EQUAL OPPORTUNITIES COMMITTEE

REMOVING BARRIERS: RACE, ETHNICITY AND EMPLOYMENT

SUBMISSION FROM MICHAEL ANDERSON

“In Britain there is more poverty in every ethnic minority group than among the white British population. The TUC believes that a major cause of this poverty is race discrimination faced by black workers in the UK labour market. The lack of access to employment and to training and promotion opportunities has also consistently undermined the financial well-being of black communities in the UK.”

(Living on the Margins, TUC, April 2015, page 2)

**The Scottish Public Sector Equality Duty**

*The Public Sector Equality Duty (PSED) is fundamentally an employment equality duty.*

The PSED emerged from the findings of the Macpherson Inquiry into the racist murder of Stephen Lawrence and the failure of the Metropolitan Police Service to investigate and prosecute that crime.

Lord Macpherson concluded that “institutional racism” was to blame and said:

"It is incumbent on every institution to examine their policies and the outcome of their policies and practices to guard against disadvantaging any section of our communities."

Consequently, Lord Macpherson made five recommendations concerning the Metropolitan Police’s recruitment, retention and promotion of BME police officers.

*The public sector cannot deliver a non-discriminatory public service to a diverse society if its policies are made and implemented by organisations whose employees do not reflect the diversity of society.*

The devolved Scottish public sector through its Equality Duty can decisively affect equitable labour market outcomes for the BME community by accounting for 20% of the Scottish labour market; and, by demonstrating to the private sector how to achieve such labour market outcomes for the BME community.

Equally, if the devolved Scottish public sector cannot deliver equitable labour market outcomes for the BME community through its Equality Duty, there would be little prospect for the private sector to achieve such outcomes through its weaker Equality Act 2010 Employment Statutory Code of Practise.
I have formed the view, based upon reviewing a representative sample of employee equality monitoring data of the devolved Scottish public sector, that the Scottish PSED is failing the BME community.

Considering that the Scottish Census 2011 reports a national BME population of 4% with council area concentrations of up to 12%, the devolved Scottish public sector in general has a static level of BME employment of approximately 2% with declining levels employment as pay and organisational authority increases: the “snowy white peaks”.

For example:

- Glasgow City Council, despite having a BME population of 12%, reports in its “Workforce Profile 2015” that BME employees comprise 2% of its entire workforce with 0.4% of employees at Grades 9-15 being BME.
- The Scottish Government reports in “Equality Outcomes and Mainstreaming Report 2015” that BME employment has only increased by 0.1% from 1.4% to 1.5% during the years of 2013 and 2014; and, during that same period there was between 1 and 4 BME Senior Civil Service employees out of a total of averaging at 179.
- Police Scotland reports in its “Equality and Diversity Mainstreaming Progress Report April 2015” that 1% of police officers are BME which has been static since 2010; and, between March 2013 and March 2014, no self-identified BME police officer was promoted.
- The Scottish Fire and Rescue Service reports in its mainstreaming and equality outcomes reports of 2013 and 2015 falling BME employment from 0.6% to 0.45%.
- NHS Scotland reports in “VME people, work, & the NHS in Scotland 2014” that there has been a marginal increase in visible ethnic minority (VME) employment of 2.63% to 2.81% from 2013 to 2014; and, states:

  “The conclusion in the 2013 research report was that the NHS in Scotland appeared to have significant problems with institutional discrimination in the employment of VME people.

  The data from one year on in the NHS would suggest little has changed in the NHS in its employment of VME people.”

**Recommendation:**

The Scottish Parliament and Government should:

- Focus the effort of the Scottish PSED upon achieving equitable employment outcomes in the public sector for the BME and all other protected characteristics populations.
• Establish for the Scottish devolved public sector a fit for purpose accountability and enforcement regime to deliver equality and diversity in public sector employment. Considering that:
  o The Scottish devolved public sector does have accountability and enforcement regimes for other aspects the public sector such as the Care Inspectorate and the Police Investigation and Complaints Commissioner.
  o The Heath & Safety at Work Act 1974 Duty of Care has an accountability and enforcement regime consisting of trade union appointed safety representatives; Health and Safety Executive and local government environmental health departments enforcement; and, personal injury litigation.

Other Specific Improvement to the Scottish PSED: Employment Tribunal Fees

A fundamental mechanism for BME employees achieving equality at work is through their ability to seek judicial redress for any employer discrimination that they may suffer: Citizens Advice finds that 80% of potential Employment Tribunal cases have merit by being assessed as having a very good, good or 50/50 chance of success if pursued.

Citizens Advice and Citizens Advice Scotland have produced data since the introduction of Employment Tribunal fees which reveals:

• Discrimination Employment Tribunal cases have reduced by a minimum of 66% and a maximum 81%.
• The reduction of Employment Tribunal cases is primarily due to the deterrent effect of fees: a survey reported that 82% of respondents stated that fees would make them less likely to, or would deter them entirely, from pursuing a of Employment Tribunal case.
• The Employment Tribunal fee remission system is not an adequate compensatory mechanism due to its complexity, eligibility criteria and obscurity.

Employment Tribunal fees has created for the Scottish devolved public sector employers a de facto “immunity” from Employment Tribunal justice.

Employment Tribunal fees are a denial of justice for BME employees seeking redress for any employer discrimination that they may suffer.

**Recommendation:** The Equal Opportunities Committee should forge a cross-party consensus to ensure that when the Scotland Bill 2015-16 (HC Bill 48), which devolves Employment Tribunals to the Scottish Government, is enacted that the Scottish Parliament will abolish Employment Tribunal fees.
Other Specific Improvement to the Scottish PSED: Zero-Hours and Short-Hours Contracts

Zero-hours and short-hours contracts indirectly discriminates against the BME community contributing to their adverse labour market outcomes of low-pay and in-work poverty. BME employees in comparison with white employees are disproportionately and to their detriment employed part-time.

Analysis of the Labour Force Survey (ONS) between 2011 and 2014 indicates that BME employees working less than 15 hours a week has increased by 16% in contrast to similar white employees decreasing by 1%. (Living on the Margins, TUC, April 2015, page 8)

Indeed, Glasgow City Council, based their own publicly released data, indicates:

- As of 31st March 2012 total workforce was 26% part-time with 24% of white employees part-time and 29% of BME employees part-time.
- As of 31st March 2015 total workforce was 27% part-time with 25% of white employees part-time and 33% of BME employees part-time.

It would unreasonable to assume that part-time employment is a positive choice made by the BME community because further analysis of the Labour Force Survey (ONS) between 2011 and 2014 indicates that BME employees suffering from under-employment increasing by 2.4% and in comparison similar white employees decreasing by 3.4%. (Living on the Margins, TUC, April 2015, page 7)

**Recommendation:** Audit Scotland should investigate the feasibility of minimising part-time employment, and the abolishment of its extreme and unacceptable form of zero-hours contracts, in the Scottish devolved public sector. Moreover, Audit Scotland should when investigating consider the costs of under-employment to individual, families, communities and society.

**Summary**

The Scottish Parliament and Government should improve BME labour market outcomes by:

- Adequately enforcing the employment duty of the Scottish PSED.
- Abolish Employment Tribunal Fees when such power is devolved.
- Minimise short-hours contracts and abolish zero hours contracts in the Scottish devolved public sector.

Michael Anderson

- Mixed race of Chinese and Scottish heritage.
• Trade union shop steward, safety representative, branch secretary and member of its Scottish Divisional Equalities Forum.
• Trainee Citizens Advice Bureau Generalist Advisor.
• An employee of a “Big 4” supermarket with 25 years of service.
• Relevant work experience: at my specific workplace, BME workers are underrepresented by a factor of 6 with no representation at line, senior and store level management when compared to the corresponding council area BME population of 6% based upon the 2011 Census.
• Relevant family experience: post-graduate level economics and accountancy educated BME cousin is unemployable in the UK but employable in Hong Kong.
• Motivation for the Submission: to further my personal actions to advance the TUC recommendation:

“That government should abandon the philosophy of voluntarism being adequate to address the race discrimination that exists in the private sector and as matter of urgency introduce legislation that places all employers under a duty to promote racial equality and to monitor the impact of such measures.” (Living on the Margins, TUC, April 2015, page 12)

Specifically, the effectiveness of any private sector equality duty would be dependent upon the effectiveness of the public sector equality duty.

Michael Anderson
11 September 2015