

EQUALITY COMMISSION FOR NORTHERN IRELAND

Submission to Panel of Parties

October 2013

INTRODUCTION

1. The Commission's submission to the Panel of Parties focuses on areas within our remit. Specifically, the paper seeks to deal with issues regarding flags and emblems, making a number of recommendations on regulating displays of flags and emblems. It also makes recommendations in relation to dealing with the past and building a shared future, relevant to our particular statutory remit.
2. The Commission is willing to engage further with the Panel on these important matters and/or to provide further advice.

FLAGS AND EMBLEMS

3. Issues surrounding displays of flags, emblems and memorabilia¹ have always generated heated debate and controversy in Northern Ireland. The Commission recognises that the display or non display of the Union Flag and other flags and emblems are associated with issues of constitutionality, national identity, culture, commemoration and celebration within communities, as well as a perceived need to 'mark out territory'. Such issues are inevitably complex and sensitive.
4. There is an equality and human rights framework in place which should form the basis to guide progress towards a more normal, stable and inclusive society in respect of these matters. This framework includes domestic equality legislation (fair employment legislation and Section 75 of the Northern Ireland Act 1998), international treaties, including the Framework Convention for Protection of National Minorities, the Belfast (Good Friday) Agreement as well as various strategies committing successive governments to move forward². It is recognised that, under equality law,

¹ Reference to flags, emblems and memorabilia include murals and memorials.

² Shared Future 2005; Cohesion Sharing and Integration 2010; Together; Building a United Community 2013

flying or not flying a particular flag may alone be unlikely to breach any equality standards.

5. In the absence of a regulatory framework applying to the flying of flags in local Councils, decisions regarding the flying of the Union Flag appear to be guided by political considerations. In those Councils where there is a broad balance of power, the issues would appear, at times, to be particularly contentious. Alternatively, in Councils where there is a clear Unionist or Nationalist majority, the 'minority' community can consider that the constitutional position or their culture and tradition is not recognised by the Council policy on flying the Union Flag. For example, Nationalists may challenge the fact that the Union Flag is displayed excessively, while Unionists may complain that, by not flying the Union Flag at all, there is no recognition of the constitutional position or their culture and identity.
6. Annex 1 includes an overview of the Commission's legislative remit, and guidance as it relates to these issues.

Flags

7. **The Commission recommends** greater regulation of the display of flags. Regulation, and enforcement if appropriate, should aim to ensure that displays of flags and emblems promote mutual respect among the communities, while not allowing the display of emblems to be used to maintain, heighten or reignite sectarian tensions. While such regulations would differ depending on the various scenarios in which flags are displayed, the principles for regulation should be consistent and based on a strong equality and human rights framework.
8. The regulatory framework should therefore be proportionate to the particular situation. The various scenarios in which flags and emblems may be displayed may be divided into 2 broad categories:
 - a) official displays of flags and emblems by public authorities and other organisations. Such displays range from considerations of flags and emblems within the workplace, displays at Council buildings as well as the provision of funding to other organisations which are displaying flags and emblems.

- b) the display of flags and emblems by private individuals or groups in public spaces or on public property as well as on private property.

Regulating the flying of the Union Flag by public authorities

9. Given that the Flags (NI) Order 2000 and its associated regulations sets out the position on the flying of the Union Flag on specific government buildings on specified days³, the predominance of enquiries to the Commission, in recent years, have related to the flying of the Union Flag in local Councils.
10. The Flags (NI) Order 2000 and the regulations made under it were the subject of a judicial review (October 2001). Lord Justice Kerr in the decision set out the view that "...the regulations follow the principle that it is the inappropriate and excessive use of symbols, including flags, which should be eliminated not their constitutional significance. The regulations achieve a balance based on respect for diversity and tolerance of difference, in full accord with the spirit of the Belfast Agreement."
11. The Commission considers that the adoption of regulations to govern the display of the Union flag at Council level could enable a shift of debate in Council chambers from displays of flags and emblems, which have the potential to be divisive, to an increased focus on the effective delivery of local services.
12. Regulations could address the prospect of eleven newly created Councils developing policies on the Union Flag in a way which would potentially convert the policy development process into a quasi referendum on the issue of the Union Flag across council areas in Northern Ireland, thus becoming a running sore and maintaining community tensions.
13. Regulation would also provide for political input on the issue to be addressed at the level of the legislature in Northern Ireland rather than at individual Council level and would afford a real opportunity for demonstrating leadership at this level.

³ The Flags Regulations stipulate where and on which days the Union Flag shall be flown as well as regulating for the flying of the Union Flag on other occasions such as the visit of a Head of State.

Proposed Regulatory Framework

14. **The Commission recommends** that regulation on the flying of flags by local councils should be considered in the context of the present Review of Public Administration. We consider it important that public policy in this area should promote good relations and thus consider the views of the minority and not simply be about reflecting the wishes of the majority population in a local area.
15. **It is recommended** that the principles contained in the Flags (NI) Order and its associated regulations should form the basis of a regulatory framework for local Councils. Such regulations should stipulate the specified days in which the Union Flag would be flown by each local Council.
16. The regulations should take account of the context, that is, the purpose, manner, location and frequency, in which the Union Flag is flown or displayed. The Commission considers that there are a range of legitimate purposes for flying the Union Flag, for example to symbolise the constitutional position of Northern Ireland or as a mark of commemoration.
17. **It is also recommended** that there is some flexibility in the regulatory framework to enable Councils to fly the Union Flag on local civic or commemorative occasions. The Commission's advice in relation to commemoration recognises that 'the Union Flag may be flown as a mark of commemoration, in a manner which symbolises the dignity and respect for those it is remembering'. The regulations should also allow for the flying of other Flags to mark occasions such as the visits by Heads of State or dignitaries to a local area.
18. **The Commission also recommends that**, in the context of the new Councils, corporate governance arrangements are extended to ensure that the excessive display of flags is curtailed. In this regard, such arrangements may be explored in terms of the development of the proposed statutory Code of Conduct for Councillors.
19. In addition, **the Commission recommends** that in the longer term consideration is given to developing shared symbols/emblems and

that, as envisaged in the Agreement⁴, symbols and emblems are used in a manner which promotes mutual respect rather than division. A set of principles, based on equality and human rights standards, should be developed which would aid decision makers in the future. Such a framework could be applied to flags, emblems and symbols.

Recommendations: Display of flags and emblems⁵ by private individuals or groups in public spaces or on public property

20. Successive government strategies have recognized the difficulties caused by the displays of flags and emblems in public spaces which serve to mark out territory as belonging to one community⁶. The Commission is mindful that we live in a society where, for some, the expression of one's culture is in many ways interpreted as a statement not of inclusion, but of exclusion from the other; a threat and something to fear. It is noted that the majority of people do not support the flying of flags on lampposts and report unwillingness to access services in areas with flags⁷.
21. Currently, public authorities and other organisations must balance various and often competing considerations, such as the health and safety of its employees removing the flags/emblems as well as the potential for further community tensions and/or additional and more aggressive unofficial flags or emblems being displayed.
22. The Commission endorses the commitments in the Together: Building a United Community Strategy around building a culture

⁴ Rights, Safeguards and Equality of Opportunity, Economic, Social and Cultural Issues, "All participants acknowledge the sensitivity of the use of symbols and emblems for public purposes, and the need in particular in creating the new institutions to ensure that such symbols and emblems are used in a manner which promotes mutual respect rather than division. Arrangements will be made to monitor this issue and consider what action might be required".

⁵ Reference to flags, emblems and memorabilia include murals and memorials.

⁶ Shared Future 2005; Cohesion Sharing and Integration 2010; Together; Building a United Community 2013

⁷ Northern Ireland Life and Times Survey in 2012. 74% of people said that they did not support the flying of flags on lampposts in their neighbourhood and over 50% of people believe that flags are usually put up by paramilitary groups (56% for union flags and 59% for Irish Tricolour flags). In terms of accessing local services and public areas it is also noted that 33% of people would be less willing to shop in neighbourhoods with displays of loyalist flags or murals, a figure that rises to 36% for republican displays.

where everyone feels safe and creating a community where all areas are open and accessible to everyone.

23. In making these commitments a reality and to facilitate expressions of identity in a sensitive way and in a way that will not be divisive, **the Commission recommends:**

- i) Where the flags/emblems are associated with illegal organisations, they should be removed by the PSNI and enforcement action taken, if appropriate.
- ii) A regulatory framework should be considered which clarifies the types of flags and emblems which could be displayed, the duration for such displays, the process for applications to display the flags/emblems and the sanctions if these processes are not adhered to. The types of flags that would be covered would be those used for civic occasions or celebration and the duration would allow the event to be properly marked in the community, but not so long as to allow the flags/emblems to mark out communities.
- iii) Within the context of a regulatory framework, the Joint Protocol in relation to Flags Flown in Public Areas (2005) should be reviewed to create a forum for local authorities to engage with each other and with local communities to control the display of flags and emblems. The engagement would be enhanced, as clarity around appropriate displays as well as authority for their removal would be clarified. It is also noted that public authorities which have a potential role in engaging on these issues as part of the Protocol will have changed since that originally envisaged, for example with the newly created local councils (2015) and Policing and Community Safety Partnerships.

24. In terms of private property, **it is recommended** that consideration is given to the extent to which displays of flags and emblems are increasing community tensions and discouraging the two communities from sharing public spaces and whether this is an area for action also. Such considerations should be balanced against individual rights as well as the need to prioritise the development and maintenance of shared spaces.

ADDRESSING THE LEGACY OF THE PAST

25. The Commission recognises that addressing the legacy of the past is a multi-faceted issue and there are many factors to consider. In giving consideration to this, **the Commission recommends** that the focus be:
- to tackle sectarianism, prejudice and hate, and the persistent and systemic separateness and lack of interconnection between the two main traditions in Northern Ireland;
 - to involve and engage everyone in the process, not just those who, in the past, have suffered directly or inflicted that suffering;
 - to ensure the process of reconciliation is based on equality and human rights principles; and
 - to make the elimination of inequalities an essential element in post-conflict programmes.

ELEMENTS OF A SHARED FUTURE

26. The Commission is mindful that the considerations of the Panel of Parties, and the focus on flags and emblems, parading and dealing with the past, form part of a wider approach to improving community relations and building a united and shared community.

Equality and good relations

27. We welcomed the publication of the Executive's strategy Together: Building a United Community in May 2013 and we see the extension of the Commission's remit – with an enhanced role in respect of good relations – as reinforcement of the concept that equality of opportunity and good relations are interdependent and inextricably linked. The one cannot be effectively pursued without the other and neither will find its full expression in the absence of the other; that equality of opportunity is threatened where there are bad relationships between different sectors of our community – and good relations will not be effectively achieved unless people are confident that there are being afforded equality of opportunity.
28. It continues to be imperative to address key inequalities. There is clear reference to the importance of addressing both equality and good relations in the Together: Building a United Community Strategy. There is a real opportunity to strengthen both equality

and good relations through clear alignment but obvious risks also. The Commission will seek to ensure that there is no diminution of effort and impact either on good relations or equality of opportunity.

29. We have recommended that a clear definition of good relations will also be critical to ensure clarity and consistency of purpose in shaping actions and to provide guidance in measuring the effectiveness of actions to promote good relations.
30. The Commission considers the following as key elements of a shared future.

Political Leadership

31. All Parties must show a willingness to compromise and move forward in a spirit of partnership, mutual support and respect. The existence of a peaceful, open, and shared Northern Ireland, at ease with itself, is a sure basis on which to build future economic prosperity⁸.

Role of Women

32. The Belfast Agreement makes two commitments⁹ on the inclusion of women: the right of women to full and equal political participation; the advancement of women in public life. **The Commission recommends** that any new structures must provide opportunities and encourage women's roles in leadership and decision making¹⁰. This has recently been referenced in the CEDAW examination of the United Kingdom – the Concluding Observations recommend that Government ensures the participation of women in the post-conflict process in Northern Ireland.¹¹

⁸ Bob Collins, View from the Chair, September 2009,

http://www.equalityni.org/sections/default.asp?secid=1_1&cms=News_Articles&cmsid=1_66&id=198

⁹ <http://cain.ulst.ac.uk/events/peace/docs/agreement.htm#rights> (Human Rights para 1; Economic, Social and Cultural Issues para1)

¹⁰ Convention on the Elimination of all forms of Discrimination Against Women, <http://www.un.org/womenwatch/daw/cedaw/>. United Nations Security Council Resolution 1325 called for the adoption of a gender perspective that included the special needs of women and girls during repatriation and resettlement, rehabilitation, reintegration and post-conflict reconstruction.

¹¹ Concluding Observations reference, 26 July 2013

Expressions of Culture

33. **The Commission recommends** that ways are found to encourage people to celebrate the positive aspects of their culture, focusing on being welcoming and inclusive so that no member of our society is made to feel alienated.

Shared Education

34. The Commission considers it important that a system of shared education has a central role to play in advancing a shared society and has **recommended** a move to a system of sharing across the full range of education providers at each level of provision; one which routinely teaches students together via a shared curriculum in shared classes.

Young people

35. One of the key tasks to challenge the systemic separateness and lack of interconnection between the two main traditions should be to ensure that our children and young people grow up learning how to live, play and work together in a diverse society.¹² The Commission has also **recommended** that public policy interventions recognise the influences of home, family and community on attitudes to prejudice and division.¹³
36. The Commission welcomes the focus of the strategy Together: Building a United Community on children and young people, including its aim to improve attitudes amongst our young people and to build a community where they can play an active role in building good relations. There needs to be changes to the attitudes of young people to difference, with measurably greater understanding and respect for diversity¹⁴.

¹² Reference to Ministerial Advisory Group on Shared Education

¹³ Paul Connolly, Alan Smith and Berni Kelly, 'Too Young to Notice? The Cultural and Political Awareness of 3-6 Year Olds in Northern Ireland'. Available at http://www.paulconnolly.net/publications/pdf_files/too_young_to_notice.pdf. This research counteracts the widely-held belief that young children have no sense of cultural differences and showed for the first time the significant affect that cultural and political influence has on the awareness and behaviour of 3-6 year-olds in Northern Ireland. The report also revealed the increased likelihood of children to identify with a particular community as they grow older and significantly, to make sectarian statements or take actions accordingly

¹⁴ Paul Connolly, Alan Smith and Berni Kelly, 'Too Young to Notice? The Cultural and Political Awareness of 3-6 year olds in Northern Ireland'. Available at http://www.paulconnolly.net/publications/pdf_files/too_young_to_notice.pdf.

Shared Housing

37. Despite the expressed views of people in Northern Ireland¹⁵, people are often still living in largely religiously/politically homogenous areas¹⁶. We recognise¹⁷ that people need to feel safe where they live and consider that if society is to be transformed, bold steps need to be taken to integrate communities. We recall the recognition within the Belfast Agreement of the role of mixed housing in facilitating reconciliation¹⁸ and also the recognition of the importance of enabling people to exercise choice in the type of community in which they wish to reside. We have expressed our view¹⁹ that segregated housing in Northern Ireland is not the way forward for our society and that we view socially, ethnically, politically and religiously integrated housing as the preferred option and long term goal.²⁰ That said, we consider that any actions must meet objectively assessed housing need, having due regard to the need to promote equality of opportunity and regard to the desirability of promoting good relations.

CONCLUSIONS

38. The Commission's submission to the Panel of Parties has sought to focus on areas within our remit. Primarily, the paper deals with issues to be addressed regarding flags and emblems. It also sets out some considerations in relation to dealing with the past and on the most important elements of a shared future. The Commission would be happy to further engage with the Panel on these important matters.

¹⁵ [ARK \(2006\) Northern Ireland Life and Times Survey 2006: This indicated that 79% of people wished to live in 'mixed' areas.](#)

¹⁶ 70% of social housing tenants live in communities that are at least 90% Roman Catholic or Protestant - Shuttleworth, I.; Lloyd, C.; (2006) Are Northern Ireland's Two Communities Dividing?: Evidence from the Census of Population 1971-2001, Shared Space, Northern Ireland Community Relations Council.

¹⁷ [Response to the draft Cohesion Sharing and Integration strategy](#)

¹⁸ [The \[Belfast\] Agreement, reached in the multi-party negotiations \(10 April 1998\) - see Section 6](#)

¹⁹ [Facing the Future DSD 2012](#)

²⁰ [ECNI Response to Facing The Future 2012](#) See Executive Summary p3

EQUALITY COMMISSION FOR NORTHERN IRELAND

Annex to Submission to Panel of Parties

Legislative Remit and Guidance on Flags and Emblems

Introduction

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, 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.

Official Displays of Flags and Emblem

Workplace

3. The Commission's remit in the area of flags and emblems stems from our duties under the Fair Employment and Treatment (NI) Order 1998 to promote equality of opportunity, affirmative action and to work for the elimination of religious/political discrimination¹, and our duty to offer advice to public authorities in relation to Section 75 of the Northern Ireland Act 1998².
4. Given that flags and emblems may have a general relevance to these provisions and, indeed, have the potential to impact adversely on equality of opportunity and good relations, the Commission has a remit and many years experience in providing such guidance.
5. The Commission has defined a good and harmonious working environment as one where all workers are treated with dignity and

¹ Article 7, Fair Employment & Treatment (NI) Order 1998.

² Paragraph 1(b), Schedule 9, Northern Ireland Act 1998.

respect, and where no worker is subjected to harassment by conduct that is related to religious belief or political opinion. The Commission advises that a good and harmonious working environment does not mean that working environments must always be devoid of anything that happens to be more closely associated with one or other of the two main communities in Northern Ireland.

6. An under-pinning principle in the achievements in the workplace has been the provision of clear and consistent parameters on symbols and emblems, based on the legislative framework³. The fair employment legislation has operated in Northern Ireland for over 35 years and has helped to change behaviour in the workplace. As a result, we no longer see workplaces bedecked with emblems associated with either community and the emblems we do see tend to be of a more subtle nature. Employers' and employees' behaviour is regulated by equal opportunities and anti-harassment policies and procedures and in general, workplaces have become more integrated^{4 5}. Employers and employees are clearly aware of the behaviour expected of them, and in most cases act accordingly. While it is recognised that laws cannot change attitudes, they can help modify behaviours.

Commission advice to Councils on flying the Union Flag

7. Given that the Flags Regulations (NI) 2000 regulate the flying of the Union Flag at government buildings⁶, the predominance of enquiries to the Commission, in relation to the flying of the Union Flag has, in recent years, come from local Councils with regard to the development and/or review of their Flags policies.
8. The Commission has produced advice on the flying of the Union Flag in Councils. It explores the requirements in relation to equality and good relations that Councils will wish to consider in their decision-making processes⁷.

³ Fair Employment Tribunal decisions, Fair Employment Code of Practice and associated Equality Commission guidance

⁴ In 1990 the Roman Catholic share of the monitored workforce was [34.9%]. In 2011 this had increased to [46.3%]. Source: Equality Commission Fair Employment Reports. (Fair Employment Monitoring Regulations were amended during this period).

⁵ General attitudes towards specific groups: Respondents were least likely to mind having someone of a different religion or with a learning disability as a work colleague. Do You Mean Me: Discrimination: attitudes and experience in Northern Ireland Equality Awareness Survey 2011.

⁶ The Flags Regulations (NI) 2000 require that no flag should be flown from government buildings except where the Regulations require or permit it to be. The main exception is to fly the Union Flag from certain government buildings on designated days.

⁷ Equality Commission for Northern Ireland: Advice on flying the Union Flag in Councils

9. In summary, the Commission considers that the flying of the Union Flag must be viewed within the context in which it is flown or displayed. Factors affecting the context include the purpose, manner, location and frequency with which flags are flown. The Union Flag is the national flag of the United Kingdom and, arising therefrom, has a particular status symbolising the constitutional position of Northern Ireland. On the other hand, the Union Flag is often used to mark sectional community allegiance. There is a world of difference between these two approaches. Thus, for example, while it is appropriate, in the Commission's view, for a local Council to fly the Union Flag at its Civic Headquarters, the rationale for its display at every Council location, facility and leisure centre would be questionable.⁸
10. The Commission advises that flags and emblems should not be used to mark out territory and that sensitivity is required when ensuring that services are accessible to all of the community.
11. The Commission advises public authorities that, when developing or reviewing a policy on the flying of the Union Flag, it should consider the policy aims and intended rationale for the policy. While this is a matter for a public authority to decide for itself, the policy aims and objectives must be legitimate. The Commission accepts that there are a range of legitimate policy options for flying the Union Flag which may be adopted, for example acknowledging the constitutional position of Northern Ireland or as a mark of commemoration.
12. The Commission notes that the political make up of a District Council has a direct bearing on policies to fly, or not fly, the Union Flag.

Related issues on shared public spaces

13. The Commission has advised public authorities, and specifically local Councils, that fair employment legislation and Section 75 obligations applies equally to displays in public spaces, to the naming of public places or to what is permitted on public property⁹.

⁸ Equality Commission Guidance: '[Promoting a Good and Harmonious Working Environment](#)'

⁹ Reference Omagh District Council and Newry & Mourne Council Section 75 investigations.

14. The Commission notes that there is a range of other issues in many local Councils which are divisive in nature, for example reviews of working environments; ceremonies which involve the national anthem or prayers; where there are requests to fly flags more closely aligned to one community eg the Armed Forces Flag.
15. It is noted that the work of some of the Statutory Transition Committees would appear to be currently marred by political dissension on these issues rather than progressing the work of the Committees.