Strengthening protection against racial discrimination

Recommendations for law reform

SUMMARY VERSION

August 2014
Introduction

1.1 The Equality Commission for Northern Ireland (‘the Equality Commission’) is an independent public body established under the Northern Ireland Act 1998. It is responsible for implementing the legislation on fair employment, sex discrimination and equal pay, race relations, sexual orientation, disability and age.

1.2 We believe that urgent changes are required to strengthen the race equality legislation in Northern Ireland. This legislation protects individuals in Northern Ireland from being subjected to unlawful discrimination because of their race. The changes are aimed at strengthening, simplifying and harmonising the race equality legislation.

1.3 Our recommendations relate to a wide range of areas covered by the race equality legislation and therefore strengthen the rights of individuals as employees, customers, pupils in school, tenants, as members of private clubs and as students in further and higher education.

1.4 We also recommend changes to the fair employment legislation. This legislation protects individuals from being subjected to unlawful discrimination because of their religious belief or political opinion. In particular, our recommendations are aimed at improving workforce monitoring on racial grounds by registered employers.

1.5 The need for reform of the race equality legislation in Northern Ireland has been recognised at a number of levels; both locally and internationally. Most recently, both the Advisory Committee on the Framework Convention for the Protection of National Minorities and the UN Committee on the Convention for the Elimination of all forms of Racial Discrimination (CERD) has urged the NI Executive to take proactive steps to address legislative shortcomings within the race equality legislation.

1 See Third Opinion on the United Kingdom of the Advisory Committee on the Framework Convention for the Protection of National Minorities, June 2011
Research by the Joseph Rowntree Foundation in 2013\(^3\), also concluded that “there is a case for embedding equality principles in society by strengthening equality legislation to make it more difficult for employers and organisations to act with impunity.”

**Our recommendations**

**Race equality legislation**

1.6 In summary, we recommend that the race equality legislation is strengthened to:

*Forms of discrimination*

- provide increased protection against discrimination and harassment on the grounds of colour and nationality. We are clear that this is a priority area for reform\(^4\).

- ensure broader protection against racial discrimination and harassment by public bodies when carrying out their public functions. Currently, protection against discrimination by public authorities when exercising public functions is limited to four areas; namely, social security, health care, social protection and social advantage.

- give stronger protection against racial harassment, including greater protection for employees against racial harassment by customers or clients.

- increase protection for certain categories of agency workers against racial discrimination and harassment;

- introduce new protection for Councillors against racial discrimination and harassment by local councils;

- increase protection against victimisation; including, changes designed to make it easier for individuals who have

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\(^3\) Poverty and Ethnicity in Northern Ireland, Joseph Rowntree (2013)


\(^4\) See [ECNI Proposals for Legislative Reform](http://www.jrf.org.uk/sites/files/jrf/poverty-ethnicity-northern-ireland-full.pdf), 2009
been subjected to unfair treatment because, for example, they have made a complaint of racial discrimination, to bring a victimisation complaint.

- introduce new protection against multiple discrimination; so that individuals have protection if they experience discrimination or harassment because of a combination of equality grounds; for example, due to a combination of being both black and female.

- expand the scope of voluntary positive action; so as to enable employers and service providers to lawfully take a wider range of steps to promote racial equality;

**Exceptions**

- remove the exception which permits discrimination on the grounds of ethnic or national origins in relation to immigration;

- narrow the exception that restricts the employment of foreign nationals in the civil, diplomatic, armed or security and intelligence services and by certain public bodies;

**Enforcement and remedies**

- increase the powers of the Equality Commission to issue additional Race Codes of Practice and to effectively carry out formal investigations;

- strengthen tribunal powers to ensure effective remedies for individuals bringing race discrimination complaints;

- harmonise and simplify the enforcement mechanism for education complaints; so as to remove unnecessary procedural barriers to pupils in schools making complaints relating to racial discrimination in education.
Fair employment legislation

1.7 In summary, we recommend that the fair employment legislation is strengthened to:

- amend the fair employment legislation so as require registered employers in Northern Ireland, in addition to monitoring the community background and sex of their employees and job applicants, to collect monitoring information as regards nationality and ethnic origin.

The primary reason for this change is to ensure the continuing usefulness of the fair employment Monitoring Regulations, and in particular, to enable employers to make a more accurate and meaningful assessment of fair participation in employment in their organisation. We are clear that this is also a priority area for reform.\(^5\)

Wider benefits of reform

Race equality legislation

1.8 We consider that there are cogent and robust reasons why the race equality legislation should be amended. In particular, we believe the recommended changes will:

- help address key racial inequalities in Northern Ireland. They will, for example, provide greater protection for individuals against racial discrimination and harassment who currently have no or limited protection under the race equality law. They will also result in the removal of unjustifiable exceptions which limit the scope of the race equality legislation.

- harmonise, simplify and clarify the race equality legislation. The changes will remove unjustifiable inconsistencies within the race equality legislation, as well as removing unnecessary barriers experienced by individuals who wish to complain of unfair treatment under the race legislation. Further, they will ensure greater legal certainty and clarity in areas where the

\(^5\)See *ECNI Proposals for Legislative Reform*, 2009
scope of legislation is unclear. The changes will make it easier for individuals to understand what their rights are and for employers, service providers and others to understand what their responsibilities are under the legislation. They will help improve consistency between the race equality legislation and other equality legislation in Northern Ireland.

- help ensure that Northern Ireland race equality legislation keeps pace with legislative developments in Great Britain. In particular, many of the changes we advocate have already been implemented in other parts of the United Kingdom. It is, however, important to stress that, as regards certain areas of reform, we recommend that the Northern Ireland Executive introduce changes that go beyond the level of protection against racial discrimination currently set out in equality legislation in Great Britain.

- further the overarching aims and objectives of the Executive’s current Racial Equality Strategy\(^6\). One of the aims of the current Racial Equality Strategy is to eliminate racism, racial inequality and unlawful racial discrimination and promote equality of opportunity in all aspects of life.

- ensure that the race equality legislation is in line with the UK Government’s international obligations relating to the promotion of human rights for racial minorities and with the recommendations of international human rights monitoring bodies.

Conclusions and next steps

1.9 It is clear that there is a robust case for addressing significant gaps and weaknesses within the race equality legislation in Northern Ireland.

1.10 We welcome the Executive’s commitment to bring forward a revised Racial Equality Strategy. We recommend, in light of the clear need for reform, that there is a commitment in the revised

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\(^6\) A Racial Equality Strategy for Northern Ireland 2005-2010, OFMDFM, [www.ofmdfmni.gov.uk](http://www.ofmdfmni.gov.uk) This strategy is currently being revised.
Racial Equality Strategy, to address legislative gaps in the race equality legislation so that individuals in Northern Ireland have effective protection against racial discrimination and harassment.

1.11 We further recommend steps are taken to amend the fair employment legislation in order to require registered employers in Northern Ireland to collect monitoring information as regards nationality and ethnic origin.

1.12 We will continue to proactively engage with a wide range of key stakeholders, including MLAs, Assembly Committees, and representatives from the race sector, in order to inform the case for change.

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Equality Commission