

Ms Jane Kennedy MP  
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**Re: Temporary provisions of the Police (NI) Act 2000**

Thank you for your letter of 21 September inviting the Human Rights Commission to comment on whether the temporary provisions of the Police (NI) Act 2000 should be renewed.

The unequivocal view of the Commission is that they should be. We say this knowing full well that the provisions allow for a type of affirmative action that might be characterised as “positive discrimination”, but we believe that this does not amount to discrimination in terms of human rights law in so far as the relevant provisions are justified for the sake of a greater good, namely the creation of a police service which is more reflective of the community it serves.

“Discrimination”, in the human rights standards, does not mean *any* differential treatment, but *unjustified* and injurious treatment based on a personal characteristic such as religion. Where differential treatment is justified, whether as a genuine occupational qualification or otherwise from the facts of the individual case, or from a consideration of the rights of others – for example, to prevent or compensate for disadvantage suffered by any group defined by the grounds on which discrimination is generally prohibited – it does not constitute discrimination. Many individuals and politicians have written to us over the past two-and-a-half years asking why the Commission “supports discrimination” and that is the reason we give.

We have also maintained the position that such differential treatment is not a violation of the European Convention on Human Rights, a point on which we were vindicated when Mr Justice Kerr, and then the Court of Appeal, gave judgment in the case of Mark Parsons last year. The temporary provisions in question do not breach anyone’s right to freedom of religion, nor do they amount to discrimination on grounds of religion in the enjoyment of any other Convention right.

In addition we have frequently been asked whether we think that the 50:50 recruitment system is having such an adverse effect on recruitment as to call into question the ability of the PSNI to protect the human rights of people living in Northern Ireland. That is a legitimate question and the answer is relevant in weighing up the admissibility of 50:50. Our answer has always been that we do not see any such effect, and the figures on recruitment which you enclosed with your letter of 21 September bear this out. There has been no significant failure to fill the vacancies available.

We may remain sceptical over whether the severance scheme put in place for the RUC by the former Police Authority was altogether proper, because it does seem to have led to a shortfall in officers of a certain calibre and experience in the detective field (hence the special recruitment of 80 detectives earlier this year outwith the 50:50 scheme), and it may be arguable that the PSNI are not fully complying with the ECHR if they are not resourced to investigate effectively the many unsolved killings in Northern Ireland, but those are points that have nothing to do with whether the 50:50 recruitment system should be renewed.

The defensibility of any deviation from the principle of completely equitable recruitment relies on its overall utility; that is, a measure that interferes with an individual right may be justified if the interference is proportionate to the achievement of a higher goal, but one that manifestly did not achieve the policy objective or that had a more serious adverse outcome (e.g. rendering the Police Service unable to fulfil its functions), could not be justified in those terms. There is therefore a continuing need to monitor the impact of 50:50, both on its own and in its interplay with the other measures applied to recruitment, retention and severance, and to demonstrate that each measure is, and all are, contributing to the goal of a more representative force to an extent that outweighs any adverse effects including the effective delivery of police services and the impact on those individuals who are not recruited.

We note from the figures enclosed with your letter that the percentage of Catholics in the PSNI has increased from 8.23% in September 2001 to 13.3% in September 2003. That certainly demonstrates progress towards a more representative composition, although factors other than 50:50 will have contributed to the outcome and the progress, it has to be said, is not dramatic. Projections are very unreliable in this context because of the large number of variables, not least the (presumably much higher) proportion of Protestant officers who would on age grounds alone be likely to retire over the next number of years. However, if the rate of increase in Catholic representation remained as observed in 2001-03, it would be a further 15 years or so before anything approaching a 45% representation of Catholics would be achieved (another variable being whether, in 15 years' time, that would represent the Catholic share of the population).

This begs the question whether the current 50:50 recruitment system is operating *effectively enough*. The same rationale as is used to justify 50:50 could be applied to argue for an even greater proportion of Catholic recruitment, but it is likely that other and possibly more important considerations would then arise in relation to maintaining the

confidence of the public at large in the Police Service. That is merely an observation and at present we are not advocating any change to the percentage of Catholics and non-Catholics recruited.

Finally, the Commission also wishes to see positive measures applied to address the under-representation of ethnic minorities in the police. It would like to receive the government's views on whether that can be done within the ambit of the present measures (for example by an amendment under section 46(2)), or whether it is intended to make other provision (as in the recruitment of detectives).

I hope these few comments are helpful to you in your deliberations.

**Brice Dickson**  
**Chief Commissioner**