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## **Policy on the Flying of the Union Flag**

### **Equality Impact Assessment – Final Decision Report**

**13 November 2012**

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**Report by:**



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analysis · research · consultation

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# 1. Introduction

## Initial EQIA

1.1 In October 2002, the Council agreed to carry out an Equality Impact Assessment (EQIA) on the policy on the flying of the Union flag on Council properties, following a complaint made under the Council's Equality Scheme.

1.2 The Council considered a draft report of the EQIA findings in April 2003 and agreed that widespread formal consultation should be carried out in the autumn of that year. A final report, which included the results of the consultation and further advice from Senior Counsel, was considered by the Policy and Resources Committee on 26<sup>th</sup> March 2004. Arising out of this the Council agreed, at its meeting on 4<sup>th</sup> May 2004, not to make any change to its current policy.

## Further review

1.3 On 17<sup>th</sup> June 2011 the Strategic Policy and Resources Committee agreed that the EQIA should be updated to facilitate a further review of the current policy. This was in response to a letter from the Sinn Féin party group to the Chief Executive in March 2011.

1.4 The Council considered a draft report of the EQIA findings (Draft EQIA Report) on 18<sup>th</sup> May 2012 and agreed a 16 week consultation period ending on 1<sup>st</sup> October 2012. During the consultation period the Draft EQIA Report was available on the Council's website together with a questionnaire designed to facilitate responses. The Council's Equality Scheme consultees were notified of the availability of the report and invited to comment and two open public meetings were held at the Ulster Hall on 13<sup>th</sup> September 2012. In addition a staff survey was conducted to gather views on the current policy and the policy options.

1.5 This report (EQIA Final Decision Report) sets out the initial findings of the EQIA process together with the results of the consultation process. The report has been prepared in order to provide the Council with all available information on which to base a decision.

## 2. The policy

2.1 The Council's current policy on the flying of the Union flag affects three separate Council buildings – the City Hall, the Ulster Hall and the Duncrue Complex – out of a total of just over 100 buildings from which the Council operates. The current policy is that the Union Flag is flown:

- outside the City Hall on a permanent basis;
- outside the Duncrue Complex and the Ulster Hall on specified days per year (designated Flag Days<sup>1</sup> plus 4 additional days<sup>2</sup>).

2.2 These buildings have different functions and are used by different groups of people and the EQIA therefore examined the impact of the policy at each building individually. The City Hall is the Council's administrative headquarters and houses the Registrar's office. It has a wider role as a public building at the centre of the city and therefore has a significance for all residents of the city, whether they use it or not, and for all visitors. The Ulster Hall is a concert hall and conference venue and the Duncrue Complex houses offices, workshops, storage and depots for a range of Council services.

2.3 The current arrangements for the flying of flags on Council properties were established through custom and practice over many years and there is no record of the aims of the policy being articulated. However, anecdotal evidence suggests that the policy was adopted to avoid the proliferation of Union flags on Council buildings throughout the city.

2.4 The Draft EQIA Report included a range of background information on policies/guidance which might have an influence on the Council's policy. These are set out in Appendix A to this report and include:

- A1 Designated Flag Days
- A2 Further information on the City Hall, Ulster Hall and Duncrue Complex
- A3 Policies of Belfast City Council
- A4 Policies of the NI Executive
- A5 Advice by the Equality Commission
- A6 Policies of other authorities.

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<sup>1</sup> See Appendix A for additional information on Designated Flag Days

<sup>2</sup> The four additional days are Christmas Day, New Year's Day, Easter Day and 12<sup>th</sup> July.

### **3. Consideration of available data and research**

#### **Data**

3.1 Data on Belfast City residents by Section 75 category is set out in Appendix B1. Most of this information is taken from the 2001 Census, updated from the 2011 Census, where available.

3.2 Data on Council employees is set out in Appendix B2. This has been updated to January 2012. The proportion of males to females remains approximately the same as in 2003 (60:40) but there has been an increase since 2003 in Council employees with a Roman Catholic community background (from 35.8% to 43.0%) and a decrease in Council employees with a Protestant community background (from 59.6% to 53.1%).

#### **Research gathered in 2003**

3.3 The Draft EQIA Report included a summary of the available research gathered in 2003. This information is included in Appendix C, as follows:

- C1 Complaints and comments (summary)
- C2 Opinion of Senior Counsel (summary)
- C3 Submissions by party groups (summary)
- C4 Opinions expressed by the Equality Commission (summary)
- C5 Results of surveys of employees and suppliers (summary).

#### **Research gathered in 2011-12**

3.4 Further research was undertaken during the preparation of the Draft EQIA Report in 2011. This information is included in Appendix D and has been updated where appropriate. Appendix D contains the following information:

- D1 Complaints and comments (summary)
- D2 Opinion of Senior Counsel (in full)
- D3 Submissions by party groups<sup>3</sup>
  - (a) Alliance Party
  - (b) Progressive Unionist Party
  - (c) Democratic Unionist Party
  - (d) Sinn Féin (including legal advice sought<sup>4</sup>)
  - (e) Social Democratic and Labour Party

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<sup>3</sup> The Ulster Unionist Party indicated that their views had not changed since 2003.

<sup>4</sup> Sinn Féin sought advice from Eugene McKenna BL and submitted it as additional information

- D4 Opinions expressed by the Equality Commission
- D5 Opinions expressed by the Human Rights Commission (summary)
- D6 View of the Council's Consultative Forum
- D7 Results of survey of visitors to the City Hall

## **4. Assessment of impacts**

4.1 In accordance with the EQIA process, having gathered information on the policy and those affected by it, the Council must then assess whether there is a differential impact on one or more of the equality groups, determine the extent of differential impact and whether that impact is adverse.

4.2 Differential impact suggests that a particular group has been affected differently by the policy (either favourably or unfavourably), while adverse impact is an indication that the effect is less favourable (i.e. negative) and is potentially unlawful<sup>5</sup>.

4.3 In order to determine whether the policy has any adverse differential impact, it is necessary to consider the people affected by the policy, their needs and experiences and the equality categories to which they belong.

### **Differential impact**

4.4 The evidence suggests that the policy has a differential impact on people with different religious beliefs/political opinions because of their differing perceptions of the symbolism of the Union flag.

4.5 No evidence has come to light at any time during the consideration of this policy to suggest that the flying of the Union flag has any differential impact on people in other equality categories, i.e. people of different racial group, age, marital status or sexual orientation, men and women generally, persons with a disability and persons without, persons with dependants and persons without.

### **Adverse impact**

4.6 If it is accepted that the policy has a differential impact on people with different religious beliefs and political opinions then it is necessary to determine whether the impact is adverse, i.e. whether the effect of the policy is less favourable to people from either of the two main communities. It is therefore necessary to consider the tangible impacts of the policy in terms of access to services, enjoying a good and harmonious working environment, and promoting good relations.

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<sup>5</sup> Practical Guidance on Equality Impact Assessment, Equality Commission for NI, 2004 (pp.22-23)

### **Assessment of impacts**

4.7 The Draft EQIA Report reached the following conclusions, based on the evidence gathered at that time.

#### ***Access to services:***

4.8 The current policy has no actual adverse impact in terms of equality of opportunity to access events, services and facilities for people in any of the equality categories.

#### ***Good and harmonious working environment:***

4.9 The current policy gives rise to an adverse impact on employees from a Catholic and/or Nationalist background in terms of their equality of opportunity to be employed in a workplace which provides a good and harmonious working environment. It should be noted that the Equality Commission is of the view that it is acceptable and appropriate for a local council to fly the Union flag at its civic headquarters but this rationale would not extend to every Council location. It should also be noted that legal opinion suggests that the risk of the policy in respect of the City Hall being successfully challenged in a discrimination claim by an employee of the Council is low but that there is a higher risk of a successful discrimination claim being brought in relation to the display of the flag at other locations

#### ***Promoting good relations:***

4.10 The current policy may give rise to an adverse impact on residents, visitors and employees with a Catholic and/or Nationalist community background in terms of their expectation that the Council will have regard to the desirability of promoting good relations in the implementation of its policies. It should be noted that legal advice suggests that it might be difficult for a complainant to maintain a successful challenge in law against the Council under Section 75(2).



## **5. Consideration of measures**

5.1 The EQIA process requires that, if it is decided that the policy has an adverse impact on one or more of the nine equality categories, then a series of alternatives should be put forward for consideration and an assessment of the possible impact of these alternatives undertaken. The Council must consider measures which might mitigate the adverse impact and alternative ways of delivering policy aims which have a less adverse impact on the relevant equality category or which better promote equality of opportunity and good relations.<sup>6</sup>

5.2 The Draft EQIA Report set out one alternative policy for the Duncrue Complex and the Ulster Hall and five alternative policies for the City Hall.

### **Duncrue Complex and the Ulster Hall**

5.3 On consideration of the evidence it was clear that both the Equality Commission and Senior Counsel differentiated between the impacts on the good and harmonious working environment of flying the Union flag at the Council's civic headquarters and at other locations, such as the Ulster Hall and Duncrue Complex. The Equality Commission considered that it was acceptable and appropriate for a local council to fly the Union flag at its civic headquarters but this rationale would not extend to every Council location. Legal opinion suggested that there was a higher risk of a successful discrimination claim being brought in relation to the display of the flag at other locations compared with the display at the City Hall.

5.4 The Draft EQIA Report therefore concluded that the only practical alternative policy option was to cease to fly the Union flag at the Duncrue Complex and the Ulster Hall.

### **City Hall**

5.5 The City Hall, as the Council's administrative headquarters and a significant civic and ceremonial centre, has a significantly different status from the Duncrue Complex and the Ulster Hall. A greater range of alternative policies was therefore considered.

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<sup>6</sup> Practical Guidance on Equality Impact Assessment, Equality Commission for NI, 2004 (pp.30-31)

### ***Option 1: Designated flag days***

5.6 Senior Counsel advised that the flying of the Union flag on designated flag days was likely to be seen by the courts and tribunals as “striking the right balance between acknowledging Northern Ireland’s constitutional position and not giving offence to those who oppose it.”<sup>7</sup> The Equality Commission also expressed the view that “the flying by a local Council of the Union flag, on appropriate occasions, with decorum and with sensitivity, should not be regarded as in itself being a breach of any legal obligation”<sup>8</sup>. The Commission did not specifically state that “appropriate occasions” would equate to designated flag days, although it must be assumed that they would see a close correlation between the two.

5.7 The Draft EQIA Report concluded that this option was likely to be the most effective in terms of promoting good relations.

### ***Option 2: Designated flag days plus additional days***

5.8 Under the current policy the Union flag is flown at the Duncrue Complex and the Ulster Hall on designated flag days plus four additional days, i.e. Christmas Day, New Year’s Day, Easter Day and 12<sup>th</sup> July. Option 2 would be to apply these days to the flying of the Union flag at the City Hall.

5.9 Following the logic applied to Option 1, the Draft EQIA Report concluded that it was probable that the courts and tribunals would be less likely to regard this option as striking the right balance, but it could be justified on the grounds that the selected occasions for flying the Union flag were appropriate. The report therefore concluded that this option had the potential to better promote good relations than the current policy but would probably not be as effective as option 1.

### ***Option 3: Two flags***

5.10 One of the policy options considered in the 2003 EQIA was to give equal prominence to the Irish Tricolour whenever the Union flag was flown, either on a permanent basis or on designated flag days.

5.11 In his opinion expressed in 2004, Senior Counsel (Mr Nicholas Hanna, QC) made it clear that the key issue in regard to this option was the overall aim of the policy. He considered that if the Union flag were to be flown on designated flag days only, the justification would be that the policy

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<sup>7</sup> Quotation from Kerr J’s judgement in *Re Murphy’s Application*, 2001

<sup>8</sup> Letter from the Equality Commission, 29 September 2011

acknowledged Northern Ireland's constitutional position as part of United Kingdom in a balanced and moderate way; however, such a reason could not be given to justify flying the flag of any other state. If the Union flag were to be flown on a permanent basis, Mr Hanna considered that:

“there is a risk of it being inferred that the underlying reason for such a policy was either ‘to assert the ascendancy of one community over another’ (*Brennan*), or to acknowledge Northern Ireland's constitutional position in a way which was neither balanced nor moderate, but was intended to give offence to those who opposed it. In such circumstances, while the flying of the Irish Tricolour alongside the Union Flag might possibly be regarded by some as ‘redressing the balance’, I think it would be very difficult indeed to justify such a course of action (which could be seen as a form of counterbalanced or mutual provocation/irritation) as paying proper regard to the desirability of promoting good relations.”

5.12 The Draft EQIA Report concluded that, although it would not be unlawful to adopt a policy of flying the Irish Tricolour alongside the Union flag, there was a possibility that each flag would be regarded as representing one specific community; this option was therefore unlikely to better promote good relations and might be regarded as “mutual provocation”.

#### ***Option 4: No flag***

5.13 In their comments on the initial EQIA in 2003, the Equality Commission indicated that not displaying the Union flag would be within the range of acceptable practices in relation to the promotion of equality of opportunity. Senior Counsel's opinion (Mr Nicholas Hanna QC, 2004) was that it would be difficult to argue that such a policy was in disregard of the desirability of promoting good relations. This is the policy adopted by seven councils in Northern Ireland.

5.14 However, in their letter dated 29 September 2011, the Equality Commission advised:

“While this policy may be considered in some respects to be a ‘neutral’ policy, it would for instance be appropriate to consider the impact on good relations for the Protestant/Unionist community of the change from a current flag policy to a no flags policy.”

5.15 The Draft EQIA Report concluded that this was a credible option which would have some positive effects in terms of promoting good relations, but it might also result in new adverse impacts for some citizens.

***Option 5: Neutral or civic flag***

5.16 In their comments on the initial EQIA in 2003, the Equality Commission indicated that not displaying the Union flag and flying a neutral or civic flag instead would be within the range of acceptable practices in relation to the promotion of equality of opportunity. Senior Counsel's opinion (Mr Nicholas Hanna QC, 2004) was that, provided the flag was genuinely 'neutral', and had cross community support, such a policy would be broadly similar in effect to that of flying no flag. This is the policy adopted by two councils in Northern Ireland.

5.17 The Draft EQIA Report concluded that this option would have the same effect in terms of promoting good relations as the option of flying no flag.

***Conclusions***

5.18 The Draft EQIA Report concluded that, in relation to the City Hall, there was a range of policy options open to the Council which would not be unlawful and would promote good relations better than the current policy. Although it is clearly impossible to define an option which would not cause offence to some people, the report concluded that it would appear that the policy options which best promote good relations were – in descending order of effectiveness:

- Designated flag days only;
- Designated flag days plus specified additional days;
- No flag or a neutral flag;
- Two flags.

## 6. Summary of consultation responses

6.1 The Equality Commission's Guide to the Statutory Duties makes it clear that a formal consultation exercise should be included as a critical stage in an EQIA, immediately before decision making. Consultation should focus on the actual impact of the existing policy and the likely impact of proposed and alternative policies. Consultation should be inclusive, afford a fair opportunity to communicate pertinent information and enable consultees to give advice and opinion on the policy so that the public authority may reach a more informed decision<sup>9</sup>. However, the Equality Commission has also made it clear that an EQIA should not be considered as a referendum whereby the views of consultees from a majority are counted as votes to decide the outcome.<sup>10</sup>

6.2 The consultation process on this EQIA covered a 16 week period ending on 1<sup>st</sup> October 2012. During the consultation period the Draft EQIA Report was available on the Council's website together with a questionnaire designed to facilitate the type of responses referred to above. The Council's Equality Scheme consultees were notified of the availability of the report and invited to comment. A press release was issued to various media outlets, a public advertisement was placed in the local press and an article was included in the September edition of City Matters. In addition two open public meetings were held at the Ulster Hall on 13<sup>th</sup> September 2012. A staff survey was also conducted to gather views on the current policy and alternative policies.

6.3 Responses were received as follows:

- individual written responses from three organisations (the Equality Commission, the Community Relations Council and the Consular Association of Northern Ireland);
- 879 written responses from members of the public (577 of which were completed questionnaires);
- a petition containing 14,740 signatures;
- comments made by the 3 members of the public and 2 organisations who attended the public meetings;
- completed questionnaires from 1038 members of staff.

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<sup>9</sup> Practical Guidance on Equality Impact Assessment, Equality Commission for NI, 2004 (p.36)

<sup>10</sup> Letter from the Equality Commission to Strabane District Council, 29<sup>th</sup> July 2011

## **Equality Commission**

6.4 The Equality Commission commented on the need for the final policy to reflect the Council's legitimate policy aims, to promote good relations and not cause unlawful discrimination or harassment through its likely impacts. They also repeated their advice that the Council should clarify the aims and objectives of flying the Union flag at locations other than the City Hall, if this was the preferred option.

6.5 The Commission also suggested that the final policy should cover displays of other flags where similar principles and context may apply. They suggested that it may serve the Council to further develop the aims of the policy and ensure that there is a policy framework in which to consider, in a consistent manner, the flying of other flags. The framework could include the duration and extent of display of flags which may be more closely associated with one community background in Northern Ireland. It should be noted that the Commission had previously written to the Council on 22<sup>nd</sup> June 2012 suggesting that the final policy should extend to the display of other flags, such as the Armed Forces Day flag.

6.6 The full text of the Commission's letter is set out in Appendix E1.

## **Community Relations Council (CRC)**

6.7 The CRC said that they had considered the legal and statutory advice given to the Council in relation to the Duncrue Complex and the Ulster Hall and agreed with the conclusion that the Union flag should no longer be flown at either site in the interests of promoting good relations.

6.8 With respect to the City Hall, the CRC said that they had examined both the historical and current statutory opinion and legal advice which underscored 'appropriate occasions' alongside 'striking the right balance'. They strongly recommended that the Council should seriously consider Option 1 (designated flag days) as the most reasonable way forward for promoting good relations.

6.9 The CRC also urged the Council to take account, when making the decision, of the NI Code of Local Government Conduct which recommends that councillors should assist their council to act, as far as possible, in the interests of the whole community.

6.10 The full text of the CRC letter is set out in Appendix E2.

## **Consular Association of NI**

6.11 The Association commented that government buildings at the central/local level across the world display the flag of the country. They pointed out that the United Kingdom and Ireland are fully recognised as two separate jurisdictions/countries. They referred to the fact that there are numerous different nationalities and foreign businesses located in Northern Ireland, especially in Belfast, so to suggest the option of displaying a foreign flag would be discriminatory to other countries represented. They also considered that regularly displaying a foreign flag on a government building would be a violation of the constitution.

6.12 The full text of the CA-NI letter is set out in Appendix E3.

## **Responses from the public**

6.13 The consultation on the EQIA attracted a wide range of responses from the public in different formats.

### ***Written responses***

6.14 Many people chose to respond using the standard questionnaire published on the Council's website while others sent written submissions by letter or e-mail. The Council also received a petition with over 14,000 signatures. The written responses have been analysed by Social and Market Research (SMR), an independent external consultancy, and full details are set out in Appendix E4. The key points are summarised in paragraphs 6.19-6.23 below.

6.15 It should be noted that a large number of the responses were identical which suggests that there was some co-operation between respondents. The Council received three batches of questionnaires containing the same comments and a standard letter submitted by a significant number of individuals.

6.16 The standard questionnaire published on the Council's website contains seven questions designed to elicit comments about an EQIA report. It is used by the Council to assist Equality Scheme consultees to comment on EQIA reports and, as such, is generally used by those with some familiarity with the EQIA process. It requests comments on the current policy and policy options presented in the EQIA and also asks consultees to comment on whether they agree with the assessment of impacts and measures considered in the report. It also asks consultees to suggest any other issues which they

think should be included and provide details of any further data or research of which they are aware.

6.17 The questionnaire did not seek personal information on respondents so it is not possible to distinguish between responses made by people from each of the two main communities.

6.18 It is clear from the responses that some members of the public did not really wish to comment on anything other than the policy options or may have had some difficulty answering the rather formal nature of the EQIA questionnaire. For example, 84% of the responses to the question asking for comments on the current policy (Q1) simply set out a preference for one of the policy options (which was the subject of Q2). The most reliable element of the responses is therefore the views expressed regarding the policy options.

### ***Views expressed in written responses***

6.19 It is difficult to analyse the responses in numerical terms because of the range of formats and the fact that some respondents expressed more than one view. However, the points raised most frequently are listed below.

6.20 Most respondents expressed a preference for one of the policy options as follows:

- approximately 350 people either expressed a preference or made comments which suggested they supported no change to the current policy;
- approximately 350 people expressed a preference for flying the Irish Tricolour alongside the Union flag whenever it is flown;
- approximately 150 people expressed a preference for either no flag or a neutral flag;
- there was very little support for the option of designated flag days with or without additional days (less than 10 responses);

6.21 When commenting on the current policy, a large number of respondents also stated that, in their opinion, the Armed Services flag should never be flown. It is assumed that this comment relates to the Council's decision to fly the Armed Forces Day flag from Monday 25<sup>th</sup> June to Saturday 30<sup>th</sup> June 2012; however, this flag was not included in the EQIA analysis and no specific question was asked.



6.22 There were a number of identical letters which stated that the consultation was an unnecessary repeat of one in 2004 which concluded that the present policy is acceptable; that the present policy is the most common among councils in Northern Ireland; that the rationale behind the review is clearly political; that there has been a very low level of complaints; that the visitor survey showed that only 3% were offended by the flying of the flag; that 42% of respondents to the 2003 staff survey wished the present policy to continue so a change in policy would not solve any chill factor but potentially create a new one; and that there is no legal pressure or requirement to change the present policy.

6.23 Other written responses contained very similar comments to the effect that removing the Union flag would not promote good community relations but would create deeper divisions and that Belfast is the capital of Northern Ireland and Northern Ireland is part of the UK, so it is completely normal that the national flag is flown.

### ***Petition***

6.24 The Council received a petition with 14,740 signatures based on the following wording:

“We, the undersigned, express our support for the existing Belfast City Council policy on flying the Union flag. We reject the 4 alternative policies proposed in the equality impact assessment (EqIA). The evidence contained within the EqIA, with very low numbers of complaints or offence among staff and users, means equality and good relations are fully compatible with the present policy.”

### ***Public meetings***

6.25 Two open public meetings were held at the Ulster Hall on Thursday, 13<sup>th</sup> September, one in the afternoon and one in the evening. Two members of the public attended the afternoon session, together with representatives of the CRC and Invest NI. One member of the public attended the evening session. Although the meetings were poorly attended, the comments made should be taken into account.

6.26 The main points made by the three members of the public were:

- working buildings should be free of any flag;
- Northern Ireland is part of the UK and the City Hall is the focal centre of Belfast, so the Council should continue to fly the flag at all times;
- changes to flying the Union Flag are part of a bigger picture and the EQIA is being conducted for political reasons;
- if no objections were made to flying the Union flag then people who did want the flag to remain would not feel so strongly;
- there should be either 2 flags or a reduction in the time that the Union Flag flies, especially not at Easter or 12<sup>th</sup> July.

### **Results of the staff survey**

6.27 Staff were given an opportunity to comment on the policy by means of a separate questionnaire during September. This questionnaire was specially designed to elicit views on employees' feelings about the flying of the Union flag as well as their preferences in terms of the current policy and the policy options. It should be noted that staff also had an opportunity to comment on the EQIA by the same means as the general public, using the standard EQIA questionnaire.

6.28 The staff questionnaire included a question similar to that asked in the visitor survey relating to feelings regarding the Union flag and also asked how they would feel if the Union flag no longer flew on Council buildings. Staff were also asked whether they thought that the current policy should be changed. A further question sought views on the structure of the policy in terms of whether the City Hall should be treated differently from other Council buildings. Finally staff were asked which of the policy options they preferred.

6.29 There were two key features of the staff survey. Firstly, some of the questions (those relating to the current policy and the policy options) were exact copies of questions asked in the staff survey in 2003 so that a direct comparison can be made between the results. Secondly, staff were asked to provide personal information in terms of their community background to allow the responses to be analysed further. They were also asked to identify their place of work so that it is possible to determine what policy respondents who work at the Duncrue Complex or the City Hall think should be adopted in respect of their place of work.

6.30 1038 responses were received representing about 36% of total staff. The respondents indicated that they came from:

Protestant community background	43.4%
Catholic community background	30.4%
Other	14.4%
No response	11.8%

6.31 The responses to the survey have also been analysed by Social and Market Research (SMR) and full details are set out in Appendix E5. The key points are summarised below.

#### ***Feelings regarding the Union flag***

6.32 Just under half the respondents (48.6%) said they feel pleased and proud to see the Union flag flying at Council buildings with a further 10.8% saying they feel comfortable about it. 13.4% said they feel uncomfortable and 15.1% said they feel offended and unwelcome. 12.2% said they have no particular feelings about the Union flag.

6.33 These responses have been broken down by community background and the results show that feelings are polarised. Almost three quarters of those from a Catholic community background (72.1%) feel uncomfortable or offended and unwelcome. Almost all those from a Protestant community background (92.3%) feel pleased and proud or comfortable. The majority of those who indicated that they came from neither a Catholic nor a Protestant community background (53.7%) said they feel pleased and proud or comfortable, with just over a quarter (26.2%) saying that they feel uncomfortable or offended and unwelcome.

#### ***Feelings if the Union flag no longer flew***

6.34 About one third of respondents (32.9%) said they would feel offended and unwelcome if the policy were changed so that the Union flag no longer flew on Council buildings, with a further 22.6% saying they would feel displeased. 13.8% said they would feel pleased and 17.6% said they would feel highly satisfied. 13.2% said that they would have no particular feelings.

6.35 Again the breakdown of responses by community background shows a high level of polarisation. Almost three quarters of those from a Catholic community background (72.4%) said they would feel highly satisfied or pleased if the Union flag no longer flew. The vast majority (88.1%) of those

from a Protestant community background said they would feel displeased or offended and unwelcome. Almost half of those who indicated that they came from neither a Catholic nor a Protestant community background (49.7%) said they would feel displeased or offended and unwelcome, with just over a quarter (28.5%) saying that they would feel highly satisfied or pleased.

### ***Structure of the policy***

6.36 One of the questions was designed to obtain views on the status of the City Hall and whether there should be a separate policy regarding the flying of the Union flag there, regardless of what the policy was. Unfortunately the responses did not indicate any clear solution, possibly because respondents did not understand the question or related the question to specific preferred options.

### ***Views on current policy***

6.37 Staff were asked whether they thought the current policy should be changed and why.

6.38 Overall 54.6% said that the policy should not be changed. The main reason given was that flying the Union flag reflects the current status of Northern Ireland as part of the United Kingdom.

6.39 45.4% said that the policy should be changed; the most common reasons given included:

- Council buildings should be neutral working environments and flags should not be flown at places of work;
- Council buildings should be welcoming to all;
- the policy should be the same as for other Government buildings;
- flags are a source of division in Belfast and so no flag should be displayed anywhere;
- a considerable section of the community view the Union flag as offensive;
- the Council should be representative of all the people of Belfast.

### ***Preferred options – City Hall***

6.40 With regard to the City Hall, 57.9% of respondents said they preferred no change to the current policy (i.e. fly the Union flag on a permanent basis), with 9.8% preferring designated flag days and 29.8% preferring no flag, a neutral flag or either of these options.

6.41 The breakdown by community background shows that 85.6% of those from a Protestant community background prefer no change and 73.4% of those from a Catholic community background prefer no flag, a neutral flag or either of these options. More Catholics than Protestant expressed a preference for designated flag days (13.7% compared with 8.4%). The majority of those who indicated that they came from neither a Catholic nor a Protestant community background (53.1%) favoured no change.

6.42 It was also possible to separate out the views of those employees who work at the City Hall (128 respondents). Just under half (46.1%) preferred no change with 17.2% preferring designated flag days and 33.7% preferring no flag, a neutral flag or either of these options.

#### ***Preferred options – Duncrue Complex***

6.43 With regard to the Duncrue Complex, 40.6% of respondents said they preferred no change to the current policy (i.e. fly the Union flag on designated flag days plus 4 additional days), with a further 13.9% preferring designated flag days only. 41.1% said they preferred no flag, a neutral flag or either of these options.

6.44 The breakdown by community background shows that 61.3% of those from a Protestant community background prefer no change with a further 21.3% preferring designated flag days only. 85.4% of those from a Catholic community background said they preferred no flag, a neutral flag or either of these options. 50% of those who indicated that they came from neither a Catholic nor a Protestant community background (53.1%) favoured no change or designated flag days only, with 42.1% preferring no flag, a neutral flag or either of these options.

6.45 It was also possible to separate out the views of those employees who work at the Duncrue Complex (108 respondents). 76.0% preferred no change or designated flag days only, with 21.3% preferring no flag, a neutral flag or either of these options.

#### ***Preferred options – Ulster Hall***

6.46 With regard to the Ulster Hall, 41.8% of respondents said they preferred no change to the current policy (i.e. fly the Union flag on designated flag days plus 4 additional days), with a further 13.0% preferring designated flag days only. 41.3% said they preferred no flag, a neutral flag or either of these options.

6.47 The breakdown by community background shows that 63.6% of those from a Protestant community background prefer no change with a further 19.6% preferring designated flag days only. 86.0% of those from a Catholic community background said they preferred no flag, a neutral flag or either of these options. 49.1% of those who indicated that they came from neither a Catholic nor a Protestant community background (53.1%) favoured no change or designated flag days only, with 43.3% preferring no flag, a neutral flag or either of these options.

6.48 As so few employees are based at the Ulster Hall, it was not practical to separate out their responses and still maintain their anonymity.

***Preferred options – comparison with 2003 results***

6.49 The table below shows a comparison of the preferred options as indicated by the two staff surveys in 2003 and 2012. The comparison appears to indicate that there have been no significant changes in views regarding the City Hall but an increase in those preferring no flag at the Duncrue Complex and the Ulster Hall (from 17% to 21% in each case).

Q6 Which of the following policy options would you prefer? (All figures are %)										
	No change		Flag days		No flag		Neutral flag		Other <sup>11</sup>	
	2003	2012	2003	2012	2003	2012	2003	2012	2003	2012
City Hall	56	58	12	10	11	10	17	15	4	8
Duncrue	49	41	11	14	17	21	16	15	6	9
Ulster H	50	42	11	13	17	21	16	15	6	9

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<sup>11</sup> In 2012 the vast majority of those within the “Other” category selected no flag or neutral flag.

## 7. Conclusions

7.1 Schedule 9 of the Northern Ireland Act 1998 requires that, in making any decision with respect to a policy, a public authority shall take into account any EQIA and consultation carried out in relation to the policy (para. 9.2).

7.2 There is no strict definition of what “taking into account” entails. However, the Equality Commission guidance on how decisions should be recorded makes it clear that a public authority must be able to record the decision making process (as well as the decision) and that the decision must be justified<sup>12</sup>.

7.3 The guidance also advises that all available information should be combined in the decision; this includes the information gathered during the research phase, the results of the consultation and the analysis of alternative policy options<sup>13</sup>. This information has been brought together in this report and the appendices (available as a separate document) in order to ensure that the Council is in a position to take account of all issues when making a decision.

7.4 The Equality Commission has acknowledged in the past that a highly structured approach to decision making may not be possible but has also made it clear that an EQIA should not be considered as a referendum whereby the views of consultees from a majority are counted as votes to decide the outcome.<sup>14</sup>

7.5 During the course of this EQIA, the Commission has advised that the Council has the freedom to select any of the available policy options but must take account of the desirability of promoting good relations and this goal must be given due significance. The Commission has also advised that what the Council decides to do should be the result of a clear policy development exercise with defined objectives for the policy<sup>15</sup>.

7.6 The following analysis of the key points arising from the EQIA and the consultation responses is provided to assist the Council, but is not exhaustive and is not meant to be a substitute for the detailed information presented in the appendices.

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<sup>12</sup> Practical Guidance on Equality Impact Assessment, ECNI 2004, p.45

<sup>13</sup> Practical Guidance on Equality Impact Assessment, ECNI 2004, p.45

<sup>14</sup> Letter from the Equality Commission to Strabane District Council, 29<sup>th</sup> July 2011

<sup>15</sup> Letter from the Equality Commission to Belfast City Council, 29<sup>th</sup> September 2011

### **Aims of the policy**

7.7 As mentioned above, the Equality Commission has advised that the Council should define the objectives of the policy. It appears that the current arrangements for the flying of flags on Council properties were established through custom and practice over many years and there is no record of the aims of the policy being articulated.

7.8 The objectives of the policy will be dependent on the option adopted. However, it should be noted that, in his opinion expressed in 2004, Senior Counsel (Mr Nicholas Hanna, QC) indicated that the flying of the Union flag at the City Hall on designated days could be justified on the basis that it would be acknowledging Northern Ireland's constitutional position as part of the United Kingdom in a balanced and moderate way. The Equality Commission referred to flying the Union flag "on appropriate occasions with decorum and with sensitivity" and indicated that this would not be regarded as a breach of any legal obligation.<sup>16</sup>

7.9 The Commission has also suggested that the Council should further develop the aims of the policy to ensure that there is a policy framework in which to consider, in a consistent manner, the flying of other flags which may be more closely associated with one community background in Northern Ireland, including the Armed Forces Day flag. 266 members of the public who responded to the questionnaire indicated that they considered that the EQIA should include the policy on the flying of the Armed Forces Day flag and that, in their opinion, it should never be flown.

### **Promoting a good and harmonious working environment**

7.10 The Fair Employment and Treatment (NI) Order 1998 places an obligation on both employers and employees to take all reasonable steps to prevent harassment. The Equality Commission guidance (2009) states that responsibility rests with the employer to provide and promote a good and harmonious working environment, i.e. one in which no worker is subjected to harassment by conduct that is related to religious belief or political opinion.

7.11 The key issue is therefore whether the flying of the Union flag could be regarded as conduct which may result in harassment for employees from a Catholic and/or Nationalist community background.

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<sup>16</sup> Letter from the Equality Commission to Belfast City Council, 29<sup>th</sup> September 2011



7.12 In his opinion expressed in 2002 Senior Counsel (Mr Nicholas Hanna, QC) said:

“...in the absence of some good reason (which to date has not been articulated) there is a degree of risk that the flying of the Union flag at the City Hall on days other than designated flag days and at other premises even on designated days only, could be held to infringe the concept of a neutral working environment for those who work in those buildings.”

7.13 In his opinion expressed in 2011 Senior Counsel (Mr David Scoffield, QC) said:

“The present policy of flying the Union flag every day at City Hall is *prima facie* lawful. There is a risk of this being successfully challenged in a discrimination claim by an employee of the Council<sup>17</sup> but I consider this risk to be low. “

The legal position is, in my view, a good deal more precarious as regards the current policy of flying the Union flag at the Ulster Hall and the Duncrue Complex .... there is a much less compelling context for the display of the Union flag at these locations .... there is a higher risk of a successful discrimination claim being brought in relation to the display of the flag at these locations than at City Hall, particularly having regard to the approach adopted by the Fair Employment Tribunal in the *Johnston*<sup>18</sup> case.”

7.14 In their letter dated 29<sup>th</sup> September 2011 the Equality Commission said:

“The Commission recognises that for local Councils there would be a difference between the customer base at the headquarters and that in more localised areas. Thus, for example, while it is acceptable and appropriate, in the Commission’s view for a local council to fly the Union Flag at its Civic Headquarters, this rationale would not extend to every Council location.”

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<sup>17</sup> Most likely, an employee who works at City Hall.

<sup>18</sup> *Johnston v Belfast City Council* 2000; this was a case considered by the Fair Employment Tribunal relating to a complaint about the display of a portrait of HM The Queen at the Dunbar depot.

7.15 In their letter to the Chief Executive in March 2011, Sinn Féin said that they had been approached by a number of Council employees who work in Duncrue and at the City Hall raising concerns about the flying of the Union flag. In the recent staff survey, several respondents commented that Council buildings should be neutral working environments and flags should not be flown at places of work.

7.16 In the light of the evidence, the Council needs to consider whether flying the Union flag on Council buildings, particularly the Duncrue Complex and the Ulster Hall, is consistent with taking all reasonable steps to prevent harassment as required by the Fair Employment and Treatment (NI) Order 1998.

### **Promoting good relations**

7.17 Under Section 75(2) of the Northern Ireland Act 1998, the Council has a duty to have regard to the desirability of promoting good relations between persons of different religious beliefs, political opinion or racial group.

7.18 In their letter dated 29<sup>th</sup> September 2011 the Equality Commission said:

“To comply with Section 75(2) you need to ensure that, when the Council is formulating its Union flag policy, and considering the various options, account is taken of the desirability of promoting good relations. That goal must be given proper weight; i.e. the weight that is appropriate in the circumstances .... Furthermore, you should not limit your consideration of the Section 75(2) goal to the immediate circumstances around flying the Union flag itself. The duty is continuous and wide and requires the Council to consider the broader and longer term picture and to consider adopting other strategies that may mitigate the immediate effects of a particular policy.”

7.19 The Draft EQIA Report contained evidence (particularly from letters of complaint and the 2003 staff survey) that some people from a Catholic and/or Nationalist community background regard the flying of the Union flag as offensive and possibly intimidating. During discussion of the draft report, the point was made that ceasing to fly the Union flag would be equally offensive to some people from a Protestant and/or Unionist community background.

7.20 The consultation responses have confirmed both these positions. In the staff survey 13.4% of respondents said they feel uncomfortable to see the Union flag flying at Council buildings and 15.1% said they feel offended and unwelcome. Almost three quarters of those who identified themselves as being from a Catholic community background (72.1%) said they feel uncomfortable or offended and unwelcome. Of the 45.4% of respondents who said that the current policy should be changed; the most common reasons given included the view that a considerable section of the community view the Union flag as offensive and flags are a source of division in Belfast and so no flag should be displayed anywhere.

7.21 On the other hand, about one third of respondents to the staff survey (32.9%) said they would feel offended and unwelcome if the policy were changed so that the Union flag no longer flew on Council buildings, with a further 22.6% saying they would feel displeased. The vast majority (88.1%) of those from a Protestant community background said they would feel displeased or offended and unwelcome. In addition, a large number of the individual comments made by members of the public were to the effect that removing the Union flag would not promote good community relations but would create deeper divisions.

7.22 In his opinion expressed in 2002 Senior Counsel (Mr Nicholas Hanna, QC) said:

“If the Council failed to give consideration to the question of whether flying the Union flag at the City Hall every day in the year might be excessive or provocative, it would, in my opinion, be at risk of being found to have failed to comply with the provisions of its Equality Scheme.

It is likely, in the event of a complaint, that the Equality Commission would follow the judge’s lead in *Murphy* and regard a policy which was similar to that of the Flags Regulations as striking the right balance, while a policy which required or permitted flying of the Union flag more frequently, or more extensively than permitted for government buildings by the Flags Regulations as excessive and in disregard of the desirability of promoting good relations. By the same token a policy which banned the flying of the Union flag entirely would probably also be regarded as being in disregard of the desirability of promoting good relations.”

7.23 In his opinion expressed in 2011 Senior Counsel (Mr David Scoffield, QC) commented on Mr Hanna's opinion:

"I would not be so pessimistic about that, in either case, provided that the decision was taken after full consideration of the possible effects on the promotion of good relations, as to which opinions are likely to differ."

7.24 In the light of the evidence, the Council needs to consider whether the current policy has regard to the desirability of promoting good relations and whether any of the alternative policies would better promote good relations.

### **Policy options – Duncrue Complex and Ulster Hall**

7.25 The Draft EQIA Report identified only one practical policy option in respect of the Duncrue Complex and the Ulster Hall which was to cease to fly the Union flag at these premises.

7.26 The 2012 staff survey specifically asked for views on the preferred options for these two buildings and the responses illustrated that views were polarised between the two communities. The vast majority of those from a Protestant community background preferred no change or a small reduction to designated flag days only, while a similar percentage of those from a Catholic community background preferred no flag, a neutral flag or either of these options. Just over three quarters of the respondents who work at Duncrue preferred no change or designated flag days only.

7.27 However, it should be noted that the comparison with the 2003 staff survey shows that, overall, there has been an increase in those preferring no flag at the Duncrue Complex and the Ulster Hall (from 17% to 21% in each case).

7.28 Very few of the comments submitted by members of the public referred to the Duncrue Complex or the Ulster Hall specifically.

7.29 In the light of the evidence it is suggested that the Council considers the position at the Duncrue Complex and the Ulster Hall separately from the decision in respect of the City Hall.

## **Policy options – City Hall**

7.30 The Draft EQIA Report identified a range of policy options open to the Council in respect of the City Hall which would not be unlawful and would promote good relations better than the current policy. (See paragraphs 5.6 to 5.18 above.)

7.31 Although it is clearly impossible to define an option which would not cause offence to some people, the Draft EQIA Report concluded that it would appear that the policy options which best promote good relations are – in descending order of effectiveness:

- Designated flag days only;
- Designated flag days plus specified additional days;
- No flag or a neutral flag;
- Two flags.

7.32 Many of the consultation responses from members of the public concerned the option to be adopted in respect of the City Hall with substantial percentages stating a preference for the current policy and each of the above options (with the exception of designated days plus additional specified days). As the Equality Commission has pointed out, an EQIA is not a referendum, so the actual numbers in favour of each options should not be the deciding factor, but the Council should take into account the fact that many people have strong views on the subject.

7.33 The staff survey showed that preferences are polarised within the two main communities, with only 3.8% of Protestant respondents favouring no flag or a neutral flag and 10.5% of Catholic respondents favouring no change. However, there was a significant percentage of each group who preferred designated flag days: 13.7% of Catholic respondents and 8.4% of Protestant respondents.

7.34 In the light of the evidence it is suggested that the Council considers which of the policy options represents the best compromise in terms of promoting good relations and causing least offence to either community.

## Summary

7.35 It is suggested that the Council should consider:

- defining the aims and objectives of the policy;
- further developing the aims of the policy to ensure that there is a policy framework in which to consider, in a consistent manner, the flying of other flags which may be more closely associated with one community background in Northern Ireland, including the Armed Forces Day flag;
- making a decision on the policy to be applied to the Duncrue Complex and the Ulster Hall separately from the decision in respect of the City Hall;
- deciding whether flying the Union flag on Council buildings, particularly the Duncrue Complex and the Ulster Hall, is consistent with taking all reasonable steps to prevent harassment as required by the Fair Employment and Treatment (NI) Order 1998;
- deciding whether the current policy has regard to the desirability of promoting good relations and whether any of the alternative policies would better promote good relations;
- deciding which of the policy options represents the best compromise in terms of promoting good relations and causing least offence to either community;
- agreeing how the impact of the final policy will be monitored (see section 8 below).

## **8. Monitoring for adverse impact**

8.1 Schedule 9 of the Northern Ireland Act 1998 requires that a system be established to monitor the impact of the final policy in order to find out its effect on the relevant groups and sub groups within the equality categories. The results of ongoing monitoring must be reviewed and published on an annual basis (para. 4 (2) (b)). If the monitoring and analysis of results over a two year period show that the policy results in greater adverse impact than predicted, or if opportunities arise which would allow for greater equality of opportunity to be promoted, the public authority must ensure that the policy is revised to achieve better outcomes for the relevant equality groups (Annex 1, para. 7.2).

8.2 The Council therefore needs to agree how the impact of the final policy will be monitored. This may involve some or all of the following:

- collation and analysis of all comments received;
- further surveys of visitors to the City Hall;
- further staff surveys;
- inclusion of appropriate questions in omnibus surveys.