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Religious or similar Philosophical Belief and Political Opinion discrimination law in Northern Ireland

- a short guide

Equality Commission

FOR NORTHERN IRELAND

Religious or Similar Philosophical Belief and Political Opinion discrimination law in Northern Ireland – a short guide

This short guide provides some basic information about the law on discrimination on grounds of religious or similar philosophical belief and political opinion in Northern Ireland. It does not attempt to describe every detail and should not be taken as an authoritative statement of the law. Further information is available from the Equality Commission or on our website www.equalityni.org. Details of some of our other publications and how to contact us are given at the back of this booklet.

The Equality Commission for Northern Ireland

The Equality Commission is responsible for enforcing the Fair Employment and Treatment legislation and for working towards the elimination of unlawful discrimination on grounds of religious or similar philosophical belief and/or political opinion. The Commission also has general duties with regard to promoting equality of opportunity and affirmative action, as well as a duty to keep the operation of the Order under review.

IMPORTANT NOTICE - short guide to religious belief/political opinion discrimination law

Changes to legislation which came into effect in April 2011 affect the information on pages 13 and 14 about making a complaint about discrimination in employment and time limits.

From April 2011, employers are not required by law to have grievance procedures although most will have them. Where the employer has a grievance procedure, an individual's failure to use or complete the procedure in relation to a discrimination complaint could lead to a tribunal reducing any award of compensation by up to 50%.

The standard time limit for bringing a complaint of discrimination to an industrial tribunal is 3 months. For more information please contact the Commission's discrimination advice team.

The law

The Fair Employment and Treatment (Northern Ireland) Order 1998

(FETO), as amended, makes discrimination on grounds of religious or similar philosophical belief and/or political opinion unlawful in the following areas:

- employment;
- provision of goods, facilities or services;
- disposal or management of premises;
- further and higher education.

The 1998 Order was amended by the **Fair Employment and Treatment Order (Amendment) Regulations (Northern Ireland) 2003** in December 2003 to meet the requirements of the **EU Framework Directive for Equal Treatment in Employment and Occupation**.

What is religious or political opinion discrimination?

In anti-discrimination law, discrimination means being treated less favourably than others who do not share the same characteristic(s).

The FETO outlines situations where individuals may complain that they have been discriminated against on grounds of religious or similar philosophical belief and/or political opinion.

It may be that individuals believe that they are treated less favourably than others because they are Catholic or Protestant or because they are perceived to hold either of these religious beliefs; or because they are perceived to be nationalist or unionist; or indeed individuals may be discriminated against because they do not hold any of these beliefs or opinions. Political opinion is not limited solely to Northern Ireland constitutional politics and may include political opinions relating to the conduct or government of the state, or matters of policy, eg, conservative or socialist political opinions. A political opinion which includes approval or acceptance of the use of violence for political

purposes in Northern Ireland is excluded. Religious belief includes those of other religions, eg, Judaism, Islam and Eastern Orthodox Christianity, as well as other faiths and philosophies such as Hinduism, Buddhism and philosophical theism, to name a few. Philosophical belief covers other beliefs about weighty and substantial aspects of human life and behaviour. They must attain certain levels of cogency, seriousness, cohesion and importance; be worthy of respect in a democratic society, be not incompatible with human dignity and be not in conflict with the fundamental rights of others. Examples might include humanism, pacifism, spiritualism.

The FETO outlines four types of discrimination:

- **Direct discrimination** is where someone is treated or would be treated less favourably than others in the same or similar position on grounds of religious belief and/or political opinion.

Example – the best candidate at interview is not appointed to a job because of their religion, while a less able candidate of a different religion is offered the post.

- **Indirect discrimination** in employment occurs where a provision, criterion or practice is applied, or would apply equally to everyone, but which has the effect of putting people of a particular religious belief or political opinion at a disadvantage when compared with others and which cannot be shown to be a proportionate means of achieving a legitimate aim.

Example – an employer whose workforce is wholly or mainly Protestant or Catholic offers opportunities for promotion to internal candidates only. The policy of promoting internally may not be intended to prevent people from the under-represented religion from applying but it has that effect.

A slightly different definition of indirect discrimination applies to complaints in non-employment cases.

- **Victimisation** means treating someone less favourably than others because they have, for example, complained of alleged discrimination, or have assisted someone else to do so.

Example – an employee loses overtime because s/he was a witness for a colleague in a fair employment tribunal hearing against their employer. This would be unlawful victimisation.

- **Harassment** is defined as unwanted conduct which has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for a person.

Harassment on grounds of religious belief or political opinion in Northern Ireland is commonly called 'sectarian harassment'. It can take subtle or overt forms, for example, singing of sectarian songs, sectarian remarks, comments, isolation or non co-operation, display of flags, bunting, etc.

Complaints of sectarian/religious harassment may be made against the employer as well as the harasser. In certain circumstances, individual employees can be held personally liable to pay compensation awards.

Employers may be liable for any sectarian/religious harassment committed by their employees in the course of their employment even if they did not know about the harassment or would not have approved of it, had they known. Employers can successfully defend a sectarian harassment case only if they can show they took such steps as were reasonably practicable to prevent the harassment from happening.

The FETO does not specifically outlaw harassment in the field of goods, facilities or services but such treatment may amount to unlawful discrimination.

Employment

The Fair Employment and Treatment Order applies to all employers, regardless of size. It also applies to other bodies and organisations, including:

- those with statutory power to select employees for others;
- employment agencies;
- trade unions and employer organisations;

- vocational training providers;
- those who have power to confer qualifications;
- those for whom work is done by contract workers;
- those who have power to select office holders;
- office holders;
- barristers; and
- partnerships.

It is unlawful for an employer, body or organisation to discriminate:

- in **recruitment and selection**, including arrangements for deciding who should be offered employment; in the terms on which employment is offered or by refusing or deliberately omitting to offer a person employment;
- in the **terms and conditions of employment**;
- in relation to **access to benefits**, including opportunities for promotion, transfer, training or any other benefits, or the refusal of those opportunities;
- by **dismissing** an employee or causing him or her any other detriment.

In addition, in certain circumstances, former employees will have rights under the FETO. For example, it is unlawful for an employer to refuse to provide a work reference for a former employee because s/he did not approve of the ex-employee's religious beliefs.

Employers are liable for acts of discrimination committed by their employees in the course of their employment, whether or not the acts were done with the employer's knowledge or approval, unless the employer can show that they took such steps as were reasonably practicable to prevent the discrimination occurring.

Scope

The FETO covers religious or similar philosophical belief/political opinion discrimination in employment in Northern Ireland if the employee does his or her work wholly or partly in Northern Ireland or does his or her work wholly outside Northern Ireland and:

- i. the employer has a place of business at an establishment in Northern Ireland;
- ii. the work is for the purposes of the business carried on at the establishment; and
- iii. the employee is ordinarily resident in Northern Ireland at the time when s/he applies for or is offered the employment or at any time during the course of the employment.

Duties on employers

The FETO places a number of significant duties on employers that are not found in other anti-discrimination legislation either in Northern Ireland or in Great Britain:

- i Registration

All private sector employers with more than ten full-time employees (defined as working more than sixteen hours per week) are required to register with the Equality Commission. Specified public sector employers are automatically deemed to be registered.

- ii Monitoring

All registered employers must submit annually to the Commission a monitoring return giving details of the community background, sex and occupational classification of their workforce. Community background in this context means those who are treated as belonging to either the Protestant or Roman Catholic community in Northern Ireland. All

registered employers must provide details of their employees, applicants and appointees. In addition, large private sector employers (those with more than 250 employees, full and part-time) and all public sector employers must provide details of promotees and leavers.

iii Article 55 reviews

All registered employers must review the composition of their workforce, and their recruitment, training and promotion practices at least once every three years in order to determine whether fair participation in employment is being secured by both Protestants and Catholics. Where it appears to an employer in the course of a review that fair participation in employment is not being provided to members of one or other community, or is not likely to continue to be provided, the employer is under a duty to determine the affirmative action (if any) which would be reasonable and appropriate to take.

iv Affirmative action

Affirmative action is a key mechanism for change contained in the employment provisions of the fair employment and treatment legislation. Affirmative action measures are designed to address under-representation in the workplace and ensure fair participation regardless of community background. This may involve the adoption of practices aimed at encouraging fair participation, for example, including a statement welcoming applications from the under-represented community in an organisation's job vacancy advertisements, or modifying or abandoning practices that may restrict or discourage fair participation.

The affirmative action provisions allowed by the FETO include:

- the encouragement of applications for employment or training for people from under-represented groups;
- recruitment from those not in employment;
- targeting training in a particular area or at a particular class of person;

- the amendment of redundancy procedures to help achieve fair participation; and
- the provision of training for non-employees of a particular religious belief, following approval by the Equality Commission.

Detailed advice and information on these duties is available to employers free of charge from the Equality Commission. Employers should consult and follow the advice of the **Fair Employment in Northern Ireland Code of Practice** and **A Unified Guide to Promoting Equal Opportunities in Employment**. These and other publications are on the Commission's website – see Employers section.

Investigation and enforcement

The Equality Commission can investigate the employment practices of any Northern Ireland employer at any time. Where the Commission considers that affirmative action is required to ensure fair participation, it may seek an undertaking from the employer that they will take such action. If an undertaking is not given or complied with, the Commission can issue a legally enforceable direction. The **Fair Employment Code of Practice** provides detailed guidance for employers regarding their duties under the FETO. Employers who are in default of the legislation through failure to register with the Commission or for not submitting monitoring returns face criminal penalties of up to £5000 as well as economic sanctions – the loss of Government grants and exclusion from public contracts.

Goods, facilities and services

The FETO outlaws discrimination on grounds of religious belief and/or political opinion in the provision of goods, facilities and services which are available to the public. This includes refusal of a service (for payment or not) or the provision of a lower standard of service.

Examples include:

- access to and use of any place which members of the public are permitted to enter;
- accommodation in a hotel, boarding house or other similar establishment;
- facilities by way of banking or insurance or for grants or loans, credit or finance;
- facilities for training;
- facilities for entertainment, recreation or refreshment;
- facilities for transport or travel; and
- the services of any profession, trade or business or any local or other public authority.

Disposal or management of premises

It is unlawful for anyone selling or managing property or premises to discriminate on grounds of religious belief and/or political opinion.

Example – it is unlawful for a landlord to refuse to rent to or to evict someone on the basis of their religion or political opinion.

Similarly, anyone selling land or premises publicly, either by advertisement or through an estate agent, may not discriminate either on the terms on which land or premises are offered, or by refusing to sell to someone on the basis of religion or political opinion.

There are some exceptions to these provisions; for example, they do not apply to people who are renting out part of their own home in which they live or premises which come within the legal definition of ‘small premises’.

Further and higher education

The FETO makes it unlawful to discriminate in further and higher education. It is unlawful for an institution of further or higher education in Northern Ireland to discriminate:

- in the terms on which it offers to admit a student to the establishment;
- by refusing or deliberately omitting to accept an application for admission as a student;
- in the way it affords a student whom it has admitted to the establishment access to any benefits or by refusing or deliberately omitting to afford such access;
- by excluding a student from the establishment or by subjecting a student to any other detriment; and
- by subjecting to harassment a person who applies for admission to the establishment as a student or a student of the establishment.

Other unlawful acts

The FETO makes it unlawful to publish discriminatory advertisements. For further information see **Recruitment Advertising: A Good Practice Guide for Employers for Promoting Equality of Opportunity** which is available from the Equality Commission, or on our website – www.equalityni.org.

It is also unlawful to instruct or put pressure on a person to do anything contrary to the FETO by discriminating in employment or other fields, or to knowingly aid another person to carry out such acts.

Employers are also liable for acts of discrimination committed by their employees in the course of their employment, whether or not the acts were done with the employer's knowledge or approval, unless the employer can show that they took such steps as were reasonably practicable to prevent the discrimination occurring.

General exceptions

There are exceptions to the general principle of discrimination on grounds of religious belief and/or political opinion, and the FETO exempts:

- employment or occupation as a clergyman or minister of a religious denomination;
- employment or occupation where the essential nature of the job requires it to be done by a person holding, or not holding, a particular religious belief or political opinion;
- recruitment of teachers in schools;
- access to training facilities in certain circumstances where the employer is taking lawful affirmative action;
- selection for redundancy in certain circumstances where the employer is taking lawful affirmative action;
- measures to encourage applications, etc, from an under-represented community where the employer is taking lawful affirmative action;
- recruitment from the unemployed (see Commission guide);
- benefits conferred by charities on persons of a particular religious belief or political opinion;
- acts done under statutory authority in the provision of goods, facilities or services or premises;

- acts done to safeguard national security or to protect public safety or public order.

Making a complaint

Employment-related complaints

Anyone who believes they have been discriminated against on grounds of religion and/or political opinion can lodge a complaint with the Fair Employment Tribunal. There are **time limits** for lodging a claim. The **time limit** can be as short as **three months** less one day from the date of the act complained about. In exceptional cases, the Tribunal has the discretion to extend a time limit but simply not knowing that there were deadlines is an insufficient reason for granting an extension. It is therefore important to seek advice as soon as possible about any matter that could be the subject of an industrial tribunal claim.

All employers should have procedures to deal with workplace grievance and disciplinary matters. In most cases, if a person fails to use or complete their employer's grievance procedure in relation to a complaint of discrimination, the tribunal can reduce any award of compensation by up to 50%.

For more information relating to the statutory grievance procedure, please contact the Labour Relations Agency – tel: 028 90 321 442. The Equality Commission can provide further advice about pursuing discrimination complaints.

Non-employment complaints

Complaints relating to discrimination in respect of education, premises, the provision of goods, facilities or services, or where an employment relationship has come to an end must be made to the county court within **six months** of the date the discrimination took place.

Advice and assistance

The Equality Commission can provide **free and confidential** advice and assistance to people who believe that they have been discriminated against on grounds of religious or similar philosophical belief and/or political opinion – contact our Enquiry line on 028 90 890 890.

Assistance by the Equality Commission may range from giving information or advice to arranging for legal representation in some cases. The Commission does not decide whether discrimination has occurred; this is for an independent industrial tribunal or court to decide.

Help for employers and service providers

The Equality Commission can provide general information and advice to employers, vocational training providers, service providers and others on recommended good practice under the Fair Employment and Treatment (Northern Ireland) Order 1998 (as amended) and other equality legislation. We also provide training. Our information and advisory services are free. For more information or advice, please contact our Enquiry line - 028 90 890 890 - or see our website.

Advisory publications

The following relevant publications are available on the Commission's website. Where hard copies are available, they can be ordered from the Commission's enquiry line on 028 90 890 890.

- Fair Employment in Northern Ireland – Code of Practice, 1989 – website only
- Unified guide to promoting equal opportunities in employment
- Model Equal Opportunities Policy, 2007
- Model Harassment Policy and Procedure, 2007
- Step by Step Guide to Monitoring, 2004

- Article 55 Review – A Guide for Employers, 2003
- Recruitment Advertising – a good practice guide for employers, 2007
- Recruitment from those not in employment – a good practice guide, 2007
- Promoting a good and harmonious working environment – guide for employers and employees, 2009
- Harassment & Bullying in the workplace, 2006 – website only.

The Equality Commission also has information and guidance on other areas of discrimination law and equality for which we have responsibility – sex discrimination and equal pay, race, disability, sexual orientation and age; and the statutory duties on public authorities to promote equality and good relations under Section 75 of the Northern Ireland Act and the disability duties under the Disability Discrimination Act.

Publications can be provided in alternative formats and languages on request, according to our Access for all policy.

Full details of our publications and further information for individuals, service providers and employers are available on our website - www.equalityni.org

Other relevant legislation

Section 75 duties on public authorities

In addition to not discriminating on grounds of religious belief or political opinion under the Fair Employment and Treatment Order, public authorities in Northern Ireland have to comply with equality and good relations duties under Section 75 of the Northern Ireland Act 1998. Public authorities have to pay ‘due regard’ to the need to promote equality of opportunity between persons of different groups, including those of different religious belief and political opinion. They must also ‘pay regard’ to the desirability of promoting good relations between persons of different religious belief and political opinion. For more information, please contact the Equality Commission or see our website.

Hate crime legislation – Crimes that are motivated by an offender’s hatred of someone because of their religion or political opinion are covered by the Criminal Justice (No 2) (Northern Ireland) Order 2004. Complaints about religious or sectarian hate crime are dealt with by the police. For more information see www.psni.police.uk.

Contacting the Equality Commission

If you need help or advice about discrimination on grounds of religious belief or political opinion or any other aspect of equality law, please contact us. We provide free and confidential information and advice to individuals, employers and service providers. We can also provide training for employers and service providers.

Enquiry line: 028 90 890 888 (for all information or advice enquiries)
Reception: 028 90 500 600
Textphone: 028 90 500 589
Fax: 028 90 248 687
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