



EQUALITY COMMISSION FOR NORTHERN IRELAND

Submission to the Committee of Experts on the European Charter for Regional or Minority Languages May 2013

Introduction

1. The Equality Commission (the Commission) for Northern Ireland welcomed the opportunity to meet with the Committee of Experts on the European Charter for Regional and Minority Languages¹ (the Committee) and to submit this response.
2. The Commission is responsible for implementing the legislation on fair employment, sex discrimination and equal pay, race relations, sexual orientation, disability and age. The Commission's remit also includes overseeing the statutory duties on public authorities to promote equality of opportunity and good relations under Section 75 of the Northern Ireland Act 1998 and the positive disability duties². The Commission's statutory duties and functions are not directly or primarily concerned with the promotion of languages. On the relatively few occasions that issues have been brought to our attention, it has come about because they were raised in the context of Section 75 of the Northern Ireland Act 1998 and/or the provisions of the anti-discrimination legislation, specifically the Race Relations (NI) Order 1997 and the Fair Employment and Treatment (NI) Order 1998.
3. The Report on the European Charter for Regional or Minority Languages: 3rd Monitoring Cycle notes that the Committee of Experts on

¹ Committee of Experts 4th 'On-The-Spot' Visit 30 April 2013.

² An overview of the Commission's remit is included in Annex 1

the Charter has been informed about several instances where public authorities decided not to promote the use of the Irish language within their services on the grounds that it would contravene Section 75 of the Northern Ireland Act 1998³.

4. The Commission's advice to public authorities has been specific to the context presented by the public authority. It has referenced our position on minority languages (as set out below), the public authority's compliance with its Equality Scheme commitments and the Commission's guidance⁴, as well as the provisions of the relevant anti-discrimination legislation, if appropriate (as set out below).
5. The Commission recognises that minority language speakers are entitled to protection of their rights as set out in the Council of Europe Charter for Regional and Minority Languages (the Charter) and the Framework Convention for the Protection of the Rights of National Minorities. We also note the references to language rights in the Belfast Agreement (1998), the Joint Declaration (2003) and the St. Andrews Agreement (2006). The UK Government ratification of the Charter in 2001 recognised obligations, in the Northern Ireland context, to protect and promote both Ulster Scots (in respect of Part 2) and Irish (in respect of Part 3).
6. The Commission has placed on record our view that a specific language statute is an appropriate mechanism of protection for the Irish language in our response to the Department of Culture Arts and Leisure's (DCAL) Consultation on Proposed Irish Language Legislation⁵. DCAL noted in its 'Summary of responses to Equality Impact Assessments Consultation Paper' that "The Commission's experience in relation to anti-discrimination legislation and the operation of Equality Schemes in Northern Ireland provides an important insight into Irish language legislation issues".

³ Council of Europe (2010): European Charter for Regional or Minority Languages: Application of the Charter in the United Kingdom 3rd Monitoring Cycle, ECMRL 2010 (4).

⁴ Equality Commission for Northern Ireland (2010): Section 75 of the Northern Ireland Act 1998 – A Guide for Public Authorities. Available at:

<http://www.equalityni.org/archive/pdf/S75GuideforPublicAuthoritiesApril2010.pdf>

⁵ Equality Commission for Northern Ireland (2007): *Response to DCAL Consultation on Proposed Irish Language Legislation*.

7. Our response had made the point that the notion that providing equality or protection for one group limits their availability for another is both unfounded in itself and acts to the detriment of all who seek to live in a society that is fair and equitable and should be avoided in the drafting of public policy. DCAL's Summary of responses noted that our response was particularly helpful and commented that the "Government subscribes to this view and wants to ensure that the debate on Irish language legislation in Northern Ireland is understood and conducted on this basis."
8. The Commission also recommended in response to the consultation that such legislation should be drafted to enable the language to be promoted in a way that is proportionate to the language needs of the situation, in a spirit of respect for the freedom of minority language speakers to speak their home language or language of preference.
9. The Commission considers that the use of minority languages, particularly Irish or Ulster Scots languages in Northern Ireland for common or official purposes would normally and objectively be considered to be a neutral act that would not be discriminatory. We believe that the speaking of Irish or its more general use in the community does not diminish the entitlements of those whose right to their British identity is guaranteed in the Good Friday Agreement. Similarly, the Commission considers that the wider use of Ulster Scots does not diminish the entitlements of those whose right to their Irish identity is guaranteed.
10. The Commission notes the context of promoting minority languages in Northern Ireland⁶ and we welcome initiatives taken to promote the Irish and the Ulster Scots language to as wide an audience as possible⁷.

⁶ Public Attitudes towards the Irish Language in Northern Ireland 2012: Findings from the Northern Ireland Omnibus Survey January 2012. Department of Culture, Arts and Leisure. In Northern Ireland the views of the Protestant and Roman Catholic communities on the use and promotion of the Irish language are distinct e.g.

- A significantly higher proportion of Catholics than Protestants were in favour of Irish language usage (66% and 14% respectively);
- Around one out of every two Catholics (52%) said Irish was important to their personal identity compared with one out of every twenty Protestants (5%);
- Almost three-quarters of Catholics (74%) and less than a fifth of Protestants (18%) agreed that the use of Irish should be supported and encouraged throughout Northern Ireland.

Public Views on Ulster Scots Culture, Heritage and Language in Northern Ireland: Findings from the Northern Ireland Omnibus Survey April 2010. Department of Culture, Arts and Leisure. This survey

Section 75 of the Northern Ireland Act

11. Designated public authorities, such as the Northern Ireland Departments and local government bodies are bound by the statutory duties of Section 75(1) and (2) of the Northern Ireland Act 1998.
12. Section 75 (1) provides that designated public authorities, in carrying out their functions in Northern Ireland, are required to have due regard to the need to promote equality of opportunity between:
 - persons of different religious belief; political opinion; racial group; age; marital status; sexual orientation; and
 - between men and women generally; and
 - between persons with a disability and persons without; and
 - between persons with dependants and persons without.

Also S75 (2) requires public authorities to have regard to the desirability of promoting good relations between persons of different religious belief, political opinion and racial group.

13. Essentially, public authorities are required to give appropriate consideration to the statutory goals when carrying out their functions, such as when they develop new policies. The two statutory goals are: (a) the **need** to promote equality of opportunity and (b) the **desirability** of promoting good relations between persons of different religious belief, political opinion and racial group. Section 75 does not oblige public authorities to adopt, or to refrain from adopting, policies that are aimed at achieving a particular policy outcome.
14. Each public authority has an Equality Scheme which sets out their arrangements for complying with their Section 75 duties and which demonstrates how consideration has been given. The arrangements in the public authority's equality scheme provide the way to consider,

focuses on awareness of and views about Ulster Scots Culture Heritage and Language: showing higher levels of awareness and positive engagement with Ulster Scots Culture Heritage and Language among the Protestant community and older respondents (aged 55-64).

⁶ For example, the Liofa 2015 project (Department of Culture, Arts and Leisure).

present and consult upon the appropriate and proportionate balance of the statutory goals. The assessment and consultation will inform final decisions on the policy.

15. It is clear that policies on the use of languages will and do engage the Section 75 duties; it is also clear they do not oblige public authorities either to develop or to refrain from developing policies which aim to promote the Irish or Ulster Scots languages.

Anti-Discrimination Legislation

15. The Commission provides general advice to public authorities on the use of languages other than English in the employment context. For example, we advise that, where an ability to speak and / or read a particular language is an objectively justified requirement of a job, then the employer may place an advertisement exclusively in that language⁸. In selecting personnel, either initially or for promotion purposes, the Commission advises that employers may include criteria with regard to knowledge and skills of a certain language; as long as they are satisfied that such criteria and their relative importance are justifiable, appropriate to the job and clearly objective⁹.
16. In relation to the use of languages other than English, for example in corporate logos and communications, the Commission advises that these will not, in general, constitute an infringement of a good and harmonious working environment.¹⁰ However, the Commission also notes that decisions on this must rest with the employer and should be based on relevant policies and procedures that are proportionate, reasonable and appropriate to the context in which the organisation operates. We recommend that employers work to ensure that their premises are a welcoming and harmonious space for their workers and customers alike.
17. The Commission also stresses that it is important to remember that on matters of discrimination in the workplace employers may be held liable for the discriminatory impact of their actions, even where this is not their

⁸ Recruitment Advertising: A Good Practice Guide for Employers (Equality Commission Guidance)

⁹ General advice contained in the Fair Employment Code of Practice: Section 5.3 Good Practice for All Employers – Core Components

¹⁰ Promoting a Good and Harmonious Working Environment: A Guide for Employers and Employees

intention. When faced with the difficult challenge of balancing individual rights in the workplace, consideration has to be given to the scope which exists in any specific situation for unlawful discrimination.

Conclusion

18. The Commission trusts that this submission will be of value to the Committee in providing an overview of the Section 75 duties on public authorities as well as the Commission's position with regard the use of minority languages. We would, of course, be happy to provide further information, if this would be helpful.
19. The Commission will continue to provide advice to public authorities and others to ensure clarity with regard to the Section 75 duties and our position in relation to the use of minority languages.

May 2013

Annex 1

The Equality Commission for Northern Ireland

1. The Equality Commission for Northern Ireland (the Commission) is an independent public body established under the Northern Ireland Act 1998. The Commission is responsible for implementing the legislation on fair employment and treatment, sex discrimination and equal pay, race relations, sexual orientation, disability and age.
2. The Commission's remit also includes overseeing the statutory duties on public authorities to promote equality of opportunity and good relations under Section 75 of the Northern Ireland Act 1998 (Section 75) and to promote positive attitudes towards disabled people and encourage participation by disabled people in public life under the Disability Discrimination Act 1995.
3. The Commission's general duties include:
 - working towards the elimination of discrimination;
 - promoting equality of opportunity and encouraging good practice;
 - promoting positive / affirmative action
 - promoting good relations between people of different racial groups;
 - overseeing the implementation and effectiveness of the statutory duty on relevant public authorities;
 - keeping the legislation under review;
 - promoting good relations between people of different religious belief and / or political opinion.
4. The Commission, with the Northern Ireland Human Rights Commission, has been designated under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) as the independent mechanism tasked with promoting, protecting and monitoring implementation of UNCRPD in Northern Ireland.