Dear Julian,

9 January 2019

Thank you for your letter of June 2018 regarding the eligibility requirements surrounding military/law enforcement experience for the recent April 2018 Border Force recruitment campaign in Northern Ireland, and the wider UK. I apologise for the delay in response, but decided to wait until conclusion of the matter, including legal challenge, to provide with a comprehensive response.

Border Force values the experience of people who have worked in the military and law enforcement. The requirement for such experience was removed in Northern Ireland by Border Force for the April 2018 campaign following concerns raised by the Equality Commission for Northern Ireland (ECNI) on using military and law enforcement as a specific criterion. The removal of the criterion was also necessary to ensure compliance with the Fair Employment and Equal Treatment Order NI 1998. The decision to remove was based on legal advice from the Crown Solicitors Office in Northern Ireland, in conjunction with the ECNI. This was in the interest of ensuring we have a representative profile of candidates in Northern Ireland avoiding indirect discrimination.

Legal proceedings were lodged in Northern Ireland seeking a review of this decision on 6th July 2018. On the 19th October 2018 the High Court agreed a settlement order between both parties which resulted in the application for leave to apply for Judicial Review being dismissed. The settlement order was agreed on the basis that Border Force will:

1. Not make any appointments from the applications received during the external recruitment campaign or at all, but for the avoidance of doubt this does not preclude appointments being made from the internal recruitment campaign, which commenced in and around April 2018 in Northern Ireland;
2. Not commence any further external recruitment campaigns within Northern Ireland pending implementation of the review of experience criteria as set out in paragraph 3 below;
3. Will review the recruitment criteria for further applications to Border Force, such that recruitment is on the basis of using success based criteria which will seek input on the full range of skills and strengths required for the relevant role, and which criteria will be applied consistently across roles in Northern Ireland and in the remainder of the United Kingdom and will not treat experience by way of law enforcement or investigations differently for roles in NI from the same roles in the remainder of the UK.
Now, allow me to answer the specific questions you posed in turn:

- **What are your department’s legal obligations in relation to the Equality Commission for Northern Ireland? Are Ministers obliged to follow the advice of the Commission or do they have discretion to disregard that advice?**

As you will be aware, the Equality Commission is a non-departmental public body established under The Northern Ireland Act 1998 with a statutory function to promote equality of opportunity across all equality grounds including religious belief and political opinion. The ECNI has statutory powers of investigation, direction, disqualification, injunction, auditing and assisting discrimination claim in Tribunal. It has published a Fair Employment Code of Practice outlawing discrimination in employment and promoting equality of opportunity which employers in NI must have regard to. Although failure to observe any of its provisions does not, of itself, leave an employer open to prosecution, the Code has significant status. In the event of any proceedings issued in the Fair Employment Tribunal in NI, the Tribunal must consider any provision in the Code which is considered relevant.

The Home Office Resourcing team initially forwarded the Equality Commission advice to our legal department for assessment who subsequently advised them to seek guidance from the Crown Solicitors Office (CSO) in NI. As a result of their assessment, the decision to omit was based on the CSO advice.

- **If the Border Force was not legally obliged to follow the ECNI advice, on what grounds was the decision to change the recruitment criteria applying to Northern Ireland taken?**

The ECNI raised concerns to Border Force in relation to potentially discriminatory criteria for the proposed recruitment exercise initiated in March 2018.

This issue was considered by Border Force and further advice sought from its legal advisors. On this basis, the decision was taken to revise the recruitment criteria applicable to Northern Ireland based on CSO advice, in-line with concerns raised by the ECNI.

- **Will the advice from the ECNI be published, either in public or made available on a confidential basis to the Committee?**

It is our understanding that the ECNI have disclosed their advice to a number of NI MLAs already. The ECNI have given permission to publish their advice if required which would need to be sought from the Equality Commission direct, advising them of publishing details.

- **In the process of coming to a decision on the Border Force recruitment criteria, was the advice of the Northern Ireland Veterans’ Support Office sought?**

- **Was any consultation undertaken with any other member of the Armed Forces Covenant Reference Group on the implications of this decision for implementation of the Covenant in Northern Ireland?**

- **Has this matter been brought to the attention of the Ministerial Covenant and Veterans Board?**

We did not seek advice or consult with any of the bodies/groups mentioned above. As far as we are aware, this matter has not been brought to the attention of the Ministerial Covenant and Veterans Board.
While legal advice was properly followed during this recruitment campaign, we understand the concerns about consistency and will be ensuring that future campaigns across the UK are entirely consistent.

Due to further EU Exit considerations, and operational resource requirements, Border Force will likely be recruiting additional staff in Northern Ireland this year. Allow me to reassure you that Border Force will take into account the full the terms of the JR and will take every step necessary to ensure all those who wish to apply, across both Northern Ireland and the remainder of the UK, can do so under open and fair competition in future recruitment campaigns. Both the criteria and selection processes used will be consistent with the recent Great Britain, Wales and Scotland campaigns that were launched towards the end of October 2018.

I trust this provides you with the information that you need.

Yours sincerely,


Rt Hon Sajid Javid MP