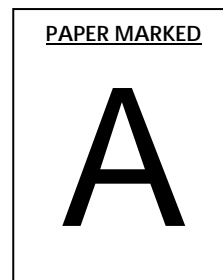


**POLICE AND CRIME  
COMMISSIONER FOR  
LEICESTERSHIRE**

**ETHICS, INTEGRITY AND  
COMPLAINTS COMMITTEE**



Report of: **CHIEF CONSTABLE**

Subject: **POSITIVE ACTION PROJECT**

Date: **FRIDAY 23 SEPTEMBER 2016 – 2:00 p.m.**

Author: **LYNNE WOODWARD**

**Purpose of Report**

1. The purpose of this report is to outline the positive action project which concentrates on recruitment, retention, progression and engagement of under-represented groups within Leicestershire Police. In particular to look at the options for positive action initiatives going forward in recruitment and progression.

**Recommendation**

2. The Board are asked for their views on the potential use of the balancing measures, under Section 159 of the Equality Act 2010.

**Introduction**

3. The positive action project is sponsored by the ACO Resources, supported by the Chief Officer Team and the Police and Crime Commissioner. This two-year project, which began in February 2015, is underpinned by the College of Policing 'BME Progression 2018 Programme', to improve the recruitment, progression and retention of Black and Minority Ethnic (BME) officers and staff, in order to build a more representative workforce. Within Leicestershire Police this has been extended to include work on all areas of under representation, including disability, gender, gender identity and sexual orientation.

The project:-

- Primarily focus on four areas: recruitment, progression, retention and engagement to increase representation from under-represented groups within all areas of the force.
- Addresses under-representation issues, by scrutinising current practices, policies and procedures covering recruitment, retention, progression and engagement.

- Encourages minority groups to consider the police service as a career, and build positive links with different communities, through neighbourhood policing teams, use of corporate communications and partnership working.
- Uses positive action initiatives to encourage a more diverse workforce.
- Enables Leicestershire Police to be an employer of choice and attract the most talented people, to make the organisation a progressive, flexible and accessible employer.
- Aims to make Leicestershire Police, at all levels, more representative of the communities they serve, by creating initiatives, which will help reduce and remove barriers to staff progressing with the organisation
- Place onus on management and make them accountable for encouraging development and progression of under-represented groups.
- Involve and work in collaboration with existing resources, i.e., Youth Commission, staff support networks and focus groups.
- Look to roll out the work of the project regionally, in collaboration with Nottinghamshire and Northamptonshire police.

### **Recruitment**

4. Due to the current budgetary reductions and the increasing need to make efficiencies within the police service, recruitment opportunities over the next 5 years are likely to be restricted. Focus for the work on increasing the representative profile of staff concentrates on police officer and police staff recruitment and progression. However, there will also be an emphasis on increasing recruitment of volunteers, special constables and cadets, where more significant progress could be made.

### **Progression**

5. Leicestershire Police has a promotion strategy, which sets out the objectives and guiding principles for promotion. The project looks at the need to do more to encourage and enable progression for people from under-represented groups. This work includes identifying opportunities for promotions, secondments and attachments, as well as opportunities for staff to access coaching and mentoring.
6. Work also includes reviewing the promotion process and applications. In addition the use of positive action initiatives for staff development programmes, which include fast track programmes, shadowing and bespoke training courses.
7. There is also to be a focus on the use of development days, management guides and leadership courses to enhance the opportunities for all under-represented groups to access development and promotion opportunities.

### **Positive Action provisions of the Equality Act 2010**

8. Positive action does mean people will be employed or promoted simply because they share a protected characteristic. It aims to encourage and assist people from disproportionately under-represented groups in order to help overcome any disadvantages experienced by those sharing a protected characteristic. The general positive action provisions are found in Section 158 and Section 159 of the Equality Act 2010.

**Action prior to selection for recruitment or promotion**

9. Section 158 of the Act allows action to be taken which is a proportionate means of achieving the aim of:-
  - a) enabling or encouraging persons who share the protected characteristic to overcome or minimise that disadvantage
  - b) meeting those needs, or
  - c) enabling or encouraging persons who share a protected characteristic to participate in that activity.
10. This provision is used regularly by Leicestershire Police, by using positive messages to encourage under-represented groups to apply for posts or promotion, providing training, secondments and opportunities for applicants to have support and information. This enables applicants to compete effectively before the application or recruitment phase.
11. Section 159 (1) of the Equality Act 2010 allows the use of positive action in recruitment and promotion on the basis that those who share a protected characteristic suffer a disadvantage or their representation in that work is disproportionately low.
12. Section 159 (3) allows the employer to treat those from a protected characteristic who meet S.159(1) more favourably in recruitment and promotion than those who do not have the same protected characteristic only if:-
  - a) Candidates are of equal merit to be promoted or recruited
  - b) All candidates are treated fairly up to the point of appointment
  - c) Taking the action is a proportionate means of achieving the aim of minimising the disadvantage or increasing representation.
13. These provisions are also known as the balancing measures. To date Leicestershire Police have not used S.159 of the Equality Act 2010.
14. Case law on the use of S.159 is limited. However some parameters have been set. In using the balancing measures (or applying the tie-breaker, as it is sometimes also called), must be done when candidates of equal merit are identified. It has been found that when identifying candidates of equal merit it is unlawful to apply a general rule, which states that, for instance, as long as all candidates have a minimum qualification they can be seen to be of equal merit. The whole recruitment process must be followed before that judgement can be determined. So it as to be at the point of final selection.
15. Conversely Advocate General Saggio determined in his opinion in the Badeck case under the EU Equal Treatment Directive, that a requirement of absolute equality between two candidates before the tie breaker could be used was a fiction, in that it is impossible or extremely difficult for two or more candidates to be on an absolute equal footing.

16. Due to the lack higher court case law and the ambiguity of the provisions very few organisations have used or relied upon S.159 to increase diversity within their workforce. In addition for some organisations who have used the provisions there has been an adverse public reaction/publicity on the use of those provisions.

### **Conclusion**

17. The question to be posed is, Should Leicestershire Police consider the use of the balancing measures during their forthcoming police/police staff recruitment?

### **Implications**

Financial :

Legal :

The interpretation of S.158 and S.159 of the Equality Act has not seen any higher court decisions.

Equality Impact Assessment :

Potential to assist in recruiting or maintaining a diverse workforce. Also has the potential if inappropriately applied for adverse publicity.

Risks and Impact :

Potential risks are legal challenges.

Link to Police and Crime Plan :

Developing a diverse workforce.

Communications :

If the balancing measures in S.159 are to be used appropriate and proportionate communications need to be drafted to mitigate any of the risks.

### **List of Appendices**

None.

### **Background Papers**

None.

### **Person to Contact**

Ms L Woodward

Tel: 07768 238797

lynne.woodward@leicestershire.pnn.police.uk