of their age, sexual orientation, **religion** or any disability they have. The UK Government propose to bring in a new law to make religious discrimination illegal by 2003. An example where religious discrimination could occur is the requirement that all employees attend for duty over a 5 over 7 or six over 7 day roster. If the roster is such that it falls during Ede, and a Muslim is refused time-off to attend his religious celebrations, then religious discrimination is likely to be taking place.

(c) Age Discrimination and the Law

The UK Code of Practice on Age Discrimination is not binding on employers as it only offers them guidelines on how to deal with the issues around age. The guideline gives suggestions on how to retain staff, how to eliminate age discrimination and how to introduce good practice. Some areas where pitfalls may occur include:

- Selection for recruitment
- Selection for Promotion
- Selection for Redundancy

Where possible, adverts placing restrictions on the type of person who may apply e.g. "young", "graduate" or "mature person" should be avoided as this would exclude a number of people who do not fall within the aforementioned categories. The selection process should be based on an **objective** criteria and not on any preconceptions about age.

CONCLUSION

The CWU is conscious that policy measures alone, does not always translate into equality of opportunity or equality of outcome. Other measures are sometimes needed to bring about the required outcome. Some of these measures include the required tools to do the job. Therefore, from the outset the bargaining agenda is examined to give “real” examples of where discrimination is likely to occur. It also encourages the negotiator to be conscious of certain pitfalls that could inadvertently occur. The negotiator is reminded to keep in mind “the likely impact such an agreement will have on disadvantaged groups”.....”does the signing of this agreement impact adversely on someone because of his/her sexuality”. It goes even further by implicitly asking the negotiator to consider if the impact results in adverse differences, “how can these differences be accommodated”?

Therefore, equality proofing is asking people involved in policy development to question all agreements that are being reached. The aim is to have a fair and inclusive workplace where members are valued as individuals. Whilst, the CWU is aware that this takes time and effort, the objective is to develop an understanding and awareness of possible barriers and act to eliminate them.

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