Equality Commission

FOR NORTHERN IRELAND

Applying to the Equality Commission for Assistance with Discrimination Complaints

Solution Guidance Notes On Completing the Application for Assistance Form

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Please read these notes for guidance carefully <u>before</u> filling in the application form.

Can the Commission help you?

If you think you have been discriminated against on the grounds of:

- Sex
- Marital Status
- Sexual Orientation
- Religion/Belief/Political Opinion
- Race
- Disability
- Age

we may be able to help you with advice or legal representation. We may also be able to assist you with an **equal pay** complaint.

The equality legislation forbids discrimination in a range of different fields such as employment, training, housing, education and the provision of goods, facilities and services. The legislation also makes it unlawful to victimise someone who has taken action in connection with a discrimination complaint.

Not all discrimination is unlawful and if your complaint is not covered by the law or is included in one of the many exceptions to the law, you will be unable to take action under the legislation.

Criteria for Assistance

Under the relevant equality legislation, the Commission *may* grant legal assistance to actual or prospective complainants in relation to proceedings arising from complaints of unlawful discrimination. The Commission will consider all applications for assistance. The legislation sets out three criteria which the Commission must use to decide which cases to support but they also give the Commission discretion over the final decision. The criteria are:

- does the case raise a question of principle?
- is the case too complex for the individual to deal with on their own?
- is there any other special consideration?

The Commission will give your application very careful and thorough consideration. However, the Commission's resources are limited and not all applications for assistance can be supported.

The Commission has a wide statutory discretion and, in considering the criteria under the legislation, we will take into account the Commission's Strategic Enforcement Policy (a copy of the Policy for the Provision of Legal Advice and Assistance is enclosed with these notes).

If an application is refused, you are still entitled to pursue a complaint to the appropriate Court or Tribunal.

Scope of Discrimination Law

Equality law in Northern Ireland forbids discrimination on the grounds of sex, marital status, sexual orientation, religion, political opinion or other belief, race (defined to include colour, race, nationality, or ethnic or national origins), disability and age. Equal pay between men and women is also covered. Some brief detail on the scope of each ground is set out below. More information on the legislation can be found on the Your Rights section of the Commission's website at www.equalityni.org. Each piece of legislation has its own exemptions and the Commission's Discrimination Advice Officers can advise you further on whether your complaint comes under the relevant legislation.

Time Limits

Time limits apply to complaints of discrimination under the legislation. See pages 11 - 16 for further details.

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The Sex Discrimination (Northern Ireland) Order 1976 and 1988, as amended by European Law

The Sex Discrimination (Northern Ireland) Orders forbid discrimination on the basis of a person's sex in:

- employment
- education
- the provision of goods, facilities, services and
- housing

It is also unlawful to discriminate against someone in employment because they are married. The employment provisions cover advertising, recruitment, selection, promotion, pregnancy and maternity rights, training, sexual harassment, terms and conditions of employment, retirement and pensions.

Equal Pay Act (Northern Ireland) 1970

The Equal Pay Act (Northern Ireland) 1970, as amended, means that employers must give equal treatment in respect of pay and other terms of their employment contracts to women and men where they are doing;

- the same, or broadly similar, work
- jobs which have been rated equivalent under a job evaluation scheme
- work of equal value when compared under such headings as skill, knowledge, decision-making, environmental demands and responsibility.

Sex Discrimination Gender Reassignment Regulations (Northern Ireland) 1999

The Sex Discrimination Gender Reassignment Regulations (Northern Ireland) 1999 prevents discrimination against transsexual people on the grounds of sex in relation to pay and treatment in employment and vocational training.

SEXUAL ORIENTATION:

The Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003

The Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003 protect against discrimination on the grounds of sexual orientation in employment and training. From November 2006 discrimination in the provision of goods, facilities and services and housing will be covered. The new legislation will also extend protection to cover private members clubs with 25 or more members and the exercise of public functions by public bodies.

Sexual orientation is defined to mean an orientation towards:

- persons of the same sex (this covers gay men and lesbians)
- **persons of the opposite sex** (this covers heterosexual men and women)
- **persons of both sexes** (this covers bisexual men and women).

The regulations apply to all sizes and types of employer and to all workers, including agency, contract and temporary workers. The regulations cover discrimination based on actual sexual orientation, perceived sexual orientation, or discrimination based on someone else's sexual orientation.

The regulations cover recruitment and selection, dismissal, access to training or promotion or work benefits. They protect against harassment and bullying, and make it unlawful to victimise someone who has made a complaint of discrimination or given evidence or information in relation to another person's complaint. They also provide protection against discrimination after the relationship has come to an end.

Finally, the regulations protect students against discrimination by institutions of further and higher education and, from November 2006, will cover education in schools.

RELIGION, BELIEF AND POLITICAL OPINION:

Fair Employment and Treatment (Northern Ireland) Order 1998, as amended

The Fair Employment and Treatment (NI) Order 1998, as amended by the Fair Employment and Treatment Order (Amendment) Regulations (Northern Ireland) 2003, makes it unlawful to discriminate on grounds of religious belief and political opinion. All religious beliefs are covered. Religious belief may include any religion or similar philosophical belief. Belief includes supposed belief and the absence of religious belief.

Political opinion includes supposed opinion or absence of opinion. All political opinions are included although a political opinion is defined as relating to the government of the state or matters of public policy.

The scope of the Fair Employment and Treatment (NI) Order, as amended, includes:

- employment
- the provision of goods, facilities and services
- further and higher education
- the disposal or management of land or premises either by sale, lease or letting

The Fair Employment and Treatment Order (Amendment) Regulations (NI) 2003 also provides protection against discrimination after the relationship has come to an end.

RACE:

Race Relations (Northern Ireland) Order 1997

The Race Relations (Northern Ireland) Order 1997 as amended by the Race Relations Order (Amendment) Regulations (NI) 2003, makes it unlawful to discriminate on the grounds of a person's race, colour, nationality (including citizenship), ethnic or national origin in:

- employment
- education
- the disposal or management of land or premises either by sale, lease or letting
- the provision of goods, facilities or services

It is unlawful to treat someone less favourably on racial grounds than others are treated or would be treated who are in the same or similar circumstances. Racial grounds include the grounds of belonging to the Irish Traveller community.

The Race Relations Order (Amendment) Regulations (NI) 2003 extends protection against discrimination on the grounds of racial or ethnic origin. The new areas include conditions for access to self employment; and public authorities' functions which consist of social protection, including social security and healthcare, and social advantages. The regulations also provide protection against discrimination after the relationship has come to an end.

DISABILITY:

Disability Discrimination Act 1995

The Disability Discrimination Act 1995 as amended makes it unlawful to treat disabled people less favourably than other people in relation to:

- employment
- the provision of goods, facilities and services
- buying or renting land or property
- education

The Disability Discrimination (Northern Ireland) Order 2006 will extend protection to cover discrimination by private clubs with 25 or more members, discrimination by district councils against their members in the carrying out of official business and discrimination by public authorities when carrying out public functions. These changes are due to come into force in late December 2006/ January 2007.

The Act defines disability as "a physical or mental impairment which has (or has had) a substantial and long-term adverse effect on a person's ability to carry out normal day-to-day activities".

physical impairment – this can includes blindness, deafness, heart disease, severe disfigurement, the paralysis of a limb or diabetes. The disability can be present from birth or caused through illness or accident;

mental impairment – this can include learning disabilities and mental ill health;

substantial – this does not have to be severe but is more than minor or trivial. When considering whether your impairment has a substantial adverse effect the Act says that any treatment or correction should not be taken into account. This includes medical treatment or the use of a prosthesis (such as an artificial limb) or other aid (for example, hearing aid). The only things which are taken into account are glasses or contact lenses. Therefore, in all other

cases, you should think about the effect which your impairment would have without treatment.

long- term adverse effect – one that has lasted or is likely to last more that 12 months;

normal day to day activities include the following range of necessary skills:

- Mobility
- Manual dexterity
- Physical co-ordination
- Continence
- Ability to lift, carry or otherwise move everyday objects
- Speech, hearing or eyesight
- · Memory, ability to concentrate, learn or understand
- Perception of the risk of physical danger

In deciding whether you are unable to carry out normal day to day activities, the focus is on what you cannot do. The appropriate Court or Tribunal will decide, on the basis of medical evidence, whether you have a disability within the meaning of the DDA. From late December 2006/ January 2007, people with cancer, HIV infection or multiple sclerosis will be deemed to have a disability.

If a physical feature makes it unreasonably difficult for a disabled person to use a service which is available to the general public, the provider has a duty to provide a reasonable alternative method of making the service available to disabled people. All businesses and other service providers have to take steps to remove the physical feature, alter the feature or provide a reasonable alternative means of avoiding the feature.

Disability Discrimination in Education

Under the Schools and Post-16 sections of the Special Educational Needs and Disability (Northern Ireland) Order 2005 it is against the law for a school, an Education & Library Board or a provider of Post-16 education (and other related services) to discriminate against disabled pupils/ students or prospective pupils/ students because of their disability.

It is unlawful for an education provider to discriminate against a disabled person:

- in the arrangements it makes for determining admissions to the institution;
- in the terms on which it offers to admit him/her to the institution;
- by refusing or deliberately omitting to accept an application for admission his/her to the institution;
- in the education/student services provided or offered by an institution;
- by suspending or expelling him/her from the school

The responsible body for a school/college/university discriminates against a disabled person if, for a reason related to his/her disability, it treats him/her less favourably than it treats or would treat others to whom that reason does not or would not apply and it cannot show that the treatment in question is justified.

Also, the responsible body must take such steps as it is reasonable for it to take to ensure that disabled pupils/ students are not placed at a substantial disadvantage in comparison with persons who are not disabled.

The Order also makes it unlawful to victimise someone who has taken action in connection with a discrimination complaint.

AGE:

Employment Equality (Age) Regulations (Northern Ireland) 2006

The Employment Equality (Age) Regulations (Northern Ireland) 2006 protect against discrimination on the grounds of age in employment and training, including further and higher education. They do not cover discrimination in the provision of goods, facilities or services, or housing.

The regulations apply to all sizes and types of employer and to all workers, including agency, contract and temporary workers. They cover discrimination based on actual age and perceived age.

The regulations cover recruitment and selection, dismissal, access to training, promotion or work benefits. They protect against harassment and bullying, and make it unlawful to victimise someone who has made a complaint of discrimination or given evidence or information in relation to another person's complaint. They also provide protection against discrimination after the employment relationship has come to an end.

The regulations introduce a new duty on employers to consider requests by employees to request to continue working beyond retirement.

An employer is required to inform an employee in writing of their intended retirement date and their right to request to continue working. If an employer does not do this, an employee may make a complaint to the Industrial Tribunal, which may award up to 8 weeks pay as compensation.

If an employee asks to continue working after the intended date of retirement, the employer must meet with the employee to consider the request. The employer must notify the employee of their decision in writing as soon as reasonably practicable after the meeting. The employee may appeal the decision and must do so as soon as reasonably practicable.

The employee has the right to be accompanied by a colleague at meetings concerning his or her request. If an employer denies, or threatens to deny, an employee the right to be accompanied, the employee may make a complaint to the Industrial Tribunal.

TIME LIMITS:

All discrimination complaints must be made within the deadlines set out in the legislation. If you do not make a complaint within these deadlines, the Tribunal or Court may be unable to help you. In all cases except equal pay cases, the Industrial /Fair Employment Tribunals and Courts have the power to decide to accept a late claim if, in all the circumstances of the case, the Tribunal or Court considers it is just and equitable to do so.

There are different time limits for the different types of discrimination. If your claim to the Tribunal or Court is made outside the statutory time limits, the Commission is unlikely to be able to support your request for assistance.

In the first instance, employees should raise their complaint internally, either through their managers/supervisors or personnel staff in order to enable their employer to deal with the matter.

Employees should check whether they should use their employer's grievance procedure. For further information on disciplinary and grievance procedures contact the Labour Relations Agency (see Useful Contacts at the end of these Guidance Notes).

Time Limits for Employment and Vocational Training Complaints

Time limits for **employment** and **vocational training** complaints under the Sex Discrimination (NI) Order 1976, the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003, the Race Relations (NI) Order 1997, the Disability Discrimination Act 1995 and the Employment Equality (Age) Regulations (Northern Ireland) 2006:

 You must lodge your complaint of discrimination on the grounds of sex, sexual orientation, race, disability or age in relation to employment or training at the Industrial Tribunal within three months of the date of the incident about which you are complaining.

Time limits for **employment** and **training** complaints under the Fair Employment and Treatment (NI) Order 1998:

- You must lodge your complaint of discrimination on the grounds of religion, belief or political opinion in relation to employment or training at the Fair Employment Tribunal in accordance with whichever is the earlier of the following two time limits:
- within three months of the day on which you first had knowledge, or might reasonably be expected first to have had knowledge, of the act complained of;

or

• The end of the **period of 6 months** beginning with the day on which the act was done.

Time limits for complaints under the **Duty to Consider Working Beyond Retirement Procedure** under the Employment Equality (Age) Regulations (Northern Ireland) 2006:

 Complaints that an employer failed to comply with the requirement to notify an employee of his/her right to request to **continue working** must be lodged at the Tribunal **within 3 months** of:

 the last day permitted to the employer for complying with the duty to notify;

or

- If the employee did not then know the date that would be the intended date of retirement, the day on which they knew or should have known that date.
- Complaints that an employer denied, or threatened to deny an employee the right to be accompanied to a meeting concerning their request to continue working must be lodged at the Industrial Tribunal within three months of the date of the failure or threat.

The Tribunal has the power to accept a late claim under these provisions where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of the period of three months.

Equal Pay complaints

You may bring an equal pay claim at any time during employment. Where it is brought successfully the Tribunal has limited power to backdate any award of damages. Once you have left your job, a claim must be lodged with an Industrial Tribunal within **6 months** of the date of termination of a stable employment relationship.

Time Limits for Education complaints

Under the Sex Discrimination (NI) Order 1976, you must bring complaints of discrimination on the grounds of **sex** in relation to **education** to the **County Court within either 6 or 8 months** of the date of the incident complained of.

- If the complaint is against an Education and Library Board, an
 educational establishment which is grant aided, the Ulster College
 or certain further education establishments, the complaint must be
 brought to the County Court within 8 months of the date of the
 incident complained of. This is because the Department of
 Education must be informed before proceedings start and given up
 to 2 months to consider the complaint.
- If the Order does not require you to give notice to DENI, the complaint must be lodged within **6 months**.

Under the Race Relations (NI) Order 1997, you must bring complaints of discrimination on the grounds of **race** in relation to **education** to the **County Court within either 6 or 8 months** of the date of the incident complained of.

- If the complaint is on the grounds of colour or nationality and is against an Education and Library Board, a college of education which is grant aided, or certain further education establishments, the complaint must be brought to the County Court within 8 months of the date of the incident complained of. This is because the Department of Education must be informed before proceedings start and given up to 2 months to consider the complaint.
- If the Order, as amended, does not require you to give notice to DENI, the complaint must be lodged within 6 months.

Under the Fair Employment and Treatment (NI) Order 1998:

 You must bring complaints of discrimination on the grounds of religion, belief or political opinion in relation to education to the County Court within 6 months of the date of the incident complained of. The Department of Education must have been given notice of the claim before the complaint is lodged in the County Court.

Under the Special Educational Needs & Disability (NI) Order 2005:

- Most complaints against schools of discrimination for a disability related reason in pre-16 education (except expulsions from grant aided schools) must be brought to the Special Educational Needs
 Disability Tribunal. You must bring such claims to the Special Educational Needs and Disability Tribunal within 6 months of the date of the incident complained of.
- You must bring complaints of disability related discrimination in expulsions from grant aided schools to the Education & Library Board Expulsion of Pupils Appeal Tribunal within 10 days of the date of the principal's letter to the parents notifying them of their child's expulsion.
- You must bring complaints of discrimination on the grounds of disability against a provider of Post 16 education to the County Court within 6 months of the date of the incident complained of.

Under the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003 and the Employment Equality (Age) Regulations (Northern Ireland) 2006:

 You must bring complaints of discrimination on the grounds of sexual orientation or age in relation to further and higher education to the County Court within 6 months of the date of the incident complained of.

Time Limits in all other cases

Time limits for **all other cases** (i.e. complaints about the provision of goods, facilities and services, the disposal or management of premises, complaints about relationships which have come to an end) under:

- the Sex Discrimination (NI) Order 1976, as amended
- the Employment Equality (Sexual Orientation) Regulations (Northern Ireland) 2003
- the Employment Equality (Age) Regulations (Northern Ireland) 2006
- the Race Relations (NI) Order 1997, as amended
- the Fair Employment and Treatment (NI) Order 1998, as amended
- the Disability Discrimination Act 1995, as amended
- You must bring complaints of discrimination about the provision of goods, facilities and services, or the disposal or management of premises on the grounds of sex, race, disability, religion, belief and political opinion to the County Court within six months of the date of the incident complained of.
- You must bring complaints of discrimination about relationships which have come to an end, on the grounds of sexual orientation, race, sex, age, religion, belief and political opinion to the County Court within six months of the date of the incident complained of.

Help and advice

If your case is covered by the legislation, the Commission's Discrimination Advice Officers will be able to assist you with preliminary advice and information. If you need an interpreter or require the form or any of the information in alternative formats, or if you need a reasonable adjustment in order to complete the form, tell the Discrimination Advice Officer and the Commission will make every effort to meet your needs.

If you decide to proceed with an application for assistance, your case will be allocated to a Legal Officer once we receive the completed application form. Unless and until you receive a firm offer of legal representation from the Commission and have accepted the Commission's terms and conditions of assistance, your complaint remains your case and you must be prepared to take full responsibility for lodging complaints within the statutory deadlines and for preparing the case for the hearing.

Completing the Application Form

IMPORTANT

- Return your completed application form as soon as possible to the Commission's office (address below). There are strict deadlines for lodging claims in the Courts and Industrial/Fair Employment/Tribunals (see time limits information above).
- If you have any difficulty filling out this form, it may be helpful to contact a Discrimination Advice Officer in the Commission, a Citizens Advice Bureau or the Law Centre (Northern Ireland).
- Please enclose copies of relevant documents, e.g. completed ET1 (NI) form, copies of relevant correspondence, questionnaires etc.

Answering the questions

Set out below is some information which may help you when filling out the application form.

Do you have a representative? Page 1

The Equality Commission is not your legal representative.

You may have a solicitor or a member of your trade union acting on your behalf. If so, please give their name, address and contact details.

About whom do you wish to complain? Page 2

You should give the name and the official position (if known) of the person who was responsible for the discrimination, abuse or harassment you are complaining about and name the employer or organisation they work for. This is because employers are responsible in law for any acts of discrimination committed by their employees in the course of their work. If there is more than one person involved, give their names, positions (if known) and their addresses (if known).

Which section should I complete?

If you believe you have been discriminated against because of your **sex, marital status** or you have an **equal pay** complaint, complete pages 4 and 5, and then continue on page 17.

If you believe you have been discriminated against on grounds of **sexual orientation**, complete pages 6 and 7, and then continue on page 17.

If you believe you have been discriminated against on the grounds of your **religion**, **belief or political opinion**, complete pages 8 and 9, and then continue on page 17.

If you believe you have been discriminated against on **racial grounds**, complete pages 10 and 11, and then continue on page 17.

If you believe you have been discriminated against on disability grounds (for complaints other than those relating to education), complete pages 12 and 13, and then continue on page 17.

If you believe you have been discriminated against on grounds of **age**, complete pages 14 and 15, and then continue on page 17.

If you believe you have been discriminated against on more than one ground, complete all relevant pages of the form.

Reasonable Adjustments Page 3

You should complete this section if you have a disability and require an adjustment to our procedure or documentation to assist you in accessing our services.

When did the alleged discrimination take place?

If there have been several incidents, give the date of the most recent incident.

If your complaint relates to a series of events or a state of affairs, specify the relevant period during which these occurred and the date of the last incident. Courts and Tribunals are strict about the time limits for lodging complaints.

When did you first know about the event or conduct?

Give the date on which you first became aware of the event or conduct which you think is discrimination.

How did the alleged discrimination take place?

Describe exactly what happened. Give dates, times, names (and official titles) of the people involved. Be as clear as possible, keep it short but continue on a separate sheet if necessary. If known, state the name of any person(s) treated more favourably than you.

Why do you believe you have been treated in this way?

What makes you think that gender, marital status, sexual orientation, race, religion, belief, political opinion, disability or age was the reason you received the treatment complained of.

Declaration

Please read this declaration carefully before signing and dating the form.

Complaints under the Special Educational Needs and Disability (NI) Order 2005

If you believe that you have been discriminated against for a reason related to disability in relation to **education** (either pre or post 16) you should complete the specific "Disability Discrimination – Education" application form.

Section 3, Education Providers

You should give the name of the school, college or institution responsible for the discrimination, you are complaining about. The 'responsible body' is the organisation with responsibility for the school/institution or the activity in respect of which you say there was discrimination. This will depend on the type of school/institution and the circumstances of each case. You cannot claim against the head teacher or any individual person you consider was responsible.

Am I/ is my child disabled?

The Order protects disabled pupils/students. To show that you are disabled you must meet the definition of a disabled person as set out in the Disability Discrimination Act 1995 ("The Act"). The Act sets out the circumstances in which a person is 'disabled'. This is different to any other definition of disability – although clearly there may be an overlap with other definitions.

You may be in receipt of disability benefits or Disabled Students Allowance but this does not mean you meet the definition of disability under the Act. By the same token, you do not need to be in receipt of disability benefits to meet the definition. Nor does it follow that if you had a Statement of Special Educational Needs at school (or still have one) that you will automatically meet the definition.

Why do you believe your or your child's disability was the reason for the alleged treatment?

State what makes you think that disability was the reason you or your child received the treatment complained of.

Need more help?

If you wish to discuss your complaint informally or get advice on completing the application form, please telephone the Commission and ask to speak to one of the Discrimination Advice Officers in the Legal Division.

The Commission Decision

Your application for assistance will be considered by the Commission's Legal Funding Committee, which is composed of Commissioners. The Committee will decide whether the Commission can offer you legal assistance and, if so, what it will cover. You may be offered help with advice, settlement of the case, or full representation by a solicitor or barrister at the tribunal or court hearing. Please note that the Commission has limited funds and cannot support every application.

If the Commission is unable to offer you legal representation, you can still take your case to a tribunal or County Court.

Conditions of support

If the Commission offers to support your case and you accept:

- The Commission will decide how your case is conducted
- The Commission will deal with your case and appoint your legal representative
- The Commission will deal with any contact with the media
- The Commission reserves the right to withdraw representation at any time, or to change the terms on which it has been offered. This may happen if the case appears to have little chance of success, or if you fail to co-operate fully, or if the other side makes a reasonable offer to settle the case.

Other Bodies

Your trade union, the Law Centre (NI), or the Citizens Advice Bureaux may also be able to help you. If your complaint is about something that

happened to you at work, the Labour Relations Agency may be able to help you to resolve the complaint. The Agency may also be able to assist you with other employment issues, such as practical guidance on disciplinary or grievance issues, your contract, or your terms and conditions of employment.

Please return your completed form to:

Legal Division
The Equality Commission for Northern Ireland
Equality House,
7-9 Shaftesbury Square
Belfast
BT2 7DP

Telephone: 02890 500 600

Fax: 02890 331 047

Textphone: 02890 500 589

Email: information@equalityni.org

Website: www.equalityni.org

USEFUL ADDRESSES:

The Law Centre (NI) **124 Donegall Street**

Belfast BT1 2GY

Telephone: 02890 244401

Email:

admin.belfast@lawcentreni.org

The Labour Relations Agency

2-8 Gordon Street

Belfast BT1 2LG

Telephone: 03300 555 300 Email: info@lra.org.uk

The Law Centre (NI) 9 Clarendon Street Londonderry **BT48 7EP**

Telephone: 02871262433

Email:

admin.derry@lawcentreniwest.org

Website: www.lawcentreni.org

The Labour Relations Agency

1-3 Guildhall Street

Londonderry **BT48 6BJ**

Telephone: 03300 555 300

Email: info@lra.org.uk

Citizens Advice Bureaux

Contact the CAB Headquarters for 45-47 Donegall Street

your local CAB at:

www.citizensadvice.co.uk

or email:

info@citizensadvice.co.uk

Belfast Unemployed Resource

Centre

Belfast BT1 2FG

Telephone: 02890 961111

Email: info@burc.org

Website: www.burc.org