

## **All Party Group on Ethnic Minority Communities**

### **Seminar on Human Rights, Public Procurement and Accountability**

**22<sup>nd</sup> of October, Long Gallery, Stormont**

#### **Resulting Action Points**

- There is a need to promote a more open and transparent debate about immigration and asylum matters in Northern Ireland, and how stakeholders here can engage more effectively with the UKBA. Lessons could be learnt from Scotland: there has been a more active debate about the awarding of the SERCO contract there and the Scottish government has been engaging with SERCO on issues of best practice regarding the implementation of the contract.

#### **Regarding the SERCO contract, questions need to be asked:**

- Who consulted us here in Northern Ireland?
- Who was involved in this and what was the procedure?
- Why were SERCO awarded the contract when the company has recently been found in breach of the ECHR?
- What is the current state of play regarding the Immigration group within OFMDFM? Is it engaging effectively with Whitehall? How can we do more develop an immigration and asylum policy which meets the needs of Northern Ireland specifically?

#### **Points to highlight for policy-makers:**

- There should be more support for service users to make complaints about poor provision of services without worrying that it will affect their Home Office claim.
- Justin Kouame suggested that NGO accounts of mistreatment and complaints from service users (e.g. poor housing, lack of electricity, gas, lack of sufficient heating in winter) should be taken into account along with court judgements when deciding which company to award contracts to.
- Staff dealing with asylum seekers should be trained in human rights, equality, diversity and cultural awareness prior to taking up a contract. This should be a requirement during the tender evaluation process. Training commitments should be clearly written into the contract.
- There needs to be thorough monitoring of the implementation of contracts and full accountability and measures of redress when unacceptable practices are uncovered.
- When awarding future contracts to be implemented in Northern Ireland, there should be more consultation with stakeholders based here and potential service users, in this case asylum seekers themselves.

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#### **Opening Remarks by Conall McDevitt MLA**

The issues surrounding human rights and public procurement have far-reaching implications for the outsourcing of government services in many areas of provision. They also provide a window into the wider debate about the treatment of asylum seekers and how the state meets this duty of care. Mr McDevitt also read out the statement sent by the UKBA, who did not send a representative to the seminar.

#### **Statement by Professor Colin Harvey, Queen's University Belfast**

- The contracting out of government services to private actors (large multinational companies with billions in annual turnover) is becoming widespread. This particular debate concerns the contract recently awarded to SERCO to provide asylum seeker services in Scotland and Northern Ireland. As SERCO have recently been found in breach of Article 3 of the ECHR, this raises the important question of how the mainstreaming of human rights through services can be ensured.
- Despite the right to seek asylum as enshrined in Article 14 of the Universal Declaration of Human Rights, the UK's policy towards asylum seekers has been one of 'restriction and deterrence'. This has created a segregated 'engineered regime' for asylum seekers which separates them from the majority population and offers them less than they would otherwise receive. The privatisation of asylum services is part of this general trend. UK asylum policy leading to deliberate destitution is 'cruel and inhumane'.
- Regardless of issues of 'value for money' in awarding contracts, national and international law should not be sidestepped.
- The challenge is how to build a human rights culture in our regional context when immigration and asylum are reserved powers and policy is driven heavily from Westminster. How do we engage effectively with the UKBA on these matters?
- On the matter of the SERCO contract: who consulted us here in Northern Ireland? Who was involved in this and what was the procedure?
- People in Northern Ireland are worried about this 'culture of complacency' and how we can shape the human rights culture which we want to build here.

- The Scottish government has been engaging with SERCO on issues of best practice regarding the contract awarded in Scotland: what can we do here in Northern Ireland?

**Statement by David Carson, Divisional Director, Central Procurement Directorate**

- Procurement policy on contracts awarded in Northern Ireland is not a reserved matter, it is developed locally.
- Procurement policy applies to government bodies but not to local authorities.
- Northern Ireland procurement policy does not extend to the contract with SERCO because it was agreed with Westminster.
- EU principles apply to procurement policy and it must also observe national laws (including the Human Rights Act).
- The government remains responsible for the actions of third parties who are delivering services under contract.

**Procedure for awarding contracts:**

- A pre-contract or qualifying questionnaire sets out conditions for suitability to tender. Previous convictions for breaches of the law can render potential contractors ineligible.
- Evaluation Stage: Select contractors to receive bids and evaluate them according to the most economically advantageous, taking the balance between quality and price into account. Quality criteria vary depending on the subject matter of the contract.
- Once awarded, actions of the contractor need to be monitored. Contractors should be clear on their obligations from the beginning.
- Issues raised should be dealt with promptly.
- The contract should include appropriate enforcement measures/measures of redress.

**Statement by Justin Kouame, Chair of NICRAS**

- Asylum seekers are not usually aware of the background and track record of a particular service provider – they merely receive a letter stating that the service provider has changed. Main concern is having somewhere to live.
- No company should be awarded a contract when they have been found in breach of human rights.
- When awarding contracts, NGO accounts of mistreatment and complaints from service users should be taken into account as well as court judgements (e.g. complaints about poor housing, lack of electricity, gas, lack of sufficient heating in winter).
- Process of making a complaint and letter-writing can be complicated. Some asylum seekers may be afraid of complaining in case it affects their Home Office claim.

- Recommend that staff dealing with asylum seekers should be trained in human rights, equality, diversity and cultural awareness prior to taking up a contract. This could also be used as a requirement during the tender evaluation process.
- Claiming asylum is a right: the UK has signed the Refugee Convention.
- Human rights should always come before money.

## **Summary of Discussion**

### **Engagement with the UKBA /Westminster on issues concerning asylum seekers and immigration policy**

- The UKBA will not talk to MLAs about the cases of asylum seekers in their constituencies. They will only deal with MPs. This is supported by a convention in Parliament – not law. Conall McDevitt, MLA, is 18 months into a dialogue with the UKBA on this issue. They are arguing that Convention trumps law. He has met with indifference from the Home Office.
- In response to a question submitted by Mr McDevitt in January, OFMDFM answered that they will engage with the UKBA on taking the needs of Northern Ireland into account. This raises the question of what kind of consultation, if any, OFMDFM had with the UKBA on the SERCO contract. What has happened to the immigration group within OFMDFM, is it engaging successfully with Whitehall?
- It is important to have an immigration policy which meets the specific needs of Northern Ireland: attracting international students, research and development, promoting an internationally open and competitive economy.
- The dynamic within the Assembly is changing but there is still a ‘cut and paste’ approach to law-making in Northern Ireland.
- There is a need to promote debate over the tension between devolved and reserved powers regarding asylum seeker issues. A more open debate over these issues is happening in Scotland.
- The Assembly makes a lot of effort to successfully influence UK negotiations with the EU on the Common Agricultural Policy and the Common Fisheries Policy – but there is much less engagement on immigration and asylum policy.

### **The monitoring of the implementation of a contract after it has been awarded**

- David Carson clarified that the circumstances of each contract are specific to its subject matter. When the contract involves dealing with vulnerable groups, measures should be designed to ensure appropriate treatment.
- Effective monitoring of contracts is important in all cases, not just those involving asylum seekers.

- It is important to talk to the people who will be the service users, identify key aspects and build them into the contract, monitor implementation. This raises the question of the level of stakeholder engagement during the negotiation of the Serco contract.

## **Training**

- Would it be possible to organise training for MLAs to make them more aware of asylum seeker issues?
- It is crucial to train people who are responsible for the implementation of the contract in human rights awareness.
- No organisation should be given a contract without having clearly defined the training obligations for staff.
- David Carson clarified that it depends on the subject matter of the contract, but training standards should be built into the criteria for being awarded the contract. There is a need to reflect on the requirements of the people that the contract is dealing with and address the matter of training adequately.