



---

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

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

---

# Contents

	<u>Page</u>
<b>Appendix A: Background information</b>	<b>4</b>
A1 Designated Flag Days	5
A2 Further information on the City Hall, Ulster Hall and Duncrue Complex	6
A3 Policies of Belfast City Council	8
A4 Policies of the NI Executive	9
A5 Advice by the Equality Commission	11
A6 Policies of other authorities	12
<b>Appendix B: Available data</b>	<b>15</b>
B1 Belfast City Residents (by Section 75 category)	16
B2 Belfast City Council Employees (by community background and gender)	19
<b>Appendix C: Research gathered in 2003</b>	<b>21</b>
C1 Complaints and comments (summary)	22
C2 Opinion of Senior Counsel (summary)	23
C3 Submissions by party groups (summary)	25
C4 Opinions expressed by the Equality Commission (summary)	28
C5 Results of surveys of employees and suppliers (summary)	29
<b>Appendix D: Research gathered in 2011-12</b>	<b>31</b>
D1 Complaints and comments (summary)	32
D2 Opinion of Senior Counsel	34
D3 Submissions by party groups	53
(a) Alliance Party	53
(b) Progressive Unionist Party	54
(c) Democratic Unionist Party	54
(d) Social Democratic and Labour Party	55
(e) Sinn Féin (including legal advice sought)	63
D4 Opinions expressed by the Equality Commission	72
D5 Opinions expressed by the Human Rights Commission (summary)	77
D6 View of the Council's Consultative Forum	79
D7 Results of survey of visitors to the City Hall	80

<b>Appendix E: Consultation responses</b>	<b>84</b>
E1 Equality Commission	85
E2 Community Relations Council	88
E3 Consular Association of Northern Ireland	91
E4 Responses from the public	93
E5 Results of the staff survey	97

### BACKGROUND INFORMATION

- 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



## Designated Flag Days

The latest advice from the Department of Culture, Media and Sport (2011) sets out the following 18 designated flag days:

20 January	Birthday of The Countess of Wessex
6 February	Her Majesty's Accession
19 February	Birthday of The Duke of York
1 March	St David's Day (in Wales only)
14 March	Commonwealth Day (second Monday in March)
10 March	Birthday of The Earl of Wessex
17 March	St. Patrick's Day (in Northern Ireland only)
21 April	Birthday of Her Majesty The Queen
23 April	St George's Day (in England only)
9 May	Europe Day
2 June	Coronation Day
10 June	Birthday of The Duke of Edinburgh
11 June	Official Celebration of Her Majesty's Birthday
17 July	Birthday of The Duchess of Cornwall
15 August	Birthday of The Princess Royal
13 November	Remembrance Day (second Sunday)
14 November	Birthday of The Prince of Wales
20 November	Her Majesty's Wedding Day
30 November	St Andrew's Day (in Scotland only)
Also	<p>The day of the opening of a Session of the Houses of Parliament by Her Majesty</p> <p>The day of the prorogation of a Session of the Houses of Parliament by Her Majesty</p>

## Further information on the City Hall, Ulster Hall and Duncrue Complex

### City Hall

1. Users of the City Hall include employees, Councillors, suppliers and contractors, service users and visitors. The City Hall is the principal workplace of 132 employees (with a further 21 who move between the City Hall and other Council buildings) and the principal meeting place for the Council and its Committees. The only Council service directly accessed by the public at the City Hall is the Registrar's office; figures for the exact number of service users are not available but there is a significant stream of visitors to these offices on a daily basis. There were over 75,000 visitors participating in tours of the City Hall between April 2010 and March 2011 and a large number of visitors patronise the Bobbin, the public café.

2. However, the City Hall is not simply the Council's administrative headquarters; it has a wider significance as a public building at the centre of the city and the grounds are also widely used for events and as a public park. There is an extensive programme of events and functions at the City Hall which are attended by people from all over the world. In addition, the Belfast War Memorial is located within the City Hall grounds and the 1<sup>st</sup> July and November Remembrance Day parades start inside the building.

3. It can also be argued that the City Hall has a significance for all residents of the city, whether they use it or not, and for all visitors. The resident population of Belfast city is 280,962<sup>1</sup> and the daytime population is considerably higher<sup>2</sup>. The Council's own tourism monitoring shows that, in 2011, there were 7.86 million visitor trips to Belfast with 1.58m staying visits and 6.28m day visits.

### Ulster Hall

4. The Ulster Hall was built in 1859 as a concert hall and conference venue. It re-opened in March 2009 after an extensive restoration and

---

<sup>1</sup> Population estimate according to 2011 Census, NISRA 2012

<sup>2</sup> The Regional Development Strategy 2025 (DRD, 2011) estimates that the Belfast city catchment area (in terms of jobs, shopping etc) is approximately 800,000 (just under 50% of the total population of Northern Ireland).

refurbishment programme which included the provision of a public café. The building is the principal place of work of a small number of staff (9 permanently located there and 30 who move between the Ulster Hall and the Waterfront Hall) and is hired out to a variety of organisations for public entertainments, meetings and other types of gathering which are attended by members of the public. Over 120,000 tickets to public events have been sold in the 2 years since the Hall re-opened.

### **Duncrue Complex**

5. The Duncrue Complex houses offices, workshops, storage and depots for a range of Council services. It is the principal place of work for 321 Council employees and the only visitors are suppliers and contractors. There are no casual visitors and members of the public do not enter the building to access services.

## **Policies of Belfast City Council**

### **Promotion of equality of opportunity**

1. The Council's Equality Scheme commits the Council to considering the promotion of equality of opportunity as part of the development or revision of every policy. This means not only identifying and addressing any differential impacts on people in each of the nine equality categories but also giving careful consideration in each case to alternative policies which might better promote equality of opportunity.

### **Promotion of good relations**

2. The Council's Good Relations Strategy includes an objective to:

“contribute towards an inclusive pluralist society, by establishing a cultural diversity programme, which acknowledges and respects the cultural diversity within the City, and to promote and support the celebration of such diversity in an inclusive manner which avoids offending those with different views.”

3. The Council has also adopted a Peace and Reconciliation Action Plan which supports programmes and projects which are working to create shared space and positive relations in Belfast. The aim of the plan is to build positive relations at a local level and to tackle sectarian and racist attitudes with a focus on conflict resolution and mediation at a local community level. The plan is structured around four key themes, all informed by the concept of shared space:

- securing shared city space;
- transforming contested space;
- developing shared cultural space;
- building shared organisational space.

### **Provision of a good and harmonious working environment**

4. The Council and the Trade Unions signed a Joint Declaration of Protection in 1997 which set in place initiatives to ensure that all Council workplaces provided a good and harmonious working environment. The Council undertakes six monthly audits to ensure that any emblems or symbols which might prove offensive to any individual or group of people are removed from the workplace.

## Policies of the NI Executive

### Belfast Agreement

1. In the Belfast Agreement, the participants endorsed the commitment:

“that whatever choice is freely exercised by a majority of the people of Northern Ireland, the power of the sovereign government with jurisdiction there shall be exercised with rigorous impartiality on behalf of all the people in the diversity of their identities and traditions and shall be founded on the principles of full respect for, and equality of, civil, political, social and cultural rights, of freedom from discrimination for all citizens, and of parity of esteem and of just and equal treatment for the identity, ethos, and aspirations of both communities.”

### Cohesion, Sharing and Integration

2. The Programme for Government PSA 7 commits the Executive to ‘reduce poverty and address inequality and disadvantage’. Part of this includes Objective 5 to ‘promote equality and the enforcement of rights.’ One action arising from this is ‘to implement a programme of cohesion and integration’.

3. The Executive is currently preparing a Programme for Cohesion, Sharing and Integration as a follow on to the strategy entitled ‘A Shared Future’. The draft Programme (which was the subject of consultation in 2010) aims:

“to ensure that all spaces and facilities are shared and welcoming, created within an ethos of fairness, equality, rights, responsibilities and respect.” (*para. 3.35*)

4. The draft Programme also states:  
“It is also important that shared spaces and facilities are welcoming to everyone from the community. This does not mean “neutralising” the area or facilities but creating a good and harmonious environment which removes any perceived threat and reflects and welcomes differing cultures and minority ethnic groups.” (*para. 3.36*)

## **Review of Public Administration**

5. The NI Executive is currently reviewing proposals for the re-organisation of local government in Northern Ireland. In 2006 the Equality Commission and the Community Relations Council submitted a joint memorandum to the RPA Steering Group on Equality, Good Relations and Human Rights, recommending that regulations should be introduced as part of RPA legislation to regulate the display of flags and emblems by public authorities. They suggested that it would not be appropriate to impose uniformity on all public authorities but that there should be consistency within each sector (e.g local government). They have recently resubmitted the memorandum to the Minister for the Environment for further consideration.

## Advice by the Equality Commission for Northern Ireland

1. Since the initial EQIA was undertaken, the Equality Commission has issued further guidance on promoting a good and harmonious working environment which distinguishes between a “harmonious” working environment and a “neutral” one. The new guidance states that:

“a good and harmonious working environment is one where all workers are treated with dignity and respect and where no worker is subjected to harassment by conduct that is related to religious belief or political opinion....This of course does not mean that working environments must always be devoid of anything that happens to be more closely associated with one or other of the two main communities in Northern Ireland....In other words an ‘harmonious’ working environment does not necessarily mean a ‘neutral’ one.” (*Promoting a Good and Harmonious Working Environment, A Guide for Employers and Employees, October 2009*)

2. The guidance includes the following specific advice on the flying of the Union flag:

“the flying of the Union flag must be viewed in the context in which it is flown or displayed. Factors affecting the context include the manner, location and frequency with which flag are flown. The Union flag is the national flag of the United Kingdom and, arising therefrom, has a particular status symbolising the constitutional position of Northern Ireland. On the other hand, the Union flag is often used to mark sectional community allegiance. There is a world of difference between these two approaches. Thus, for example, while it is acceptable and appropriate, in the Commission’s view, for a local Council to fly the Union flag at its Civic Headquarters, the rationale for its display at every Council location, facility and leisure centre would be questionable. (*Promoting a Good and Harmonious Working Environment, A Guide for Employers and Employees, October 2009*)

## Policies of other authorities

### Flags Regulations (NI) 2000

1. The regulations govern the flying of the Union flag on buildings occupied by NI Executive Departments and agencies but do not apply to local councils. They require that no flag should be flown from Government buildings with one main exception – the requirement to fly the Union flag from seven Departmental Headquarters buildings on designated flag days.

### Policies in England, Wales and Scotland

2. The flying of flags is not the subject of statute law in England, Wales or Scotland. Advice is issued by the Department for Culture, Media and Sport (for England), the Welsh Assembly Government (for Wales) and the Scottish Executive (for Scotland). The advice relates to government buildings only, but many councils also follow the advice on a voluntary basis.

3. In 2008 the UK government published the White Paper “*The Governance of Britain: Constitutional Renewal*” which contained proposed changes to the rules on the guidance relating to the flying of flags in England, Wales and Scotland. The changes give UK government departments the freedom to fly the Union flag on their buildings as often as they wish. These changes followed a consultation process where over 60% of respondents supported flying the Union flag on all UK government buildings all the time. The rationale for the changes (set out in an earlier Green Paper) included the government’s view that:

“..in other countries, such as France and the United States, the national flag is regarded as a source of pride, in recent years the Union flag has all too often become the preserve of political extremists, a symbol of discord rather than harmony. It is critical that this symbol is not hijacked by those who seek to work against the fundamental British values of tolerance and mutual respect.”

4. The Scottish Executive revised its guidance in 2006 to require the flying of the Saltire each day from Executive buildings and the flying of the Union flag on designated flag days. The National Assembly for Wales building flies the Union flag, the Red Dragon and the European Flag on a daily basis.



5. Research for the initial EQIA report showed that a number of major city councils in England and Wales had already adopted the policy of flying the Union flag every day (for example, Bradford, Coventry, Newcastle, Cardiff and Swansea<sup>3</sup>). Others tended to fly the Union flag on designated flag days only (for example, Birmingham, Leeds, Manchester and Sheffield). In Scotland, the majority of councils tended to fly the Union flag alongside the Saltire on designated flag days, although some flew both flags every day (for example, Aberdeenshire, Dundee, Moray, Renfrewshire and Scottish Borders). Edinburgh City Council flew the Saltire every day but did not fly the Union flag, although there was a flag displayed inside the Council Chambers.

6. Although the research has not been fully repeated for this report, it appears that some councils have changed their policies as a result of the White Paper. For example, Birmingham, Leeds and Sheffield councils now fly the Union flag every day.

#### **Policies of other councils in Northern Ireland**

7. When the initial EQIA was prepared, a full list of the policies of other councils in Northern Ireland was compiled. Since then, several councils have undertaken EQIAs and three have changed their policies; Limavady Borough Council decided to fly no flags (having previously flown the Union flag on designated days); Ards Borough Council decided to fly the Union flag at its headquarters every day instead of on designated days and Craigavon Borough Council made a minor change adding some specific occasions to the list of designated flag days. The current position is set out in the table overleaf and summarised below:

- 8 councils fly no flags;
- 2 councils fly a neutral 'civic' flag;
- 10 councils fly the Union flag every day at one or more buildings;
- 3 councils fly the Union flag on designated flag days plus a small number of additional specified days at one or more buildings;
- 2 councils fly the Union flag on designated days at the headquarters building only.

---

<sup>3</sup> Cardiff and Swansea also fly the Red Dragon every day.

## Policies of Northern Ireland Councils

		Union flag flown		Alternative policy
	Council	Frequency	Location	
1	Antrim	every day	2 buildings	
2	Ards	every day	HQ + 4 other buildings	
3	Armagh	designated days	HQ	
4	Ballymena	every day	HQ + 2 other buildings	
5	Ballymoney	designated +2	3 buildings	
6	Banbridge	every day	HQ	
7	Carrickfergus	every day	HQ	
8	Castlereagh	every day	HQ	
9	Coleraine	every day when building is in use	2 buildings	
10	Cookstown			No flags
11	Craigavon	designated + others	HQ + others	
12	Derry			No flags
13	Down			Neutral flag
14	Dungannon	designated	HQ	
15	Fermanagh			No flags
16	Larne	every day	HQ	
17	Limavady			No flags
18	Lisburn	designated +2	HQ	
19	Magherafelt			No flags
20	Moyle			No flags
21	Newry & Mourne			No flags
22	Newtownabbey	every day	every building	
23	North Down	every day	3 buildings	
24	Omagh			Neutral flag
25	Strabane			No flags

### AVAILABLE DATA

- B1 Belfast City Residents (by Section 75 category)
- B2 Belfast City Council Employees (by community background and gender)

## Belfast City Residents (by Section 75 category)

**Note:** The following analysis of Belfast City residents by Section 75 category is based mainly on Census information from 2001, updated, where possible, from the 2011 Census data published in July and September 2012.

### Religious belief

There is a fairly even proportion of people from the two main communities with 47.2% of residents from a Catholic community background and 48.6% from a Protestant or other Christian related community background<sup>4</sup>.

However, there are many neighbourhoods comprising people almost exclusively from one community background; in the 2007 Council public survey, 78% of residents described their area as mainly one religion<sup>5</sup>. In the Council's 2010 public survey, 51% of those surveyed stated 'that their local area is a place where people from different religious and political backgrounds get on well together'. 4.2% of the population has indicated that they are of a non-religious persuasion or a member of other non-Christian religions<sup>6</sup>.

### Political opinion

The results of the last Council election (May 2011) are set out in the table below.

	Percentage of first preference votes cast		Number of Councillors	
	2001	2011	2001	2011
Sinn Féin	28.4%	29.4%	14	16
Ulster Unionist	18.3%	8.6%	11	3
Democratic Unionist	18.1%	23.5%	10	15
SDLP	17.4%	13.8%	9	8
Alliance	6.8%	12.7%	3	6
Progressive Unionist	5.8%	2.8%	3	2
Others	5.1%	9.2%	1	1

**Source:** Belfast City Council

<sup>4</sup> NISRA (2001) Census of Population

<sup>5</sup> Ipsos MORI (2007) Survey of Belfast Resident Population

<sup>6</sup> NISRA (2001) Census of Population

## **Ethnic background**

There is a slightly higher proportion of people from a black and minority ethnic background in Belfast at 1.4% compared with 0.8% in Northern Ireland (NI). The largest minority ethnic groups in Belfast are the Chinese community (0.5%) and the mixed community (0.3%)<sup>7</sup>. The Census data relates to 2001 and does not take account of the influx of migrants over the last 9 years, particularly from the eastern European countries which joined the European Union in 2004. A study commissioned by the Council in 2006<sup>8</sup> estimated that approximately 7500 migrants had settled in Belfast during the previous 2 years, mostly people within the 18-34 age range. Most new migrants to Belfast come from Poland, followed by Slovaks, Filipinos, Indians and Czechs.

## **Age**

Belfast has a lower percentage of young people (aged under 16 years) than the NI average. In 2011<sup>9</sup>, 19% of Belfast residents were under 16 years (compared with 21% in NI as a whole). The figures for people aged over 65 years for Belfast and Northern Ireland are almost identical at 14.6%. Population projections for the 15 year period ending 2021 indicate that the percentage of young people is likely to fall and the percentage of older people is likely to rise<sup>10</sup>.

## **Marital status**

A relatively high percentage of residents are single at 41.3% compared with the NI average of 33.1%. There is also a higher percentage of widowed people at 9.3% compared with the NI average of 7.8%. Conversely there are fewer married people at 36.9% compared with the NI average of 48.5%<sup>11</sup>.

## **Sexual orientation**

Approximately 1% of the NI population identify themselves as gay or lesbian<sup>12</sup>; however, the Council currently has no data specific to Belfast.

## **Gender**

---

<sup>7</sup> NISRA (2001) Census of Population

<sup>8</sup> Jarman, N (2006) New Migrants and Belfast

<sup>9</sup> NISRA (2011) Census of Population

<sup>10</sup> NISRA Demography (2005) Population Projection 2021

<sup>11</sup> NISRA (2001) Census of Population

<sup>12</sup> ARK (2003) NI Life & Times Survey

Belfast has a predominantly female population (51.9% of residents). This is slightly higher than the NI figure of 51.0%<sup>13</sup>.

### **Disability**

The 2001 Census showed that one in four (24.2%) of Belfast residents has a limiting long term illness, health problem or disability which limits their daily activities or the work they can do, compared with the NI average of 20.3%<sup>14</sup>. Most people underestimate the prevalence of disability in NI; 92% of respondents to a survey in 2002 thought that the figure was lower than it actually is<sup>15</sup>.

### **Dependants**

30.4% of households in Belfast include dependant children, compared with the NI average of 36.5%. 11.0% of households consist of a lone parent and a dependant child or children, compared with the NI average of 8.1%. Over 94% of lone parents in Belfast are female<sup>16</sup>.

At the time of the 2001 Census, 11.8% of people said that they provided unpaid care for a dependant person; this is slightly higher than the NI average of 11.0%<sup>17</sup>.

### **Multiple deprivation**

On many measures of socio-economic performance there has been a narrowing of the gap between the Belfast region and UK averages; however, on most measures a gap remains. As the Northern Ireland Poverty and Social Exclusion Survey noted, exclusion remains a fact of life for a large section of the regional population with Belfast containing more than its proportionate share<sup>18</sup>. About 46% of the Belfast population live in the most deprived Super Output Areas in NI and Whiterock 2 is ranked as the most deprived area in NI. 35% of the Belfast population are identified as income deprived (compared with 25% in NI as a whole) and 16% identified as employment deprived (compared with 13%)<sup>19</sup>.

---

<sup>13</sup> NISRA (2011) Census of Population

<sup>14</sup> NISRA (2001) Census of Population

<sup>15</sup> Equality Commission NI (2002) Survey into Public Attitudes to Disability

<sup>16</sup> NISRA (2001) Census of Population

<sup>17</sup> NISRA (2001) Census of Population

<sup>18</sup> OFMDFM (2008) Poverty and Social Exclusion Survey

<sup>19</sup> NISRA (2010) NI Multiple Deprivation Measures

**Belfast City Council Employees**  
**(by community background and gender)**

Standard Occupational Classification Major Groups	No. of Protestant Male employees			No. of Roman Catholic Male employees			No. of Male employees whose community cannot be determined		
	FT	PT	Total	FT	PT	Total	FT	PT	Total
1 Managers and senior officials	88	0	88	98	0	98	6	0	6
2 Professional occupations	60	0	60	55	0	55	7	0	7
3 Associate professional & technical occupations	83	29	112	60	13	73	6	2	8
4 Administrative and secretarial occupations	45	3	48	31	3	34	8	0	8
5 Skilled trades occupations	95	8	103	50	8	58	4	0	4
6 Personal service occupations	104	32	136	74	29	103	8	1	9
7 Sales and customer service occupations	1	3	4	1	4	5	0	0	0
8 Process, plant and machine operatives	161	6	167	83	6	89	7	0	7
9 Elementary occupations	234	14	248	159	9	168	15	4	19
<b>TOTALS</b>	<b>871</b>	<b>95</b>	<b>966</b>	<b>611</b>	<b>72</b>	<b>683</b>	<b>61</b>	<b>7</b>	<b>68</b>

Standard Occupational Classification Major Groups	No. of Protestant Female employees			No. of Roman Catholic Female employees			No. of Female employees whose community cannot be determined		
	FT	PT	Total	FT	PT	Total	FT	PT	Total
1 Managers and senior officials	99	0	99	103	0	103	10	0	10
2 Professional occupations	46	0	46	56	0	56	0	0	0
3 Associate professional & technical occupations	57	17	74	70	27	97	6	3	9
4 Administrative and secretarial occupations	144	10	154	129	13	142	5	2	7
5 Skilled trades occupations	2	0	2	0	0	0	1	0	1
6 Personal service occupations	35	51	86	31	53	84	6	2	8
7 Sales and customer service occupations	6	1	7	4	10	14	2	1	3
8 Process, plant and machine operatives	1	0	1	1	0	1	0	0	0
9 Elementary occupations	79	1	80	44	2	46	5	0	5
<b>TOTALS</b>	<b>469</b>	<b>80</b>	<b>549</b>	<b>438</b>	<b>105</b>	<b>543</b>	<b>35</b>	<b>8</b>	<b>43</b>

**Source: Fair Employment Monitoring Return, January 2012**



## **Appendix C**

### **RESEARCH GATHERED IN 2003**

- 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)

## **Complaints and comments**

When the initial EQIA was undertaken in 2003 the Council had received no specific complaints about the flying of the Union flag, although the Registrar identified one occasion when a customer had made adverse comments on the service provided for marriages, including an objection to the flying of the Union flag.

## Opinion of Senior Counsel

1. In 2002, before the initial EQIA was undertaken, the Council sought the opinion of Senior Counsel (Mr. Nicholas Hanna QC) in relation to the current policies on the display of flags, memorabilia and emblems at the City Hall. The initial EQIA was undertaken as a result of the opinion he gave. The full text of this opinion is included in the full EQIA report (which can be accessed on the Council's website at [www.belfastcity.gov.uk/equality/impact.asp](http://www.belfastcity.gov.uk/equality/impact.asp)) and the main points relating to the flying of the Union flag are quoted below:

2. On the issue of a good and harmonious working environment:

“At first sight it might be thought that the flying of the Union flag on the *exterior* of the City Hall or the other two Council buildings would be unlikely to have an intimidatory or chilling effect on persons who worked within those buildings. It is, however, possible that a tribunal might conclude, at least to some extent, that they did have that effect. “

“...it is unlikely that a tribunal would fault the Council if it chose to fly the Union flag on the City Hall on designated flag days. Such a practice would be consistent with the practice of many public bodies, including councils, throughout the United Kingdom. It would accord with the practice laid down for government buildings and could be regarded as “striking the right balance between, on the one hand, acknowledging Northern Ireland's constitutional position and, on the other, not giving offence to those who oppose it” (per Kerr J in *Re Murphy's Application for judicial review*, 2001).”

“...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.”

3. On the issue of promoting good relations:

“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.”

4. In 2004, Senior Counsel was asked to provide a further opinion on the alternative policy options under consideration and this was reported to the Policy and Resources Committee together with the EQIA report in April 2004 and taken into account when the final decision was made.

## Submissions by Party Groups

In 2003 the party groups represented on the Council were invited to submit written statements giving their views on the policy. The full text of each submission is included in the full 2004 EQIA report (which can be accessed on the Council's website at [www.belfastcity.gov.uk/equality/impact.asp](http://www.belfastcity.gov.uk/equality/impact.asp)) and the main points are summarised below.

### Sinn Féin

- any approach to the issue of flags should be set firmly within the context of the Good Friday Agreement;
- the agreement acknowledged the sensitivity of the use of symbols and emblems for public places and the need to ensure that they are used in a manner which promotes mutual respect rather than division;
- for Nationalists and Republicans the British Union flag is a symbol of foreign domination and represents generations of injustice, oppression, inequality, discrimination and violence;
- if Nationalists and Republicans are to feel comfortable inside and outside the City Hall, then everyone's cultural identity must be recognised and legitimised;
- where British cultural symbols are involved in public life, equivalent Irish cultural and political symbols should be given equal prominence.

### Ulster Unionist Party

- in the Belfast Agreement the constitutional position of Northern Ireland is stated as being "in its entirety" part of the United Kingdom and the flying of the Union flag from the City Hall is a clear expression of that constitutional position;
- we do not believe the flying of the Union flag suggests a particular religious belief or political opinion and does not have an adverse effect in respect of equality;
- the Union flag should be accorded no less standing than in any other parts of the United Kingdom.

### Alliance Party

- symbols should not be used to stress dominance or to exclude; symbols such as flags should be used to promote pluralism and aim to unite the community;

- as an acknowledgment of the constitutional status of Northern Ireland the Union flag should be flown on designated days from the City Hall;
- serious consideration should be given to the creation and flying of a new flag for the City of Belfast;
- the regular flying of the Irish Tricolour alongside the Union flag would have two negative effects: it would imply that there was joint authority and it would suggest that the Union flag represented one section of the community while the Tricolour represented another, entrenching divisions.

### **Democratic Unionist Party**

- the flying of the Union flag is a visible expression of the constitutional status of Northern Ireland as an integral part of the United Kingdom;
- the Union flag should continue to fly on Belfast City Hall all year round and should be flown at all Council offices on the same days and in the same manner as on government buildings generally;
- we believe that the flying of the Union flag on public buildings is not something that causes offence to the vast majority of nationalists; however, any attempt to curtail the flying of the Union flag on Council buildings will cause grave offence to the entire unionist community in Belfast and potentially irreparable damage to relations between the two communities.

### **Progressive Unionist Party**

- Northern Ireland is an integral part of the United Kingdom and the flag of a nation is a constitutional symbol;
- while this needs to be respected there is no requirement to fly the flag every day;
- it is our opinion that the Union flag should fly outside the City Hall, the Ulster Hall and the Duncrue Complex on the designated flag days plus the additional four days exclusive to Northern Ireland.

### **Social Democratic and Labour Party**

- the issue of the display of flags is a difficult and divisive one which requires to be managed with sensitivity;
- judgement on this issue should be informed by relevant legislative provisions and legal precedents;
- the display of the Union flag is clearly identified with the Unionist community, with the Union with Britain and with those who would refer to themselves as British;

- to display the Union flag – or for that matter the Irish Tricolour – alone is contrary to legal principles and good practice;
- the SDLP remains committed to developing this issue in a creative and constructive manner but, in the interim, favours the option of flying no flags – this would not be a resolution of the issue but reflects realities without closing down opportunities.

## Opinions expressed by the Equality Commission

1. The initial EQIA report made reference to two statements by the Equality Commission of relevance to the assessment of equality impacts of the flying of the Union flag:

“the display of the Union flag – other than in a ceremonial context – could, to varying degrees, involve an expression of sectoral community allegiance. As such, this should be regarded as unacceptable.” (*verbal statement to the NI Assembly Ad Hoc Committee on Flags (NI) Order 2000, October 2000*);

“the Commission urges the avoidance of contentious displays which act as a badge for community or political allegiance” (*written advice to Fermanagh District Council, March 2002*).

2. Subsequently the Equality Commission submitted written comments on the initial EQIA. The full text is set out in the full 2004 EQIA report (which can be accessed on the Council’s website at [www.belfastcity.gov.uk/equality/impact.asp](http://www.belfastcity.gov.uk/equality/impact.asp)) and the main points are summarised below:

- the Commission recommended that the Council should reconsider its existing policy in terms of the extent of the displays of the Union flag in terms of the number of days and the locations on which it is flown;
- the Commission recommended that the Council reconsider the policy option of flying the Union flag on designated days at the Ulster Hall and Duncrue Complex;
- the option that no flag be flown or that a ‘neutral’ or ‘civic flag’ be flown are acceptable policies, provided that the flag is not associated predominantly with one community in Northern Ireland.



## Results of surveys of employees and suppliers

1. As part of the consultation process on the initial EQIA, written surveys of employees and suppliers were undertaken and two focus group discussions with Council employees were facilitated.
2. The findings of the surveys and comments made at the focus groups are set out in the full EQIA report (which can be accessed on the Council's website at [www.belfastcity.gov.uk/equality/impact.asp](http://www.belfastcity.gov.uk/equality/impact.asp)) and the main points are summarised below.

### Employee survey

3. The main findings of the employee survey were that:
  - 42% of Council employees returned questionnaires;
  - 42% of all respondents thought that the current policy should not be changed and 35% thought that it should;
  - when asked to explain why they thought that the policy should not be changed, the most frequent comment made by respondents was that the Union flag is the flag of the United Kingdom of which Northern Ireland is a part;
  - when asked to explain why they thought that the policy should be changed, respondents mainly commented about the need to promote a neutral and harmonious environment and to ensure that no-one was offended by the policy;
  - the most popular option for those with a Catholic and/or Nationalist background was to fly a neutral flag whilst the most popular option of those with a Protestant and/or Unionist background was to retain the current policy.

### Employee focus groups

4. The main comments made were:
  - flying the Union flag as a mark of respect is acceptable but when any flag is flown as a symbol of dominance the practice becomes unacceptable;

- most participants felt that the Council flew the Union flag in a respectful way and not in order to make a political point and that most employees would understand this;
- several participants felt there was a need for change in order that the Council could show that it was leading the way in promoting good relations.

### **Supplier surveys**

5. A small number of suppliers who had reason to visit the City Hall, Ulster Hall or Duncrue Complex were asked to provide comments by means of three separate written surveys. The main comments were:

- City Hall – 7 respondents felt that the policy should not be changed because the Union flag is the national flag whilst 5 respondents felt the current policy did not provide a neutral environment for visitors and portrayed the Council as being representative of one community;
- Duncrue Complex– 2 responses were received, both in favour of the current policy;
- Ulster Hall – 3 responses were received, one in favour of the current policy and two favouring a neutral or civic flag.

## **Appendix D**

### **RESEARCH GATHERED IN 2011-12**

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

## Complaints and comments

1. The current review of the policy is being undertaken partly as a result of a letter from the Sinn Féin party group to the Chief Executive in March 2011. In the letter, Councillor McVeigh stated that:

“Over the past number of weeks and months, our Sinn Féin team in the council have received a number of complaints from constituents in relation to the current council policy of flying the Union Jack above the City Hall.

We have also been approached by a number of members of council staff, who work both in Duncrue Street Council depot and City Hall itself, who have raised their concerns about both the flying of the Union Jack and the overwhelming British/Unionist nature of memorabilia throughout the City Hall itself.

It is very clear that a significant proportion of the City find this policy of flying the Union Jack at worst offensive and at best off-putting. Clearly some members of staff find the flying of the Union Jack intimidating also.”

2. The Chief Executive has also received six letters from individuals in recent months, expressing concerns about the policy. Comments included:

“I was very offended to see the Union flag flying”

“I was surprised and annoyed to see the Union Jack flying over the City Hall... As a Nationalist who aspires to Irish re-unification and as someone who gives his allegiance to the Irish Tricolour, I found the presence of the Union Jack above my City Hall offensive.”

“when I think of a building flying the British Union Jack I think of a place that is predominantly Protestant/Unionist. It certainly did not look to be a “City Hall for all”, but for only one side of the community.”

“I believe that this is ...divisive and intimidating and is counter-intuitive when it comes to nurturing cross community participation..... I believe

that if the Tricolour were to fly above City Hall, it would be a harmonious gesture and would allow all to feel that their national identity is both respected and represented.”

“... I’ve always felt alienated from my City Hall and its grounds because it is a bastion of Unionism and Britishness.”

“tourists come to Belfast to see Ireland and the Irish culture – if they wanted English culture they would go to England in the first place – this is why we would like the flags flying together – to show that we are united as one.”

## Opinion of Senior Counsel

### BRIEF TO ADVISE

BELFAST CITY COUNCIL

Querist

in relation to its approach to the  
flying of flags at Council buildings

---

### COUNSEL'S ADVICES

---

#### INTRODUCTION

1. I am asked to advise Belfast City Council ('the Council') in relation to its approach to the flying of flags at Council buildings. I understand this issue is currently under consideration by the Council and that an equality impact assessment (EQIA) on the matter is being prepared. My advice is sought in relation to the legal context in which the issue arises, in order to inform the EQIA.

#### FACTS AND INSTRUCTIONS

2. In brief compass, the position remains that the Union flag is flown at City Hall every day, *i.e.* 365 days *per* year. The Union flag is also flown at the Duncrue Complex and the Ulster Hall on specified flag days, namely the 18 government designated flag days plus New Year's Day, Easter Day, 12 July and Christmas Day. It may also be flown at half mast on *ad hoc* occasions to mark a particular event, usually a death or funeral.

3. Other flags are rarely, but periodically, flown, in accordance with various decisions of the Policy and Resources Committee. For instance, the flag of the Cross of St Patrick is flown at City Hall on St Patrick's day (alongside the Union flag); the European flag is flown on Europe Day; and the Red Ensign is flown on National Merchant Navy Day. Flags of other nations may on occasion be flown to mark the presence of overseas dignitaries or heads of state.
4. This position has evolved over a considerable period of time as a result of 'custom and practice'. As appears below, detailed consideration was given to a change of policy in relation to the flying of flags in 2004 but this resulted in no change to the present practice.
5. The matter has been raised again in recent times, partly due to the relocation back into the City Hall after its refurbishment, but particularly by means of a letter from Cllr McVeigh to the Chief Executive of 14 March 2011. The issue was referred back to the Strategic Policy and Resources Committee ('the SP&R Committee') by the Chief Executive in response. At the Committee's meeting of 15 April 2011 it was determined that the matter should be left for consideration until after the local government elections in May 2011, so that the newly elected Committee could consider it.
6. On 17 June 2011, the SP&R Committee agreed that an updated EQIA in relation to the issue should be prepared. As noted above, this advice has been sought in the context of that process.

#### **THE PREVIOUS LEGAL ADVICE**

7. Much the same issues as I am asked to address have already been considered in some detail by one of my colleagues, Mr Nicolas Hanna QC, in advices provided to the Council on 27 March 2002 ('the Hanna advice')<sup>20</sup>. These advices were sought following the receipt at that time, by the Chief Executive, of a complaint from a

---

<sup>20</sup> A further version of these advices was provided on 22 April 2002 but in terms which are not materially different from the original opinion.

councillor about the Council's policies and practices in relation to the flying of flags and the display of artefacts and memorabilia on council premises.

8. I am bound to say that I agree, in very large measure, with the advice which was given by Mr Hanna QC. I would accordingly commend further consideration of his advices. I do not propose to rehearse exactly what he has already said. However, I summarise the main conclusions of that advice below:

- (a) The Council is obviously free to change its policies and practices in relation to the flying of flags by democratic decision at any time – provided that what is decided is lawful<sup>21</sup>.
- (b) The extent to which the flying of the Union flag is directly regulated by law – in the form of the Flags (Northern Ireland) Order 2000 and related Flags Regulations (Northern Ireland) 2000<sup>22</sup> – is limited to government buildings. Accordingly, the 2000 Order and Regulations do not prescribe how the matter should be dealt with by the Council<sup>23</sup>.
- (c) However, seeking to 'translate' the provisions of those instruments into the Council's context<sup>24</sup>, they would probably point towards the Union flag being flown at City Hall on government designated flag days; to the flag not being flown at all at the Ulster Hall; and to there being a discretion to fly the flag at the Duncrue Complex; but the Union flag should not be flown at any other time, other than on the designated flag days<sup>25</sup>.
- (d) Given that there is no direct legal control over the Council's policies and/or practice in this regard, the then (and now) current policy and practice are *prima facie* lawful, unless some cause of action or ground of challenge in public law can be made out in relation to them<sup>26</sup>.

---

<sup>21</sup> See the Hanna advice, at paragraph 7.

<sup>22</sup> As now amended as to the designated days by the [Flags Regulations \(Northern Ireland\) \(Amendment\) 2003 \(SR 2003/553\)](#).

<sup>23</sup> *Ibid*, at paragraph 8.

<sup>24</sup> For whatever that is worth.

<sup>25</sup> See, again, the Hanna advice, at paragraph 8.

<sup>26</sup> See the Hanna advice, at paragraph 10.



- (e) The relevant employment discrimination legislation – principally contained within article 19 of the Fair Employment and Treatment (Northern Ireland) Order 1998 (FETO) – has been interpreted as requiring employers to provide, and take steps to maintain, a ‘neutral working environment’ for employees. This concept is defined further in guidance, in which employers are urged to “promote a good and harmonious working environment”, a policy reflected in the Council’s own Equal Opportunities Policy. In essence, the obligation is to create a working environment in which employees should not be subjected to a detriment by feeling intimidated or harassed, or being subjected to a ‘chill factor’<sup>27</sup>. Whether this obligation has been breached is to be judged objectively and not through the mere assertion of offence.
- (f) It is difficult to see how the flying of the Union flag on the exterior of Council buildings would be likely to have an intimidatory or chilling effect on persons working within the buildings – although a tribunal could conclude that it had that effect<sup>28</sup>.
- (g) A tribunal is unlikely to fault the Council for flying the Union flag at City Hall on designated flag days – since this would recognise the City Hall’s place as the administrative headquarters of this body of local government, accord with the approach at government buildings generally and also accord with the approach adopted at a number of councils in Great Britain<sup>29</sup>.
- (h) On the contrary, the tribunal would require the flying of the Union flag more often than on designated flag days to be justified; and the explanation of simple ‘custom and practice’ may not be regarded as satisfactory. Likewise, the flying of the Union flag at other Council buildings may also require justification, which is presently unclear. There is a risk here of an adverse finding if a claim was brought in a tribunal, although this risk is “probably quite small”<sup>30</sup>.

---

<sup>27</sup> *Ibid*, at paragraphs 12-13.

<sup>28</sup> *Ibid*, at paragraph 15.

<sup>29</sup> *Ibid*.

<sup>30</sup> *Ibid*.

- (i) FETO also prohibits discrimination in the provision of goods, facilities and services to the public. The flying of the Union flag is unlikely to give rise to discrimination in this regard, given the limited definition of discrimination within article 28 of FETO, which contains nothing equivalent to the requirement of a 'neutral working environment' which applies in the employment field<sup>31</sup>.
- (j) The anti-discrimination provision in section 76 of the Northern Ireland Act 1998 is unlikely to add anything to the provisions of FETO discussed above and the risk of the Council's present policies being held to be in breach of its section 76 obligations is remote<sup>32</sup>.
- (k) The Council's Equality Scheme focussed on the question of equality of opportunity<sup>33</sup> and did not adequately deal with good relations<sup>34</sup>. A policy requiring the flying of the Union flag every day runs a risk of being found to be in breach of section 75(2) of the Northern Ireland Act 1998 on the basis that it could only have been arrived at in disregard of the desirability of promoting good relations<sup>35</sup>. Likewise a policy of banning the flying of the Union flag completely may be found to be in breach of that obligation. In either event, the important thing is to consider the good relations aspect of the matter in the setting of any policy, recognising that the desirability of promoting good relations can be outweighed by other factors<sup>36</sup>.
- (l) It is much less likely that there would be any breach of the section 75(1) obligation since the flying of the flag is unlikely to have any significant effect on equality of opportunity<sup>37</sup>.

---

<sup>31</sup> See the Hanna advice, at paragraph 16.

<sup>32</sup> *Ibid*, at paragraph 17.

<sup>33</sup> Pursuant to section 75(1) of the Northern Ireland Act 1998.

<sup>34</sup> Pursuant to section 75(2) of the 1998 Act. See the Hanna advice, at paragraph 21.

<sup>35</sup> See the Hanna advice, at paragraph 24.

<sup>36</sup> *Ibid*, at paragraph 26.

<sup>37</sup> *Ibid*, at paragraph 25.

9. I provide some further comments on the legal position below, which are necessarily limited given the comprehensive nature of Mr Hanna QC's advice, with which I agree in large measure, and which holds good given the absence of any particularly significant legal developments in the meantime.

#### **UPDATE ON THE FACTUAL POSITION**

10. There have been a number of developments, of varying significance, further to the provision of Mr Hanna's advice in 2002. I understand these will be addressed in more detail in the EQIA itself and they are mentioned here merely to provide context for the discussion of the present legal context which follows.

#### *The Good Relations Strategy*

11. In the first instance, the Council adopted a Good Relations Strategy in February 2003, with a copy of which I have been provided<sup>38</sup>. It deals comprehensively with the Council's strategy in relation to promoting good relations, including by adopting that as a corporate strategy. The flags issue is mentioned specifically in the Strategy but dealt with only briefly in the following terms:

"The Cultural Diversity Sub-Committee also discussed the problems associated with the display of flags and emblems. It agreed that the current Council logo was non-offensive and should be displayed more prominently on Council properties and suggested that consideration should be given to developing a Belfast flag.

At its meeting on 4<sup>th</sup> November 2002, the Council agreed that its current policy on the flying of flags on Council properties should be the subject of an Equality Impact Assessment. It is likely that the results of this will assist in resolving what has proved to be a contentious political issue within the Council.

---

<sup>38</sup> The Council also published a Good Relations Plan in 2007 but this seems to me to be less relevant than the underlying Strategy.

It is beyond the scope of this strategy to provide definitive answers to all of the sensitive and complex issues outlined above, but the Council will attempt to address these within the near future.”

#### *The 2004 EQIA*

12. The next year, the Council conducted the detailed EQIA on the flying of the Union flag which had been mentioned in the Good Relations Strategy. It was, at least in part, a product of the advices provided by Mr Hanna. The EQIA was produced in March 2004 and considered the questions both of equality of opportunity and good relations. The EQIA process involved consultation of a wide range of users of Council facilities, from the elected members, to employees, to contractors, to visitors, and so on.

13. In discussing the impact of the Council’s policy, it was said that:

“It is very difficult to assess the degree of impact of the Council’s current policy. It does not have a measurable effect and the actual impact depends on the perception of each individual. A recent survey showed that a large percentage of people do not have particularly strong views about flags.”<sup>39</sup>

14. Likewise, it was said to be “difficult to define the tangible effects of the adverse differential impact of the current policy”<sup>40</sup>.

15. The 2004 EQIA went on to discuss the various options under consideration at that time – namely, maintaining the current policy; flying flags on designated flag days only; flying two flags (the Union flag and the Irish Tricolour); flying no flags; or flying a neutral or civic flag.

---

<sup>39</sup> See section 5.1 of the 2004 EQIA.

<sup>40</sup> Section 5.3.

16. In terms of the breakdown of responses from both employees and the public consultation, there was, in my view, a certain predictability to the results obtained. By far, most of those from a Protestant background favoured no change to the policy and most of those from a Catholic background favoured change either to a position of there being no flags flown or a neutral/civic flag flown.
17. The outcome of the detailed research accompanying the present EQIA process remains to be seen. The previous process, however, appears to me to have indicated that the issue is not one of particular concern to most users or employees of the Council or its premises; that the flying of the Union flag has no particular or strong effect on such persons; but that, when asked, most people would prefer the maintenance or removal of the flag on the basis of their community allegiance.

*The further legal advice*

18. Further to the carrying out of the EQIA, Mr Hanna QC was asked to give further advice, which he did on 9 February 2004 – although stressing that this had to be read in conjunction with his earlier advices. On this occasion, rather than simply addressing the legality of the then current policy, Mr Hanna was asked to express views on the legality of the various options under consideration. On this occasion, his advice (again, with the content of which I broadly agree) may be summarised as follows:
- (a) There is a “definite risk” that the flying of the Union flag at the City Hall on days other than designated flag days, and particularly every day of the year, could be held to infringe the concept of a neutral working environment, contrary to article 19 of FETO. There is a similar risk in relation to the flying of the Union flag at other Council buildings, even on designated flag days only, since it is difficult to discern a proper justification for the use of the flag in relation to two further Council buildings not having the same status as City Hall<sup>41</sup>.

---

<sup>41</sup> Hanna advices #2, at paragraph 6 and 12-13.

- (b) There is also a risk that that policy might be held, on a complaint to the Equality Commission, not to comply with the Council's Equality Scheme as not having had regard to the desirability to promote good relations (with a much lesser risk in relation to the obligation to promote equality of opportunity)<sup>42</sup>.
  - (c) It is unlikely that there is a breach of any other legal obligation in relation to the current policy<sup>43</sup>.
  - (d) Having regard to the legal principles discussed with reference to the current policy, the flying of the Union flag at additional Council buildings or at the Ulster Hall and Duncrue Complex on additional days would be fraught with risk<sup>44</sup>.
  - (e) The policy of flying the Union flag at the City Hall on designated flag days only, flying no flag at all or flying a genuinely neutral flag were all options within the legitimate range open to the Council<sup>45</sup>.
  - (f) Although the flying of the Irish Tricolour would not, *per se*, be unlawful, having regard to the legal obligations discussed, it was difficult to regard this as being within the range of options legitimately open to the Council<sup>46</sup>.
19. This advice, and the EQIA, were discussed at a meeting of the Policy and Resources Committee on 26 March 2004. Failure to agree a way ahead at that meeting meant that, in effect, the current policy continued by default.

*The views of the Equality Commission*

20. There has also, I understand, been some modest clarification of the position of the Equality Commission. In 2002, it provided advice (recorded in the 2004 EQIA) which essentially indicated that there should be "particular sensitivity concerning displays

---

<sup>42</sup> *Ibid*, at paragraph 8

<sup>43</sup> *Ibid*, at paragraph 7.

<sup>44</sup> *Ibid*, at paragraphs 9-10.

<sup>45</sup> *Ibid*, at paragraphs 11, 16 and 17.

<sup>46</sup> *Ibid*, at paragraph 18.

which are wholly or mainly associated with one section of the community”. Insofar as a preference was stated, this appears to have been that there should be no display of flags at workplaces and that the Union flag should not be used in a way of expressing sectoral community allegiance (although this was to be distinguished from being used in a ceremonial context).

21. In the context of the 2004 EQIA, the Commission essentially repeated its plea for particular sensitivity; and recognised that context was important. At one end of the spectrum, the flying of the Union flag can be used simply to symbolize the constitutional position of Northern Ireland and, at the other end of the spectrum, may be used as an indicator of sectional community allegiance. In this vein, the Commission recognised a distinction between the headquarters of a council and more localised offices or facilities. In summary, the Commission recommended that the existing policy be reconsidered as regards the extent of the display of the Union flag at City Hall and the flying of the flag at the Duncrue Complex and the Ulster Hall. It also considered that flying no flag at all or a neutral/civic flag would be acceptable.
22. Since that time, in October 2009, the Equality Commission has issued further guidance entitled *Promoting a Good & Harmonious Working Environment: A Guide for Employers and Employees*. I think it is fair to say that the emphasis has shifted away from the concept of a neutral working environment to one which is harmonious. So, for instance, the guidance expressly states that:

“While the Commission recognises that some employers will still choose to promote their workplace environment as a “neutral” space, it is important to recognise that the two concepts “harmonious” and “neutral” are not inextricably linked. In other words, an “harmonious” working environment does not necessarily need to be a “neutral” one.”

23. More pertinently in the present context, the guidance says this about the flying of the Union flag:

“The Commission is often asked for its opinion with regard to the flying of the Union Flag at workplaces. We remain of the view that the flying of the Union Flag must be viewed within the context in which it is flown or displayed. Factors affecting the context include the manner, location and frequency with which flags are flown. The Union Flag is the national flag of the United Kingdom and, arising therefrom, has a particular status symbolising the constitutional position of Northern Ireland. On the other hand, the Union Flag is often used to mark sectional community allegiance. There is a world of difference between these two approaches. Thus, for example, while it is acceptable and appropriate, in the Commission’s view, for a local Council to fly the Union Flag at its Civic Headquarters, the rationale for its display at every Council location, facility and leisure centre would be questionable.” [underlined emphasis added]

24. My reading of this is that the Commission would view the flying of the Union flag at City Hall as acceptable (indeed, appropriate) but would be much more sceptical of there being any rational basis for it being displayed at other Council buildings such as the Ulster Hall or the Duncrue Complex.
25. The guidance gives little clue as to the Commission’s views on the frequency of the flying of the Union flag at City Hall. Some assistance on this matter may be gleaned from a finding of the Commission against Lisburn City Council on a complaint to it under paragraph 10 of Schedule 9 of the Northern Ireland Act. The Commission found that Lisburn City Council had failed to comply with its Equality Scheme in adopting a position requiring the flying of the Union flag at various council locations on a daily basis.
26. However, there are particular circumstances relating to that case. Firstly, this was contrary to a previous position adopted by the Council, after a full equality-audited process, in which it was decided to fly the Union flag on designated flag days only. Secondly, the new decision was taken without any such process having been conducted. And, thirdly, it resulted in the Union flag being flown on a much wider



basis than is presently the case in relation to Belfast City Council facilities. In all of the circumstances, particularly in light of the second factor I have just mentioned, it is unsurprising that a breach of the Council's Equality Scheme was found. I am not sure this is of particular assistance in the present context, however, in terms of indicating clearly how Belfast City Council ought (in the Commission's view) to proceed.

27. Plainly, the position of the Equality Commission will be explored in more detail by the consultant, Ms Wheatley, who is conducting the EQIA on the Council's behalf. My interpretation of the direction of the Commission's thinking is that the preferred option is likely to be the flying of the Union flag at City Hall on designated flag days only and at no other Council locations or, in the alternative, the use of no flag or a civic/neutral flag.

#### **UPDATE ON THE LEGAL POSITION**

28. There have not been any hugely significant legal developments in this area since Mr Hanna QC provided his previous advices. I deal below with some matters not touched upon in Mr Hanna's advice and some developments which are worthy of mention but which do not radically alter the legal landscape.

##### *The Johnston case*

29. In his advices Mr Hanna considered in some detail the FET case of *Brennan v Short Bros plc* (1995). He did not discuss another FET case which is of relevance, namely *Johnston v Belfast City Council* (2000)<sup>47</sup>. In that case, the claimant, who was employed by the Council as a contract supervisor at its Dunbar Street cleansing depot, complained about a portrait of the Queen hanging in his work location. The factual background to the case includes a failure to resolve the issue by agreement when it was raised by the claimant and, indeed, a very considerable flaring up of the issue after it received media attention and elected members became involved. The Tribunal found that the claimant had been discriminated against on the basis of his

---

<sup>47</sup> Case ref 00241/97FET.

political opinion and religious belief but felt the case was not one for a high level of damages.

30. It is understandable that this case was not discussed in any detail by Mr Hanna since the available report of it is very short and records principally the tribunal's consideration of the issue of damages, rather than the reasons for its finding of discrimination. The much more detailed treatment of the issue and reasoning contained within the *Brennan* case means that it can rightly be described as the leading case on this issue.
31. Given that there is much of the factual background which may not be recorded in the available report of the *Johnston* case, there may not be a huge amount which can be drawn from it. However, it seems to me to support fairly strongly the suggestion in Mr Hanna's advice (and the Equality Commission's discussion of the issue) that the display of emblems in a context which is removed from the administrative headquarters of the Council – in this case simply a cleansing depot – is much more likely to give rise to valid complaint.

#### *The PSNI Flags Regulations*

32. Mr Hanna QC also did not deal with the provisions of the Police Emblems and Flags Regulations (Northern Ireland) 2002. These Regulations provide for the PSNI to have a service emblem and a service flag. The service flag is the service emblem on a dark green background and, by virtue of regulation 9, it is "the only flag which may be flown on land or buildings used for the purposes of the police..."; save that, by virtue of regulation 10, on the occasion of a visit by Her Majesty the Queen, the Royal Standard may be flown.
33. There are two points which can be drawn from these regulations. Firstly, as with the Flags Regulations (Northern Ireland) 2000, they are an instance of legislative intervention dealing directly with the flying of flags. As has previously been observed, the absence of any such legislation relating to district councils serves to underline the fact that it is for the Council to decide itself what its policy should be and this is, generally speaking, free from legal prescription. Secondly, however, it is

clear that in the context of the PSNI, a decision has been taken to go with a ‘neutral’ flag as a matter of general policy. This was obviously a political decision taken with the specific context of policing in mind but illustrates one possible solution to this contentious issue in that instance.

*Further cases on section 75*

34. It is also worth mentioning a number of recent cases in relation to public authorities’ obligations under section 75 of the Northern Ireland Act 1998. In paragraph 24 of his advice, Mr Hanna QC indicated that the only case to date of which he was aware in which section 75 had been considered was *Re Murphy’s Application*<sup>48</sup>, itself a case dealing with flags.
35. This provision was considered recently in the case of *Re JR1’s Application*<sup>49</sup>. In that case, the Chief Constable introduced a pilot scheme for the use of Taser by police officers. Although he was conducting an EQIA into this new development, the pilot scheme began in advance of the EQIA having been completed. It could not, therefore, have properly informed the decision to introduce the pilot scheme. For present purposes, two key aspects of the judgment of the Lord Chief Justice are important. First, the judgment appears to reaffirm the approach taken in previous case-law<sup>50</sup> that the remedy for any breach of section 75 is not primarily to be by way of judicial review (and the consequent holding as unlawful of the act which was not properly assessed) but, rather, by way of complaint to the Equality Commission under Schedule 9. Secondly, following the recent approach in English case-law, the decision whether or not to undertake an EQIA<sup>51</sup> could be challenged only on *Wednesbury* grounds. This is because, although the section 75 duty is “wide-ranging” it is also a “general” duty, to be contrasted with the particular and plainly legally enforceable duties contained in section 76 of the Act<sup>52</sup>.

---

<sup>48</sup> [2001] NI 425.

<sup>49</sup> [2011] NIQB 5.

<sup>50</sup> Principally, *Re Neill’s Application* [2006] NICA 5.

<sup>51</sup> Or, in the *JRI* case, to proceed to implement the new policy in advance of the completion of the EQIA.

<sup>52</sup> See paragraphs [29]-[33] of the judgment.

36. I have previously provided advice to the Council in relation to the effect of this authority<sup>53</sup>. However, for present purposes, it suffices to note that the Courts have recently re-emphasised the general nature of the obligation within section 75(1) to have “due regard” for the matters there set out, which is a relatively weak obligation and which can be discharged in a number of ways, not always requiring a full EQIA. The same must also be true of the obligation simply to have “regard” for the desirability of promoting good relations under section 75(2).

## DISCUSSION

37. In relation to the Council’s policy on the flying of flags, I should say immediately that I have a concern that there may be a tendency to ‘over-legalise’ what is essentially a political question. As was made clear by Mr Hanna QC’s advices, there is a range of options open to the Council in relation to the flying of flags, a number of which are likely to be considered by the courts to be lawful. The determination of which policy should be adopted is essentially a political question to which (subject to the caveat expressed below) there is unlikely to be any determinative legal answer. In short, the law does not positively require the Council to adopt any particular policy as to the use of flags.
38. Having said that, when one comes to the application of anti-discrimination law (and, in particular, the provisions of FETO relating to the employment environment), there are clearly some policies which are likely to be more ‘risky’ than others, by which I mean giving rise to a greater risk of an adverse finding by a tribunal in the event that an individual were to bring a discrimination claim. The assessment of such risk is not a precise science, since each case will depend on its own facts and context, the particular evidence given and the individual approach adopted by the specific tribunal members hearing the case. Suffice to say that the more extreme a policy, the more likely it is to give rise to a legitimate claim.

---

<sup>53</sup> In my advices in relation to proposed amendments to Standing Orders and the allocation of Committee appointments of 23 May 2011. In addition, for the reasons mentioned at paragraph 59 of those advices, there is clearly an argument that an EQIA is not strictly required in relation to the flags policy, although I recognise that it has been determined that it would be helpful and appropriate to carry one out in the circumstances.

39. For my own part, it seems to me to be particularly significant that in the one case in this jurisdiction in which the flying of the Union flag has been considered<sup>54</sup>, Kerr J (as he then was) said:

“... the flying of the Union flag [*in the context of the Flags Regulations*] is not designed to favour one tradition over another; it merely reflects Northern Ireland’s constitutional position as part of the United Kingdom.”

40. This decision is likely to be of extremely persuasive value to a tribunal considering a fair employment claim in the present context.

41. On the other hand, it is also plain that Kerr J was extremely sympathetic to the approach adopted by the Secretary of State in the Flags Regulations, namely that the use of the flag should not be inappropriate or excessive and that, in confining its use to designated flag days observed in the rest of the United Kingdom, the Secretary of State was seeking to<sup>55</sup> “strike the correct balance between, on the one hand, acknowledging Northern Ireland’s constitutional position and on the other not giving offence to those who oppose it”.

42. The striking of such a balance seems to me to be a laudable aim. More importantly in the present context, however, the more balanced the approach, the less risk there is likely to be of successful challenge.

43. Drawing all of these strands together, my views can be summarised as follows:

- (1) 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>56</sup> but I consider this risk to be low. I also consider the risk of a successful discrimination claim in the County Court from a member of the public who uses services provided at City Hall to be lower still. As noted in *Murphy*, the use of the Union flag in

---

<sup>54</sup> *Re Murphy’s Application* [2001] NI 425.

<sup>55</sup> And, I think, implicitly in the judgment of Kerr J, had succeeded.

<sup>56</sup> Most likely, an employee who works at City Hall.

this context is not designed to favour one tradition over another, but simply to reflect the constitutional position of Northern Ireland.

- (2) I also do not consider there to be a substantial risk of this policy, if maintained, being found to be in breach of the Council's equality obligations under section 75 of the Northern Ireland Act 1998, provided that decision is taken (as currently envisaged) after full and proper consideration of the EQIA which is being prepared and of the possible effects of the decision on equality of opportunity (which are likely, in my view, to be minimal) and on the promotion of good relations (which might well be more significant). Provided these matters are fully considered within the decision-making process, the Council is free to adopt whatever position it wishes by means of its democratic process<sup>57</sup>. This is because the section 75 obligations are principally procedural obligations as to how decisions are reached and not substantive obligations as to what the resultant decision must be.
- (3) The view expressed at paragraph (2) above is probably the area where I would be most inclined to differ from Mr Hanna QC. His view appeared to be that if the Council were to maintain a policy of flying the Union flag at City Hall every day, or abandoned this completely, there was quite a considerable risk of that decision being held to fall foul of the Council's section 75(2) obligations. 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.
- (4) Plainly, however, there are some options which are likely to be less open to the risk of successful legal challenge in a discrimination claim than others. In that sense, I agree with the previous advice that the flying of the Union flag at City Hall on a restricted number of days<sup>58</sup> is likely to be legally 'safer' than the present policy and very unlikely to give rise to a successful discrimination

---

<sup>57</sup> Subject to any challenge for irrationality or breach of some other relevant legal obligation, the most pertinent of which are discussed in these and Mr Hanna's advices.

<sup>58</sup> The designated government flag days or perhaps those days plus some additional days on which the Council felt, for some particular reason, it was appropriate to display the flag.

claim. The use of no flag or the use of a civic or 'neutral' flag is also extremely unlikely, in my opinion, to be open to successful legal challenge<sup>59</sup>.

(5) 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. The nature of these buildings is such that they can be contrasted with City Hall, which is the seat of local government in the city<sup>60</sup>. It is also unclear why these buildings would be selected, in contrast to other Council buildings or facilities which are not so selected, for the display of the Union flag. Accordingly, there is a much less compelling context for the display of the Union flag at these locations.

(6) That is not to say that the display of the Union flag at the Ulster Hall and the Duncrue Complex is necessary unlawful – particularly given that this is only on a specified number of days *per* year and that the practice has been maintained<sup>61</sup> for quite some time – but 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* case. Any increase in the number of days on which the Union flag is displayed at these locations would obviously increase that risk.

## CONCLUSION

44. I recognise that the issues addressed in these advices are politically sensitive. As I hope I have clearly expressed above, whilst the Council is right to be concerned about the risk of potential claims or challenges, and whilst it is proper for legal

---

<sup>59</sup> An employee with a Protestant or Unionist community background might seek to challenge the position if a decision is taken which effectively ceases the present practice of flying the Union flag, on the basis that this creates what is sometimes termed a 'cold house' for persons of his or her community background. I consider that any such challenge is likely to have a very limited prospect of success indeed.

<sup>60</sup> I recognise that the Ulster Hall is a historic civic building, but it is nowadays mainly used as a venue for concerts and performances, as well as meetings and conferences (for which it may be hired). The Duncrue Complex is the building from which many of the Council's contract services (such as refuse collecting and cleansing) are operated. It is essentially a place of employment for many of the Council's employees.

<sup>61</sup> Without any apparent difficulty, so far as I am aware.

advice to be sought in relation to these issues, there is no 'correct' legal answer to the question of how and when a district council should display the Union flag.

45. I trust these advices will be of some assistance to the Council, and its appointed consultant who is in the course of preparing the EQIA on the matter, in considering the possible legal implications of the various options which are due for consideration. If I can be of any further assistance, the Town Solicitor should not hesitate to contact me further.

**David A Scoffield QC**

**Bar Library**

**Belfast**

**23 November 2011**



## Submissions by Party Groups

The party groups were invited to submit additional or revised comments in July 2011 in order to inform the preparation of the Draft EQIA Report. Five party groups offered additional comments which are set out in full below.

### Alliance Party

#### Background and Principles

The general principle of respect in a divided society should guide the Council in deciding a policy on flying flags. Symbols should not be used to stress dominance or be used to exclude; rather symbols such as flags should be used to promote pluralism and aim to unite the community. The Good Friday Agreement entrenches the Principle of Consent. Hence constitutional position of Northern Ireland is that it remains a part of the United Kingdom unless and until its people decide otherwise. There is a wide spectrum of practice in flag flying on government buildings throughout United Kingdom. The citizens of Belfast are part of a community in Europe, part of the United Kingdom constitutionally and part of a rich and diverse community comprising Belfast.

#### Practice

As an acknowledgement of constitutional status the Union flag should be flown on designated days from the City Hall.

In addition to the Union flag, the flag of the European Union should be flown on Europe Day (May 9) and St Patrick's flag on March 17. Serious consideration should be given to the creation and flying of a new flag for the City of Belfast.

The regular flying of the Irish tricolour alongside the Union flag would have two negative effects. First it would imply that there was joint authority and second it would suggest that the Union flag represented one section of the community while the tricolour represented another, entrenching divisions and harming the prospect of greater pluralism.

## **Progressive Unionist Party**

The Progressive Unionist Party's view of the flag's issue cannot be divorced from their vision for the future based upon the parameters of the GFA.

Northern Ireland is an integral part of the United Kingdom as per the will of the people. It is the view of the Progressive Unionist Party that while this needs to be respected there is no requirement that all day every day this glaring fact is appreciated. However the flag of a nation is a constitutional symbol and is also internationally recognised, a flag identifies its people and territory.

With these facts in mind, it is our opinion that the Union Flag should fly on a permanent basis outside Belfast City Hall. If this is not possible, our position is that the Union Flag should fly outside Belfast City Hall, Duncrue Complex and the Ulster Hall on the 15 'flag days' as in the rest of the UK and those 4 days exclusive to Northern Ireland (New Year's Day, Easter Day, 12 July and Christmas Day).

## **Democratic Unionist Party**

Our submission of 7 April 2003 still reflects the position of the party on this issue.

In essence, it is clear that there is no *legal* reason why the existing arrangement should be changed or any compelling equality consideration. It is purely a *political* question and should be addressed as such, rather than being considered under the cover of an EQIA or suggested legal risk. Those who do not wish the Union Flag to be flown are democratically entitled to vote against it and are accordingly answerable to the electorate. However, from a good relations perspective, it is manifestly obvious that any decision to reduce the frequency of when the Union Flag is flown will have a significantly detrimental impact on good relations within the council.

## **Social Democratic and Labour Party**

### **Introduction**

1. The SDLP recognises that the issue of the display of flags continues to be a difficult and divisive one. The issue requires to be managed with sensitivity, is guided by principle and is in the best interests of all in a divided community. These are high objectives. SDLP proposals in relation to the display of flags were not intended in any way to denigrate those who value the Union or the British monarchy or to deny those who value Britishness or define themselves as Unionists. This policy document attempts to acknowledge these matters and concerns and those who have different senses of identity and to chart a course through difficult issues.

### **Principles Governing the Display of Flags**

2. The SDLP believes that judgement on this issue should be informed by relevant legislative provisions, legal precedents decided by the Fair Employment Tribunal, the Good Friday Agreement and the Agreement between the British and Irish governments, further to the Good Friday Agreement. First, “The Belfast Agreement: an Agreement reached at the Multi-party Talks on Northern Ireland” (commonly referred to as the “Good Friday Agreement” and hereinafter referred to as ‘the Agreement’) provides clear and compelling principles which should inform and can lead to a solution to this issue, a solution which respects the identity of each citizen and each community. It is essential that in determining this issue, the Council adheres to the principles articulated in the Agreement.

Second, the SDLP would refer to the obligations placed on the British Government and particularly on the British Government by the “Agreement between the Government of the United Kingdom, of Great Britain and Northern Ireland and the Government of Ireland, (hereinafter referred to as the ‘Agreement between Governments’). Those obligations are by way of international treaty and binding in international law. Their relevance should be reflected in the policy of the Council.

Third, the SDLP refers to the relevant provisions of the Northern Ireland Act 1998, and in particular the Section 75 equality duty.

Fourth, the contents of the Fair Employment Treatment Order 1998 have a direct relevance.

Fifth, relevant decisions of the Fair Employment Tribunal are applicable, in particular the cases of *Brennan v Short Brothers plc* and *Johnston v Belfast City Council*.

### **Implementing the Good Friday Agreement**

4. In the section of the Agreement that deals with “Constitutional Issues,” a number of principles are endorsed. This policy document would refer to the principles outlined at paragraphs 1(iii), 1(v) and 1(vi), where the parties to the Agreement:

“1(iii) acknowledge that while a substantial section of the people in Northern Ireland share the legitimate wish of a majority of the people of the island of Ireland for a united Ireland, the present wish of a majority of the people of Northern Ireland, freely exercised and legitimate, is to maintain the Union and, accordingly, that Northern Ireland’s status as part of the United Kingdom reflects and relies upon that wish; and that it would be wrong to make any change in the status of Northern Ireland save with the consent of a majority of its people;”

“1(v) affirm that whatever choice is freely exercised by a majority of the people of Northern Ireland, the power of the sovereign government with jurisdiction there shall be exercised with rigorous impartiality on behalf of all the people in the diversity of their identities and traditions and shall be founded on the principles of full respect for, and equality of, civil, political, social and cultural rights, of freedom from discrimination for all citizens, and of parity of esteem and of just and equal treatment for the identity, ethos, and aspirations of both communities;”

“1(vi) recognise the birthright of all the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both, as they may so choose, and accordingly confirm that their right to hold both British and Irish citizenship is accepted by both Governments and would not be affected by any future change in the status of Northern Ireland.”

5. The SDLP would also refer to Article 1(iii), 1(v) and 1(vi) of the “Agreement between Governments” which states:

“1(iii) acknowledge that while a substantial section of the people in Northern Ireland share the legitimate wish of a majority of the people of the island of Ireland for a united Ireland, the present wish of a majority of the people of Northern Ireland, freely exercised and legitimate, is to

maintain the Union and, accordingly, that Northern Ireland's status as part of the United Kingdom reflects and relies upon that wish; and that it would be wrong to make any change in the status of Northern Ireland save with the consent of a majority of its people;"

"1(v) affirm that whatever choice is freely exercised by a majority of the people of Northern Ireland, the power of the sovereign government with jurisdiction there shall be exercised with rigorous impartiality on behalf of all the people in the diversity of their identities and traditions and shall be founded on the principles of full respect for, and equality of, civil, political, social and cultural rights, of freedom from discrimination for all citizens, and of parity of esteem and of just and equal treatment for the identity, ethos, and aspirations of both communities;"

"1(vi) recognise the birthright of all the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both, as they may so choose, and accordingly confirm that their right to hold both British and Irish citizenship is accepted by both Governments and would not be affected by any future change in the status of Northern Ireland."

### **The Equality Duty**

6. The SDLP believes that the new statutory duty applicable since 1 January 2000 on public authorities further to Section 75 of the Northern Ireland Act 1998 which, inter alia, "requires public bodies to promote good relations between persons of different religious beliefs and political opinion in the workplace", has clear implications in relation to the display of flags. This issue requires to be assessed in the context of the equality duty.

7. It is also to be noted that employers have duties further to the Fair Employment and Treatment (NI) Order 1998. The Order creates a requirement to provide fair participation in employment and determining reasonable and appropriate affirmative action. A submission by the Equality Commission to the Assembly Ad Hoc Committee on the draft regulations proposed under Article 3 of The Flags (NI) Order 2000, stated:-

*"Such affirmative action includes the need to build good and harmonious working environments and to take action to minimise chill factors as identified in the Fair Employment Code of Practice."*

The Commission added that the code recognises *"the importance of the working environment for the promotion of equality of opportunity and fair*

*participation” concluding that “the Commission has warned of the need to ensure that the working environment does not carry the potential for messages – explicit or implicit – being given to under-represented groups in work places that they are unwelcome.”*

8. It is submitted that in considering this issue the above principles should be upheld and reflected in the policy of the Council.

### **Implementing the Agreement**

9. It is argued that paragraphs 1(iii) of ‘the Agreement’ and the “Agreement between Governments” respectively (hereinafter referred to as “the Agreements”) which detail the constitutional position of Northern Ireland and what is commonly referred to as “the principle of consent”, means that the Union flag should fly from Government or Council buildings in Northern Ireland on designated days, as is the case in and to be generally consistent with practice in Scotland or England/Wales. The SDLP accepts the paragraph 1(iii) but submits that it is incorrect to interpret the Agreements in this way for a number of reasons.

10. First Northern Ireland cannot be compared on this issue with England and Wales or Scotland:

(A) Northern Ireland is a divided society, emerging from many years of conflict. The division has been around issues of national identity, political aspiration and community treatment. In this context, to interpret the constitutional position and the principle of consent so as to enable the display of only the Union flag on government/Council buildings on designated days suggests that one national identity, political aspiration and community requirement has a standing legally and practically, over those of others.

(B) The existence of the Agreements demonstrate that Northern Ireland is not comparable with England, Scotland or Wales:

- Uniquely among regions, Northern Ireland has the guaranteed right in law to opt out of the Union should a majority desire this;
- Uniquely among regions, the constitutional arrangements for Northern Ireland were laid down in an international treaty between two sovereign governments and were approved by the people of Ireland, North and South, in a referendum. In the debate and

discussion around this issue, there has been insufficient regard paid to the international responsibilities of the British government. The SDLP believes that the government should review the draft regulation to ensure compliance with treaty commitments.

11. Second, beyond the broad political and legal arguments outlined above, it is submitted that the approach of some, who invoke constitutional principles referred to in the Agreements to justify the display of the Union flag on government/Council buildings is a misinterpretation of the Agreements.

12. Paragraph One of the section of the Agreement on “Constitutional Issues,” and Article 1 of the Agreement between Governments lays down a number of principles. It is submitted in determining this issue that those principles should be considered in their totality and that each principle should be considered no less important than any other.

Paragraph 1(4) recognises the right:

“of all the people of Northern Ireland to identify themselves *and be accepted* as Irish or British, or, both as they may so choose” and “affirms that the power of the sovereign government shall be founded on the principles of ... *parity and esteem* and of the *just and equal treatment for the identity, ethos and aspirations of both communities*”.

It is submitted that, for example, the display of the Union flag is clearly identified with the Unionist community, with the Union with Britain and with those who would refer to themselves as British. To display the Union flag – or for that matter the Irish Tricolour alone – is contrary to the above principles and good practice. It should be noted that this argument is not outlined so as to suggest that in the treatment of issues of identity – flag, language etc – there should always be the same treatment at all times and in all ways. This may not be appropriate in political terms, feasible in financial terms or practical in real terms. This policy document elaborates on this perspective at paragraph (19).

13. Moreover, to display the Union flag on government/Council buildings *only* does not accord “just and equal treatment to the identity, ethos and aspirations” of the nationalist community. In addition, it is submitted that the display of the Union flag *only* on government/Council buildings does not respect the right “to be accepted as Irish.”

14. Moreover Paragraph 5 of the Section of the Agreement on “Rights, Safeguards and Equality of Opportunity” provides that:

“All participants acknowledge the sensitivity of the use of symbols and emblems for public purposes and the need in particular in creating the new institutions to ensure that such symbols and emblems are used in a manner which promotes mutual respect rather than division. Arrangements will be made to monitor this issue and consider what action might be required.”

The flying of a flag to which one community in Northern Ireland identifies, but another does not, is not sensitive. Nor does it promote mutual respect rather than division. The above principles need to be fully addressed and implemented in determining this matter.

### **Legal Precedents**

15. This policy document would also refer to relevant findings of the Fair Employment Tribunal and in particular the cases of Brennan v Short Brothers plc and Johnston v Belfast City Council. It is relevant to quote what the Chair of the Equality Commission stated in evidence to the Ad Hoc Committee:-

*“In the case of Brennan v Short Brothers plc the FET stated that anything which identifies community allegiance needs justification.”*

16. The Chair of the Equality Commission added that:-

“The Johnston case is the only case to date where a finding of discrimination was based solely on the display of emblems identifying community allegiance.....The tribunal found that the display of the portrait (Her Majesty the Queen) is capable, in our Society, of causing offence to certain sections of the workforce. It is accepted that there are circumstances where a display of the portrait is appropriate, for example, at certain ceremonial occasions.”

### **Options on the Display of Flags**

17. There are four options for addressing this issue, which it has been argued are consistent with the Agreements:

- (A) flying of no flags on;
- (B) flying both the Union Flag and the Irish Tricolour;



- (C) creating new consensual symbols with which both unionist and nationalists could identify;
- (D) acknowledge that the principles of the Agreements may enable consideration of the display of either the Union flag and Irish Tricolour together or, where appropriate, display of the Union flag or Irish Tricolour only on restricted days and on restricted buildings by agreement.

18. The SDLP is prepared to consider each of these options. It is recognised that the display of both flags would be viewed by unionists as not sensitive to their concerns and it may be difficult to secure agreement on consensual symbols. However the SDLP would wish to explore further these options in order to satisfactorily resolve this issue.

19. The SDLP remains committed to develop this issue in a creative and constructive manner. Therefore, and elaborating on 17 (D) above, it has been argued that it is not necessarily valid that the same outcome is achieved on all aspects of the expression of different identities in Northern Ireland. Indeed, it is argued by some that parity of esteem could allow for different, as well as the same circumstances, to apply in relation to issues of identity. In this context, a situation could arise where there would be different, as well as same circumstances, applying to the display of the Union flag and to the Irish Tricolour. If different, as well as same circumstances, could apply to the display of flags, it would then be a matter of agreeing when and where they could be displayed, either together or separately, ensuring that there is no unreasonable differential between the occasions when, for example, the Union flag and Irish Tricolour would be displayed separately. It may help inform this issue, if this option was to be explored further.

However, an environment to consider all options can best be developed if there is a determination arising from the present consultation consistent with the principles, legal precedents and inter-party and inter-government agreements outlined above.

20. The SDLP favours in order to act consistent with the Agreement the option of flying no flags. This is not a resolution to this issue. It reflects realities without closing down opportunities, treats both communities in Northern Ireland equally and is consistent not only with the principle of just and equal treatment for the identity, ethos and aspirations of both communities, but also with the right of people in Northern Ireland to identify themselves and be accepted as Irish or British, or both. The SDLP believes that this is a preferred

method to proceed. However, the SDLP repeats that this is not a resolution of this issue and will continue to seek to explore methods of advancing the other options and addressing concerns.

## **Conclusion**

21. The SDLP also notes that the face of Belfast has changed, over the last decade, with the arrival of new ethnic communities. There have also been significant developments in terms of cultural awareness and mutual tolerance. There are many images and headlines that suggest otherwise, but, in general, this assertion holds. It should also be recognised that, as a society, we have not developed to the point of mutual acceptance or toleration of the flags, emblems and symbols that reflect and represent our different identities. The SDLP believes that our society will reach that level of awareness whereby respective flags, symbols and emblems will be honoured or that common flags, symbols and emblems will be agreed.

22. To do so requires an environment whereby the Agreements are and are seen to be upheld; that its principles are respected: that difficult judgements are made consistent with the intention of the Agreements; that each citizen and community knows that that which good government, the Agreements and a stable community requires will be implemented.

23. The SDLP welcomes the establishment of the Diversity Working Group as a positive means of discussing contentious issues. The SDLP will want to play a constructive and positive role in this working group. We hope that if a consensus cannot be reached on that we agree a way to manage controversial issues.

## **Sinn Féin**

### **(a) Written submission January 2012**

Sinn Féin have in the past raised concerns about the council policy of flying the Union Jack above the City Hall, Duncrue Street Depot and the Ulster Hall.

Over the past number of weeks, months, and indeed years our Sinn Féin team in the council have received a number of complaints from constituents in relation to the current council policy of flying the Union Jack above the City Hall.

We have also been approached by a number of members of council staff, who work both in Duncrue Street Council depot and City Hall itself, who have raised their concerns about both the flying of the Union Jack and the overwhelming British/Unionist nature of memorabilia throughout the City Hall itself.

Over past number of decades Belfast as a city has changed and indeed the number of people visiting the city hall has increased dramatically. In the last local government elections almost 44% of the first preference votes cast were cast for Sinn Féin and the SDLP. We now have a much more significant immigrant population, adding to the already rich and diverse nature of our city communities. Over the past number of years the number of young children attending Irish language schools and using Irish as their first language has increased dramatically.

Many more people now visit the city hall, not least because of the Bobbin, the tours, that include Irish language tours and now the Christmas and Spring markets. All of this has meant that more people have taken notice of the flying of the flag and as a consequence have been contacting our constituency offices to register their complaints.

It is very clear that a significant section of the population of the City find this policy of flying the Union Jack, at worst offensive and at best off-putting. Clearly some members of staff find the flying of the Union Jack intimidating also.

Over recent years Belfast City Council has made considerable efforts to make Belfast City and the City Hall itself a more inclusive City and venue for all of its citizens. This policy of flying the Union Jack is out dated and out moded and

is a throw back to those times when the City Hall was indeed a 'cold house for Catholics', when Nationalists and Republicans across this city felt alienated and disenfranchised.

We believe the time for change in relation to these matters is long overdue. The flag should be removed and a clear action plan in relation changing the one dimensional cultural and political character of the City Hall be developed.

**(b) Legal opinion sought by Sinn Féin, submitted May 2012**

The text of the advice and opinion offered by Eugene McKenna BL is set out below. (Please note that this is a copy of a scanned document.)

IN THE MATTER OF BELFAST CITY COUNCIL'S POLICY ON THE  
FLYING OF FLAGS AT COUNCIL BUILDINGS

**Brief to advise Sinn Féin**

---

ADVICE AND OPINION

---

1. I am asked to advise the party on the merits of the advices provided to Belfast City Council by Mr Paul Scofield QC on the issue of the legal position regarding the flying of flags, and in particular the Union Flag, at Council property.

***Background Facts***

2. These are as set out at paragraph 2.-6. of Mr Scofield's opinion. I have no instructions that any issue is taken with the accuracy of the factual background as set out there and the subsequent factual update at para. 10 – 17.

***Previous legal advice to the Council***

3. As Mr Scofield points out the Council were previously advised by Mr Nicholas Hanna QC in 2002 and again in 2004 in the carrying out of an EQIA by the council on the flying of the Union Flag. A copy of his advice has been included in my brief.
4. Mr Scofield states that he agrees with the conclusions of Mr Hanna QC "in very large measure" and effectively commends the conclusions in those advices to the Council. However, their respective views on the legal risk associated with the current council flags policy are markedly different.

5. At para. 8 (a) – (l) of his opinion Mr Scoffield QC sets out in summary what in his view are the main conclusions of Mr Hanna’s advice in 2003. Mr Scoffield then reviews the legal developments in this area and concludes that there have been no significant developments. He goes on to address some matters not raised by Mr Hanna QC.
6. These include a discussion of *Johnston v Belfast City Council* (2000 00241/97 FET), a Fair Employment Tribunal case involving a complaint from a Council employee regarding the hanging of a portrait of the English monarch at his place of work in Dunbar Street cleansing depot.
7. He also deals with the judgement in *Re JR1’s Application* [2011] NIQB 5 which was a case involving a pilot scheme for the use of Tazers by the PSNI in circumstances where an EQIA was being conducted but had not been completed. What emerges from this judgement is that the proper remedy for breaches of s.75 of the Northern Ireland Act 1998 is not judicial review but a complaint to the Equality Commission. Secondly, that an EQIA is not always required in order to have “due regard” to the matters set out in s.75.

#### *Mr Scoffield’s Conclusions*

8. Mr Scoffield comes to the following conclusions in light of the various matters referred to. These are, in summary:
  - (a) The present policy of flying the flag every day is *prima facie* lawful. He describes the prospect of a successful challenge by a council employee to this policy to be low. Further he regards the prospect of a successful claim by a member of the public (presumably under part IV of the Fair Employment and Treatment (NI) Order 1998) as even lower.



- (b) If this policy is continued after full and proper consideration of the EQIA it is unlikely to be found to be in breach of s.75 NI Act 1998. In this Mr Scoffield QC is at odds with Mr Hanna QC who feels that there would be a risk of the policy breaching s.75.
- (c) The flying of the Union flag on designated flag days is likely to be a safer policy in terms of risk of discrimination than the current one. Not flying any flag or a neutral civic flag would similarly be a safe policy.
- (d) The flying of the Union Flag at the Duncrue Street complex and the Ulster Hall is more likely to be the subject of successful legal challenge. This is based largely on the *Johnston* decision referred to above.

#### *FETO considerations*

- 9. Both Mr Hanna QC and Mr Scoffield QC seek to distinguish Belfast City Hall from other council buildings as it is the seat of local government and therefore greater justification can be found for the flying of the Union flag there rather than at other council buildings. This does not however, in my view, have sufficient regard to the fact that it is not merely the seat of local government. There is also a large throughput of public who avail of the services offered by the City Hall ranging from wedding ceremonies to use of the cafe. Similarly there is a body of council employees who work there and so the Council must pay regard to its duties as an employer as the City Hall is a place of employment.
- 10. Under the Fair Employment and Treatment (NI) Order 1998 and the Code of Practice, the Council should, as an employer, consider the purpose and effect of the flying of any flag to determine whether they are likely to have a harassing or discriminatory effect. This is likely to be dependent in part on the respective community make-up of the workforce.

11. Mr Scoffield QC relies also on the Equality Commission guidance “Promoting a Good and Harmonious Working Environment” and in particular the shift in emphasis from a “neutral” environment to a concept of one which is “harmonious” as reducing the legal risk of the current policy in an employment context. Whilst it is correct to say that the two are not inextricably linked it is also reasonable to suppose that a neutral environment is more likely to be harmonious than one in which there are displays which are associated with one section of the community only and where employees are drawn from both.
12. The Equality Commission guidance further recognised that where members of the public interacted with an employer that an organisation may wish to ensure that no section of the community perceives a “chill factor” when interacting with its representatives. Of course a neutral environment *e.g.* one in which no flags are flown is unlikely to be the source of a “chill factor” for any section of the community.
13. Mr Scoffield regards the flying of the Union flag at Belfast City Council as *prima facie* lawful. This is primarily based on the absence of any legislation addressing the flying of flags by local government. Whilst to that extent he is no doubt correct this is likely to be too formalistic an approach. In the context of the flying of flags the policy must be in compliance with all relevant anti-discrimination and equality legislation. In addition the principles of administrative law require that regard be had to other comparative legislative provisions relating to the flying of flags.
14. I do not consider that the likelihood of a successful legal challenge *per se* to the current policy is as low as Mr Scoffield believes. The more problematic issue, in terms of the prospect of success, may be the *nature* of any challenge and the factual matrix in which it is made. On the other hand a consideration for the council would have to be the consequences of a successful legal challenge and adverse judicial comment on the flags policy.



15. Given the decisions in *Johnston and Brennan v Short Brothers* (1995) and in the context of the new guidance from the Equality Commission the prospect of a successful legal challenge by a council employee is not as low as Mr Scoffield suggests. A successful complaint by an employee to the FET would be damaging for the council and would set back, for example, its promotion of positive cross-community relations. Therefore, whilst on one hand even if the risk may be relatively low that a challenge might be successful, on the other the issue for the council is whether it wishes to take that risk given the extent of any damage that might be inflicted.
16. Whilst the judgement in *Murphy* (see para. 19 below) recognises that the Union flag represents the constitutional position of Northern Ireland the question might legitimately be asked why there is any requirement that it be flown by local authorities at all. The justification for its being flown at UK Government buildings is clear but is perhaps less so at local level.
17. This being so it is therefore likely that a court or tribunal would have great difficulty in accepting any justification for the flying of the Union flag every day of the year on the City Hall as this would be far in excess of that permitted for UK Government buildings. To do this at a local level in the context of Northern Ireland politics runs the real risk of being regarded as an attempt to assert the primacy of one section of the community at a local level where the promotion of a harmonious environment is all the more important. This is likely to increase the prospect of a finding in favour of an employee at the FET.
18. Even if there can be a justification for the flying of the Union flag on designated flag days at the City Hall as the seat of local government, this justification does not extend to the Ulster Hall or Duncrue complex. In my view a complaint by an employee at these sites to the FET stands a reasonable prospect of success.

#### *s.75 considerations*

19. I tend to agree with Mr Hanna QC rather than Mr Scoffield in his assessment of the risk of a successful challenge to the current policy under s.75 of the Northern Ireland Act 1998. The judgement of Kerr J (as he then was) in *Re Murphy's Application* [2001] NI 425 is strong authority for the proposition that the flying of the Union flag on days other than in accordance with the Flags Regulations (NI) 2000 would be in contravention of the duties of the council under s.75. Those regulations were found to "exemplify a proper regard for 'partnership, equality and mutual respect'". As outlined above it is unlikely that a court or tribunal would decline to follow this authority by finding that flying the Union flag all year round was in keeping with the council's s.75 duties.
20. In the first instance any complaint regarding the council's s.75 duties should be referred to the Equality Commission under schedule 9 of the 1998 Act. It may be that any failure by the Council to take advice or guidance offered by the Equality Commission could possibly be the subject of challenge by way of Judicial Review.
21. Having also looked at the advices provided to Ballymena Council both by the Equality Commission and William Orbinson QC it is interesting to note a distinction between the legal risk associated with flags and emblems in the exercise of political functions as opposed to that of employer or provider of services to the public with the legal risk being higher in the latter than the former. This dichotomy was recognised in the case of Ballymena given the predominately Unionist make-up of the council. The same cannot be said of Belfast and it is arguable that the present policy is not an accurate reflection of the political character of the council. This, however, is more the arena of politics than the law.

#### *Conclusion*

22. As is implicitly recognised by Mr Scoffield the safest policy in terms of legal risk for Belfast City Council is that no flags are flown on any council property at any time. This would result in neutrality on this issue and therefore promote a harmonious working environment and ensure no member of any section of the community was subjected to a "chill factor".
23. It is more likely that a court or tribunal would take the view that the flying of the Union flag on designated days would strike the right balance in line with the *Murphy* judgement.
24. I do not agree with Mr Scoffield's implicit view that the current policy presents a low legal risk. This view is in marked contrast to that of Mr Hanna QC and of the Equality Commission and Mr Orbinson QC in the Ballymena context.
25. A challenge by an employee under FETO would have a greater prospect of success than by a member of the public. Any challenge under s.75 of the 1998 Act would be by way of complaint to the Equality Commission but a failure by the council to properly and fully consider advice and guidance from the Commission may be open to challenge by way of Judicial Review.

Eugene McKenna BL

Bar Library

6<sup>th</sup> March 2012

## Opinions expressed by the Equality Commission

### Advice to other councils

Since 2003 the Commission has commented on the specific issue of flying the Union flag on the designated flag days plus a number of additional days as follows:

“generally, the preferred position of the Equality Commission is that the Council should abide by the Department of Environment recommendation in respect of the 17 designated days for the Union Flag as previously advised to the Council and should not add additional days to the calendar.” (*Final report of the Commission investigation into an alleged failure by Lisburn City Council to comply with its Equality Scheme, June 2006*);

“We believe that a complainant may find it difficult to convince a Tribunal or court that a practice of flag flying by a Council would be unlawfully discriminatory if it strictly adheres to that which is permitted on designated government buildings by the Flags (NI) Regulations 2000. Conversely however, the Commission believes that a practice of not displaying the Union Flag is also likely to be within a range of acceptable practices”. (*Written advice to Limavady Borough Council, August 2003*).

The Commission has also commented on the consultation and decision making processes within an EQIA as follows:

“Consultation is an integral part of any impact assessment as it ensures a transparent, inclusive decision-making process and democratic participation..... we would like to remind the Council that, as per Schedule 9 9. (2) it will be obliged to take the results of the Equality Impact Assessment into account when it finalises its decision, bearing in mind that the EQIA should not be considered as a referendum whereby the views of consultees from a majority are counted as votes to decide the outcome. “ (*Written advice to Strabane District Council, July 2011*).



### **Advice sought as part of the 2011 EQIA**

A meeting was held with officers of the Equality Commission on 2<sup>nd</sup> September 2011 to seek any further views in order to inform the preparation of this EQIA report. Following the meeting, the Equality Commission offered preliminary comments in writing in a letter dated 29<sup>th</sup> September 2011 (the text of which is reproduced below).



Our ref: 2716

29 September 2011

Ms Hazel Francey  
Good Relations Manager  
Belfast City Council  
City Hall  
Belfast  
BT1 5GS

Dear Hazel

Thank you for your letter, dated 9 September, in relation to the Council's review of its policy on the flying of the Union Flag.

As you are aware, the Commission previously provided input to the Council's current flags policy as part of its equality impact assessment. While this advice is not reiterated in full here, it is relevant to note some of the equality considerations to be borne in mind as the Council develops its flags policy.

**General Commission Advice**

- The Commission recognises the sensitivity for employers, including local Councils, in reviewing or developing policies regarding the flying of the Union flag.
- The Council needs to consider the relevant statutes, and also those regulations that may be appropriate to them, when developing their own policy with regard to the flying of the Union flag. The relevant statutes within the remit of the Commission are the Fair Employment and Treatment (NI) Order 1998, Sections 75 and 76 of the Northern Ireland Act 1998. The Flags Regulations (NI) 2000 (as amended), which restrict and regulate the display of the Union flag at government buildings and courthouses, are also of some relevance as is the judicial review challenge to these. While there is limited caselaw directly related to this area there are some FETO cases which have relevance.
- Displays of the Union flag must be viewed within the context with which it is flown or displayed. Factors affecting the context include the manner, location and frequency with which flags are displayed. It is for employers to consider the purpose and potential impact of the display of flags that are, or may be perceived to be, associated wholly or mainly with one section of the community in Northern Ireland. 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.

- It is for the Council to develop its policy on the display of the Union Flag taking account of the full context in which it operates. The Commission does not have the power to issue directives regarding the flying of the Union flag or the removal of the Union flag.
- What the Council decides to do should be the result of a clear policy development exercise, with defined objectives for the policy and records of how the decisions were framed and taken. Contemporaneous records should be maintained of the relevant considerations at each stage of policy development.

**Aims of the policy**

You note that the Commission has expressed the view that the Union Flag, if flown in some contexts has a particular status symbolising the constitutional position of Northern Ireland. You ask whether this is the only policy aim which the Commission would consider to be acceptable.

As long as the policy aims are in keeping with the statutory provisions set out above, there may well be further policy considerations that would assist the Council to realise its good relations objectives. The Council is of course better placed than the Commission to clearly define the rationale and aims for its policy.

Once the Council has determined the legitimate policy aims, it should ensure that the final policy, when implemented, does not cause unlawful discrimination or harassment unintentionally or indirectly through its likely effects or impacts. As advised previously, the Commission considers that there would be a difference between the Civic headquarters of the Council, i.e. the City Hall, and other locations, such as the Ulster Hall and Duncrue Street. It would be for the Council to clarify its aims and therefore policy with regard these locations.

**Promotion of good relations**

Your question asks whether flying the Union Flag on designated days might breach the Section 75 duty to promote good relations.

The relevant duty comes from Section 75(2) of the Northern Ireland Act, and it states: "...a public authority shall...have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group."

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. It will also be crucial to ensure that the goal is taken into account by the final decision-makers. 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.

The Commission is of 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. There can be no guarantee that any policy decision will not be perceived as a source of offence by some people. The fact of such perceived or actual offence does not, of itself, disallow a policy decision properly taken.

**No flag**

You ask whether flying no flag might breach the Section 75 duty to promote good relations.

In considering this option it is important to bear in mind the point made above, that the good relations duty is continuous and wide and requires the Council to consider the broader and longer-term picture. 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 the current flag policy to a no flags policy.

**Additional days**

You ask whether flying the Union flag on designated days plus a small number of extra days is within an acceptable range of policies. The answer provided above is of relevance. In brief, so long as the proposal is being adopted for an acceptable i.e. lawful reason; is not done with the intention to discriminate against or harass anyone on the grounds of religious belief or political opinion or damage good relations; is designed with due account given to concerns about context, proportionality and sensitivity; and the decision making process being followed ensures compliance with Section 75, then it is unlikely, in the Commission's view, that it would be unlawful to adopt it.



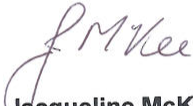
### **Two flags**

You question ask whether the Commission has a view on the implications for promoting good relations of adopting a "two flags" policy.

Like all proposals under consideration, this proposal should be examined under the criteria already referred to, for example what is the aim of this policy; does the Council have a basis for considering that the same "constitutional recognition" aim that applies to the Union flag could be applied to the national flag of Ireland; and what its potential impact would be on good relations. The Council should consider whether, if this policy were challenged under FETO, it could satisfy a Tribunal that the decision, in its intention and its impact, was not discriminatory on grounds of religious belief or political opinion. The Commission would recommend the Council consider this position very carefully before advancing it and indeed whether there are wider considerations which the Council should have regard to.

I hope that this is of assistance to the Council as it reviews its policy in this area.

Yours sincerely



**Jacqueline McKee**  
**Director of Advice & Compliance**

📞	<b>Direct Line:</b>	<b>028 90 500 631</b>
☎	<b>Textphone:</b>	<b>028 90 500 589</b>
✉	<b>E-mail:</b>	<b><a href="mailto:jmckee@equalityni.org">jmckee@equalityni.org</a></b>
💻	<b>Website:</b>	<b><a href="http://www.equalityni.org">www.equalityni.org</a></b>



## **Opinions expressed by the Human Rights Commission**

In February 2011 the Northern Ireland Human Rights Commission published a briefing paper on Flag Flying which addressed the human rights implications of local Councils flying national flags. The Commission made it clear that they have not developed a specific policy position on public authorities' usage of flags. However, the briefing paper included the following information:

“The flying of flags by public bodies is not a matter explicitly referred to in any human rights instrument. In this sense, there is no direct human right to have a flag ‘flown for you’, nor is there a direct human right not to have a flag ‘flown at you’. However, the regulation of flag flying is a matter which engages freedom of expression which is protected under Article 10(1) of the European Convention Human Rights.” (p.4)

“It should be first noted, in relation to the suggestion of persons taking offence at a flag, that there is no ‘right to be offended’ that can be derived from the ECHR. Article 10 protects expression which can shock, offend or disturb. Therefore, if the issue being dealt with is that persons are ‘offended’ by particular flags, this would not be a legitimate basis for their restriction. “ (p.6)

On restricting the number of days on which the flag is flown:

“... if a Council chose to move its policy in the direction of limiting the flying of the Union flag it is difficult to see how a successful challenge to such a policy could rely on human rights law.... The concept of freedom of expression is inherently incapable of containing an obligation to express something.” (p.8)

On flying the Union flag and the Irish Tricolour:

“It has also been asserted that the display of the Irish Tricolour by a public authority alongside the Union flag would contravene Article 21 of the Framework Convention (on the Protection of National Minorities) .... The flying of any flag does not necessarily, and does not usually, constitute an activity that challenges the territorial integrity of the state

in whose territory the flag is flown, least of all where it is flown alongside the state's own flag. " (pp. 9-10)

On flying no flag:

"The Commission has also given advice to Councils that have policies of not flying any flags, and concluded that this is a relatively easy position to defend in human rights terms.... This advice was given with a caveat that the consistency of such a 'no flags' policy with human rights was easier to establish from the international human rights standards in relation to a rights based rationale for maintaining an existing 'prohibition', than it would be in a case for adopting or abandoning a flags policy." (p.10)

## **View of the Council's Consultative Forum**

The Council's Consultative Forum on equality issues meets approximately twice a year and is invited to comment on policies which are being developed or revised, in advance of, or as part of, any formal screening or EQIA consultation. The Forum includes representatives of a range of organisations which represent people across the nine equality categories. The Consultative Forum met on 28<sup>th</sup> May 2011 and was asked for opinions on the issue of the flying of the Union flag.

The Forum suggested that a Belfast City Council flag may be a compromise on this issue. Suggestions were also made that flying flags representing the diversity of the community on relevant days e.g the Polish flag, the Rainbow flag, the African Union flag or the EU flag could be explored.

## **Results of survey of visitors to the City Hall**

A survey of visitors to the City Hall was carried out by specialist consultants over a two week period in September 2011 on issues associated with 'shared space'. The survey was carried out on a face to face basis at the City Hall and included questions about the welcoming nature of the different areas visited and some specific questions about the flying of the Union flag.

A total of 402 people participated in the survey. 63% of visitors surveyed were Belfast residents, 23% residents of other council areas in Northern Ireland and 18% were visitors from outside Northern Ireland. Among visitors from Northern Ireland, 62% classified their community background as Protestant, 24% as Catholic and 14% as "other".

An extract from the report of the survey relating to the flying of the Union flag is set out below.

## VISITOR SURVEY: RESPONSES TO QUESTIONS RELATING TO THE FLYING OF THE UNION FLAG

One in three (33%) visitors said that they had noticed, flags flying outside the building (City Hall), with no significant variation in response to this question by community background (NI residents only).

Table 2.25 Did you happen to notice any flags flying outside the building?	
Base: 402	%
Yes	33
No	67

Among those who did notice flags flying outside of City Hall (n=133), almost all (96%) had noticed the Union Flag.

Table 2.26 Can you recall what it was / they were? UNPROMPTED	
Base: 133	%
Yes - Union Flag	96
Yes – other (specify)	-
No, can't recall	4

Those who were unable to recall (unprompted) the Union Flag flying outside of City Hall (n=263) were asked directly if they could recall the Union Flag flying over the front entrance of City Hall. In response, 7% of this group (when prompted) said they had noticed the Union Flag flying.

Table 2.27 Did you notice the Union Flag flying over the front entrance of City Hall? [Excludes those who were able to recall the Union Flag unprompted]	
Base: 263	%
Yes	7
No	93

Combining both prompted and unprompted awareness of the Union Flag found that overall, 37% of all visitors could recall the Union Flag flying over the entrance to City Hall, with residents (41%) more likely to recall the flag compared with non residents (31%). There was no significant variation in recall level between protestant and catholic visitors (NI residents only).

Table 2.28 Prompted / Unprompted Awareness of the Union Flay Flying over then Entrance of City Hall	
Base: 263	%
All Visitors	37

Visitors were asked how they felt when informed that the Council flies the Union Flag every day. In response, 36% said they felt pleased and proud to see the flag flying, with 18% feeling comfortable and 39% having no particular feelings about the flag. Five percent of visitors felt uncomfortable to see the flag flying, with a further three percent feeling offended and unwelcome because the Union Flag was flying.

Table 2.29 The Council flies the Union Flag on the City Hall every day. Which of the following statements best reflects your feelings regarding the Union flag?		
	%	N
I felt pleased and proud to see the flag flying	36	141
I felt comfortable to see the flag flying	18	70
I had no particular feelings about the flag	39	155
I felt uncomfortable to see the flag flying	5	19
I felt offended and unwelcome because the flag was flying	3	11

Female (57% vs. 49%,  $p \leq 0.01$ ) visitors to City Hall were more likely to say that they felt proud or comfortable with the Union Flag flying, with older visitors (60+, 65%,  $p \leq 0.05$ ) also more likely to say they felt proud or comfortable compared with other age groups (16-39, 44%: 40-59, 51%). Those who had previously visited City Hall were also more likely to say they felt proud or comfortable (56% vs. 47%,  $p \leq 0.01$ ).

Analysis by community background found that protestant (72%) visitors were more likely to say they felt pleased / proud (50%) and comfortable (22%) about the Union Flag flying. One percent of protestant visitors said that they felt uncomfortable, with a further 1% feeling offended by the Union flag flying. In contrast, 4% of catholic visitors said they felt pleased and proud, 8% comfortable with 56% saying they had no particular feelings. Twenty percent of catholic visitors said they felt uncomfortable with the Union flag flying, with a further 12% saying they felt offended.

Table 2.30 The Council flies the Union Flag on the City Hall every day. Which of the following statements best reflects your feelings regarding the Union flag by Community background (NI Residents Only)						
	Pleased and Proud	Comfortable	No particular feelings	Uncomfortable	Offended and unwelcome	N
	%	%	%	%	%	
Protestant***	50	22	26	1	1	206
Catholic	4	8	56	20	12	81

\*  $p \leq 0.05$ ; \*\*  $p \leq 0.01$ ; \*\*\*  $p \leq 0.001$

The majority (57%) of visitors supported the view that the Council should always fly the Union Flag, with female (63% vs. 49%,  $p \leq 0.01$ ) visitors more likely to support this view. Older visitors (60+, 68%,  $p \leq 0.05$ ) were also more likely to say to say that the Union Flag should always be flown compared with other age groups (16-39, 48%: 40-59, 56%). Non residents were also more supportive of the Union Flag flying at all times (68% vs. 51%,  $p \leq 0.01$ ), as were visitors from outside Northern Ireland (76%) compared with Northern Ireland residents (54%,  $p \leq 0.01$ ).

Table 2.31 Do you think the Council should fly the Union flag?		
	%	N
Yes, always	57	122
Yes, on specific designated flag days	34	132
No, never	9	35

Analysis by community background found that the majority (72%) of protestant visitors believe that the Council should always fly the Union Flag compared with 16% of catholic visitors.

Table 2.32 Do you think the Council should fly the Union flag by Community background (NI Residents Only)				
	Yes, always	Yes, on specific designated flag days	No, never	N
	%	%	%	
Protestant***	72	27	2	204
Catholic	16	48	36	81
* p<=0.05; ** p<=0.01; *** p<=0.001				

### CONSULTATION RESPONSES

- E1 Equality Commission
- E2 Community Relations Council
- E3 Consular Association of Northern Ireland
- E4 Responses from the public
- E5 Results of the staff survey



## **Equality Commission**

### **Response to Belfast City Council's Policy on the Flying of the Union Flag and Belfast City Hall: Promoting a Good and Harmonious Environment Equality Impact Assessments: Draft Reports for Consultation**

The Equality Commission welcomes the opportunity to respond to Belfast City Council's Equality Impact Assessments on the Policy on the Flying of the Union Flag and Belfast City Hall: Promoting a Good and Harmonious Environment.

There is a clear link between these two EQIAs and the Commission welcomes that both assessments are undertaken simultaneously.

We are pleased to note the systematic EQIA process that has been undertaken by the Council. The draft reports are well structured, easy to read and comply with stages 1 to 4 of the Commission's practical guidance on equality impact assessments. We also acknowledge that in both reports the Council has undertaken comprehensive analyses of a range of available data and information of the impacts on one or more of the equality groups. The reports set out in detail the Council's consideration of alternative policies which might mitigate adverse impact and might better promote equality of opportunity and good relations. The information contained in both reports should allow consultees to consider the impact of the current policies, the mitigating measures and alternative policies.

#### **Flying of the Union Flag**

The Commission recognises the sensitivity for organisations, including local Councils, in reviewing or developing policies regarding the flying of the Union Flag. The most recent Commission advice to the Council with regard the development of this policy (September 2011) is referenced in the EQIA report and will not be reiterated in full in this response.

In summary however, it is noted that Equality Commission advice is based on the relevant statutes within our remit, that is, the Fair

Employment and Treatment (NI) Order 1998 and Sections 75 and 76 of the Northern Ireland Act 1998. The Commission stresses that the Council is best placed to develop its policy on the display of the Union Flag taking account of the full context in which it operates. The final Council policy should reflect the Council's legitimate policy aims, and should promote good relations and not cause unlawful discrimination or harassment, unintentionally or indirectly through its likely effects or impacts.

The EQIA recognises that there are a range of legitimate policy options open to the Council and the policy options identified appear rational to the Commission. As previously advised it would be for the Council to clarify the aims and objectives of flying the Union Flag at locations other than the City Hall, if this was the preferred option.

While it is acknowledged that this EQIA deals with the flying of the Union Flag on specific Council buildings, consideration should be given to ensuring that the Council's final policy covers displays of other flags where similar principles and context may apply. To this end, 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. Such considerations would include the duration and extent of displays of flags which may be more closely associated with one community background in Northern Ireland, or indeed associated with neither of the two main community backgrounds.

### **Promoting a Good and Harmonious Environment,**

We welcome that the Council has broadened the scope of the EQIA, 'Promoting a Good and Harmonious Environment', to cover all nine Section 75 grounds and that the proposed policy considers the City Hall, and its grounds, in terms of promoting a good and harmonious environment in its widest sense. Again, there are a range of legitimate policy options open to the Council and the preliminary recommendations appear rational in terms of the aims and objectives of the policy. It is recognised that the range of legitimate options and the way forward, for this policy, will take account of many factors other than equality, for example the preservation and display of the many historical artefacts in Belfast City Hall.

Section 75 commitments require that in making any decision with respect to a policy adopted or proposed to be adopted, the public authority shall take into account any EQIA and consultation carried out in relation to the policy. The Commission looks forward to the publication of Belfast City Council's stage 6 Equality Impact Assessment Reports. We are happy to offer advice on this aspect before the final reports are published.

## Community Relations Council

Date: October 2012

### RE: Flying of the Union Flag/Promoting a Good and Harmonious Environment

Thank you for your letter, enclosures and request to consult with the Community Relations Council (CRC), about the outcomes of your policy screening procedures/equality impact assessment procedures on Belfast City Council's Flying of the Union Flag/Promoting a Good and Harmonious Environment.

CRC has a critical interest<sup>62</sup> in how the flying of flags intersects with the promotion and protection of good relations, as well how creating a 'Good and Harmonious Environment' can help build and promote good relations. It is within this context that we will focus our comments.

#### Policy Context

CRC is fully committed to the full implementation of Section 75(2) and the promotion of good relations throughout Northern Ireland society.

BCC should consider international obligations e.g. Council of Europe, Framework Convention for the Protection of National Minorities Section II, and Article 6<sup>63</sup>; UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities Article 1<sup>64</sup> - these treaties have been ratified by the UK and are binding on government departments including local authorities.

It will be important to benchmark these developing policies against government priorities<sup>65</sup>, as well as consider BCC internal commitments to the promotion of good relations within its corporate structures i.e. recent Investment Programme<sup>66</sup> - it is essential the spirit of this principle guides this current debate.

---

<sup>62</sup> CRC receive repeated requests for advice and guidance in relation to flag flying from individuals and groups within local communities who feel that their concerns have not been properly considered when decisions are reached. In addition to offering support to local communities, CRC sits on OFMDFM's Flags Protocol Working Group (meetings of this group are currently suspended due to ongoing CSI negotiations).

<sup>63</sup> The Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and co-operation among all persons living on their territory, irrespective of those persons' ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media. These standards have been ratified by the UK government and are therefore legally binding upon public authorities.

<sup>64</sup> States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity; States shall adopt appropriate legislative and other measures to achieve those ends.

<sup>65</sup> Programme for Government (PfG) whose aim is 'to build a shared and better future for all', and any future Cohesion Sharing and Integration (CSI - which is noted as a building block within the PfG).

<sup>66</sup> 'Good relations and equality - we are committed to promoting equality and good relations and believe these are key to improving the quality of life for everyone. Fairness and respect are central to this programme and underpin all of our activities. A peaceful and inclusive society is vital to economic regeneration, attracting talent, sustaining inward investment, generating tourism and tackling poverty. We want to shape Belfast so that its spaces and services meet the ambitions of all residents.'

## **Flags**

The surveys and political, legal and statutory analysis reveal the range of attitudes and positions. Based on this comment BCC has formulated a number of options (alongside remarks on the potential to enhance or negatively impact on good relations). The assembly of these options is a constructive development for the purpose of this consultation. However, the alternative approaches also reveal the complexity of flag flying in our society, and expose the need for an urgent regional discussion on the flying of flags on civic buildings.

However, after considering the legal and statutory advice given to BCC in relation to the Duncrue Complex or the Ulster Hall, CRC agrees with the conclusion that the Union Flag should no longer be flown at either site in the interests of promoting good relations.

Furthermore, in relation to the flying of the Union flag on City Hall, CRC examined both the historical and current statutory opinion and legal advice which underscored 'appropriate occasions' alongside 'striking the right balance' (Annex1). CRC therefore strongly recommends that BCC should seriously consider Option 1<sup>67</sup> (proposes Designated Days) as the most reasonable way forward for promoting good relations.

## **Promoting a Good and Harmonious Environment**

The development of this work has been taken forward over a considerable period of time. CRC supports the scope of the proposals which focuses on reviewing, repositioning and supplementing displays. These actions provide an opportunity to increase and improve good relations within City Hall and its grounds for workers, users and visitors.

However, when developing signage enhancements, it is important that BCC consider the recent comments from the Advisory Committee on the Framework Convention for the Protection of National Minorities. It observed that 'In Northern Ireland, the authorities have failed to adopt comprehensive legislation on the Irish language and the general climate is not conducive to promoting the use of this language in public life. It is regrettable that measures to promote the visibility and use of this language have often been opposed with the justification that they constitute a discrimination against other groups of the population'<sup>68</sup>.

## **Political Leadership**

Senior counsel stated it 'is essentially a political question to which.... there is unlikely to be any determinative legal answer'. It is therefore crucial that the elected representatives revisit the Northern Ireland Code of Local Government conduct which reminds councillors of their 'specific responsibilities under equality

---

<sup>67</sup> Option 1 - Designated flag days only. In the light of the legal opinion and the views expressed by the Equality Commission, it appears that the option of flying the Union flag at the City Hall on designated flag days only has the potential to be regarded by many as striking the right balance and therefore to be the most effective in terms of promoting good relations.

<sup>68</sup> June 2011 [http://www.coe.int/t/dghl/monitoring/minorities/3\\_FCNMdocs/PDF\\_3rd\\_OP\\_UK\\_en.pdf](http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_OP_UK_en.pdf)

legislation', and recommends that councillors should assist their council 'to act, as far as possible, in the interests of the whole community'<sup>69</sup>.

This political leadership is particularly important within the context of good governance, minority rights, symbolism and civic pride.

### **Future proofing**

It is critical that BCC continue to reflect on the changing nature of Belfast, examine the impact of any policy changes and revisit policies accordingly if there are opportunities to mitigate negative impacts or better promote good relations. The Council may also want to consider the development of a good relations engagement programme (between political representatives of BCC and Belfast residents/visitors to Belfast) on an inter-community city basis. This direct dialogue would enhance existing good relations data and research, and foster a better understanding about the needs of transformative politics.

### **Conclusion**

In the absence of appropriate enforceable guidelines about the display of flags and emblems on official property, it is the view of CRC that the overarching goals of promoting equality, good relations and civic governance may be compromised, and CRC urges BCC to develop a policy that deals with these negative impacts appropriately.

There is substantial opportunity for both policies to promote and enhance community relations and to have a positive impact on our transformative process from conflict to sustainable peace, equity and equality. CRC hopes that these comments support BCC in finalising the EQIA process and would welcome the opportunity to discuss further any aspect of this response with the Equality Unit.

---

<sup>69</sup> [Northern Ireland Code of Local Government Conduct, DOE, 2003, Page 4  
http://www.doeni.gov.uk/nl\\_lgd\\_conduct\\_april\\_2003.pdf](http://www.doeni.gov.uk/nl_lgd_conduct_april_2003.pdf)

## **Consular Association of Northern Ireland**

CA-NI was formed in 2008 to serve all foreign government officials (Consuls - career and honorary), due to the expanding foreign government representation and nationals in Northern Ireland. Thirty-three foreign countries currently have formal representation in Northern Ireland, dually accredited by our respective government (Ministry of Foreign Affairs) and all of us by the Foreign and Commonwealth Office (FCO) for the United Kingdom. The majority of businesses and our nationals reside, work or study in the Belfast Borough.

Our input is non-political, non-partisan, non-sectarian, third party and being well versed in the area of protocol, feel we may provide some additional perspective on the matter. In relation to flying of the Union Flag EQIA, Members have provided the following highlights for consideration:

- At the United Nations all 193 Member states fully recognise the United Kingdom (as England, Scotland, Wales, Northern Ireland) and Ireland as two separate jurisdictions/countries.
- Thus there are 2 different Ambassadors accredited to the United Nations - one for the United Kingdom and one for Ireland.
- The United Kingdom and Ireland have two separate and distinct: constitutions, coat of arms, flags, passports, national identity cards, heads of government, heads of state, visa requirements, government departments, councils and agencies, including border/immigration.
- There is an Irish Embassy in London representing Ireland and a British Embassy in Dublin representing the United Kingdom, respectively.
- All countries around the world establishing Diplomatic/Consular relations with the United Kingdom and/or Ireland are defined as two separate and distinct countries.
- All Diplomatic/Consular postings to Northern Ireland are accredited only by the Foreign and Commonwealth Office in London for the United Kingdom. The Department of Foreign Affairs in Dublin has no jurisdiction in the UK, including Northern Ireland.
- A government building at the central/local level, across the world displays the flag of the country.
- To regularly/continually display a foreign flag on a government building other than in its defined jurisdiction/country is a violation of the constitution, except in

matters of visiting dignitaries, heads of state/government, royalty or an international event being hosted, when in addition to the host country you display other national flags for that specific occasion.

- Dedicated Diplomatic/Consular buildings across Northern Ireland, including Belfast representing a foreign country in Northern Ireland display their own national flag not the Union Jack, which is the flag for the defined territory of the United Kingdom “receiving state”.
- There are numerous different nationalities and foreign businesses located in Northern Ireland, especially in the Borough of Belfast, so to suggest the option of displaying another foreign flag besides the Union Jack, outside the previous particulars, would isolate and be discriminatory to the other countries represented. Not to mention would portray the government building as representing the country of the flag being displayed.

While we appreciate a section of the community may view the Union Jack not as a flag defining a specific country/jurisdiction, but with sectarian meaning or undertone, the fact remains that the Union Jack is the national flag of the United Kingdom, which includes Northern Ireland.

Thank you for providing us the opportunity to share our views as we all work towards a shared society of mutual tolerance and respect.



## Responses from the public

### A. QUESTIONNAIRE RESPONSES

**Q1: Do you have any comments on the current policy regarding the flying of the Union Flag?**

<i>Base=577</i>	n	%
I believe that the Irish Tricolour should be flown alongside the Union Flag whenever it is flown	220	38
I believe that no flags or a neutral flag should be flown and that the Armed Services Flag should never be flown	142	25
I believe that the Irish Tricolour should be flown alongside the Union Flag whenever it is flown and the Armed Services Flag should never be flown	124	21
No change to current policy	67	12
Change policy – current policy one-sided	12	2
Other	12	2

**Q2. Do you have any comments on the 4 policy options?**

<i>Base=577</i>	n	%
I prefer option 4 – Two flags	346	60
I prefer option 3 – No flag or a neutral flag	150	26
No change to current policy	66	11
Designated Flag Days	6	1
Designated Flag Days plus specified additional days	1	-
No Comment	8	1

**Q3. Please provide details of any other issues which you think should be included in EQIA and your reasons for suggesting them.**

<i>Base=302</i>	n	%
The Armed Services Flag and Memorabilia	266	88
No change to current policy	22	7
EQIA not needed / biased	4	1
National Anthem	2	1
EQIA should be broader	2	1
Republican Parades	1	0.3
Other Parades	1	0.3
Fly both flags / minority flags	1	0.3
Single Flag for N Ireland	1	0.3
Change policy – one-sided	1	0.3
Ban Murals and Paramilitary Flags	1	0.3

**Q4. Do you agree or disagree with the assessment of impacts?**

<i>Base=551</i>	n	%
Strongly Agree	5	1
Agree	486	88
Neither agree nor disagree	26	5
Disagree	4	1
Strongly Disagree	30	5

**If you do not agree with the assessment of impacts, please tell us your reasons and any changes you think should be made.**

<i>Base=52</i>	n	%
No change in policy	34	65
Anti-British / Unionist culture	9	17
Fly N Ireland Flag	1	2
City Hall cold and unwelcoming	1	2
EQIA biased	4	8
Need change	1	2
Put to a vote	1	2
Agree with approach	1	2

**Q5. Do you agree that the measures are enough and appropriate?**

<i>Base=543</i>	n	%
Strongly Agree	2	0.4
I agree that if you adopt option 4 the measures are enough and appropriate	123	23
I agree that if you adopt option 3 the measures are enough and appropriate	132	24
Agree	225	41
Neither agree nor disagree	28	5
Disagree	7	1
Strongly Disagree	26	5

**If you do not agree that the measures are enough and are appropriate, please tell us why and suggest any changes or further measures that you would like to see us take.**

<i>Base=29</i>	n	%
Current policy correct	21	72
Consider flying NI flag	1	3
Survey shows no evidence for change	2	7
Do more for protestant areas	1	3
Put to a vote / more publicity	1	3
EQIA biased	1	3
Consider impact of not flying the flag	1	3
Questionnaire not user friendly	1	3

**Q6. Are you aware of any further data and / or research which may be relevant?**

<i>Base=577<sup>70</sup></i>	N	%
Other Councils have adapted a policy of Neutrality	266	46
The Good Friday Agreement	266	46
Government Buildings at Stormont have dealt with the flags issue better than Belfast City Council	266	46
Current policy correct – evidence based	5	1
Other countries don't fly foreign flags	2	0.3
Other	4	1

**Q7. Do you have any further comments on the EQIA report and / or the consultation process?**

<i>Base=34</i>	N	%
No change in policy	18	53
EQIA broader / better advertised	11	32
EQIA a waste of money	3	9
Other	2	6

---

<sup>70</sup> Some respondents provided more than one response

## B. RESPONSES BY LETTER AND E-MAIL

<i>Base=326</i>	N	%
No change to policy	175	54
Single letter (79 submitted):	79	24
<ul style="list-style-type: none"> <li>▪ This consultation is an unnecessary repeat of one in 2004 which concluded the present policy is acceptable. There has been no change in the law since that time and in general practice, flying the flag has become more common not less. The present policy is the most common among Councils in Northern Ireland and the same as other major cities in the United Kingdom.</li> <li>▪ The rationale behind the review is clearly political not equality as 5 of the 7 complaints in the last 10 years were from Sinn Fein councillors and as the consultation paper admits the new review was partially the result of a letter of complaint from the Sinn Fein Group leader.</li> <li>▪ Only 2 complaints were received from members of the public in 10 years prior to a SF letter campaign which only produced a further 6 complaints. This is a ratio of 1 in every 5 years to 1 in every 1.25 years neither supports there being widespread or genuine issues with the present approach.</li> <li>▪ The survey only found 3% of users offended by the flying of the flag. This very low level again fails to substantiate the need to change to any of the 4 options.</li> <li>▪ The staff survey results show that a change in policy will not solve any chill factor but potentially create a new one as 42% (the most popular view expressed) wish the present policy to continue .</li> <li>▪ The advice makes clear the low risk of a successful legal challenge to the present policy means there is no legal pressure or requirement to change it.</li> </ul>		
Belfast is the capital of NI and NI is part of the UK and the Union Flag is the flag of our country so it is completely normal that the National flag is flown.	14	4
Whilst Belfast City Council claim to be trying to promote good community relations, if they take the decision to remove the Union Flag then this would produce the exact opposite of what they are allegedly trying to achieve. A decision to do so would make community relations worse and would actually create deeper divisions.	13	4
Removing flag will create deeper divisions, the EQIA exercise and the so called objective behind it as stated by Belfast City Council is completely flawed.	12	4
Neutral flag only	5	2
No flag or neutral flag	4	1
Fly the flag always	3	1
Two flags	2	1
Other comments	19	6

## Results of the staff survey

<b>Q1 Which of the following statements best reflects your feelings regarding the Union flag? (I feel .... to see the Union flag flying at Council buildings)</b>					<b>%</b>
	<b>All</b>	<b>C</b>	<b>P</b>	<b>Other</b>	
Pleased and proud	48.6	5.7	78.1	38.3	
Comfortable	10.8	4.1	14.2	15.4	
No particular feelings	12.2	18.0	6.3	20.1	
Uncomfortable	13.4	31.6	0.9	16.1	
Offended and unwelcome	15.1	40.5	0.5	10.1	

<b>Q2 Do you think the current policy should be changed in any way?</b>					<b>%</b>
	<b>All</b>	<b>C</b>	<b>P</b>	<b>Other</b>	
Yes	45.4	87.2	16.2	49.3	
No	54.6	12.8	83.8	50.7	

<b>Q3 Why do you feel the current policy should be changed or not be changed?</b>
<i>Policy should be changed – most common reasons:</i> <ul style="list-style-type: none"> <li>▪ Council buildings should be neutral working environments and flags should not be flown at places of work;</li> <li>▪ Council buildings should be welcoming to all;</li> <li>▪ the policy should be the same as for other Government buildings;</li> <li>▪ flags are a source of division in Belfast and so no flag should be displayed anywhere;</li> <li>▪ a considerable section of the community view the Union flag as offensive;</li> <li>▪ the Council should be representative of all the people of Belfast.</li> </ul>
<i>Policy should not be changed – most common reason:</i> <ul style="list-style-type: none"> <li>▪ flying the Union flag reflects the current status of Northern Ireland as part of the United Kingdom.</li> </ul>

<b>Q4a The City Hall has a special status so the Union flag should be flown there more often than at other buildings. %</b>				
	<b>All</b>	<b>C</b>	<b>P</b>	<b>Other</b>
Strongly agree or agree	58.0	17.3	86.9	51.7
Neither agree nor disagree	11.0	15.7	6.1	17.7
Strongly disagree or disagree	31.0	67.1	7.0	30.6

<b>Q4b The Union flag should be flown at the City Hall only. %</b>				
	<b>All</b>	<b>C</b>	<b>P</b>	<b>Other</b>
Strongly agree or agree	20.8	20.5	23.3	15.3
Neither agree nor disagree	17.2	16.3	15.9	25.7
Strongly disagree or disagree	62.0	63.1	60.8	59.0

<b>Q4c The policy about the flying of the Union flag should be the same at all Council buildings. %</b>				
	<b>All</b>	<b>C</b>	<b>P</b>	<b>Other</b>
Strongly agree or agree	52.5	47.9	55.0	51.7
Neither agree nor disagree	18.5	15.4	19.0	23.1
Strongly disagree or disagree	29.1	36.7	26.0	25.2

<b>Q5 If the policy were changed so that the Union flag no longer flew on Council buildings, which of the following statement would best reflect your feelings? (I would feel .... because the Union flag no longer flew) %</b>				
	<b>All</b>	<b>C</b>	<b>P</b>	<b>Other</b>
Highly satisfied	17.6	41.3	4.1	12.2
Pleased	13.8	31.1	1.4	16.3
No particular feelings	13.2	19.6	6.5	21.8
Displeased	22.6	3.5	35.8	21.8
Offended and unwelcome	32.9	4.5	52.3	27.9

<b>Q6a Which of the following policy options would you prefer for the City Hall? %</b>				
	<b>All</b>	<b>C</b>	<b>P</b>	<b>Other</b>
No change <sup>71</sup>	57.9	10.5	85.6	53.1
Flag days	9.8	13.7	8.4	9.7
No flag	10.0	26.6	0.5	9.7
Neutral flag	14.7	35.1	1.8	15.9
No flag or neutral flag <sup>72</sup>	5.1	11.7	1.6	6.2
Other or no answer	2.5	2.4	2.1	5.3

<sup>71</sup> i.e. fly the Union flag on a permanent basis

<sup>72</sup> A number of respondents selected two options (no flag and neutral flag) – this preference has therefore been included as a separate response

<b>Q6b Which of the following policy options would you prefer for the Duncrue Complex?</b>					<b>%</b>
	<b>All</b>	<b>C</b>	<b>P</b>	<b>Other</b>	
No change <sup>73</sup>	40.6	6.6	61.3	35.3	
Flag days	13.9	4.1	21.3	14.7	
No flag	21.0	45.2	7.6	17.6	
Neutral flag	15.2	28.2	4.6	20.6	
No flag or neutral flag	4.9	12.0	1.2	3.9	
Other or no answer	4.3	3.7	4.0	7.8	

<b>Q6c Which of the following policy options would you prefer for the Ulster Hall?</b>					<b>%</b>
	<b>All</b>	<b>C</b>	<b>P</b>	<b>Other</b>	
No change	41.8	6.4	63.6	35.6	
Flag days	13.0	3.8	19.6	13.5	
No flag	21.2	46.2	7.6	17.3	
Neutral flag	15.3	28.8	4.6	20.2	
No flag or neutral flag	4.8	11.0	1.2	5.8	
Other or no answer	4.0	3.8	3.4	7.7	

<b>Q6a Which of the following policy options would you prefer for the City Hall? – Responses from those employed at the City Hall only (128)</b>					<b>%</b>
	<b>All</b>	<b>C</b>	<b>P</b>	<b>Other</b>	
No change	46.1	9.6	77.8	43.8	
Flag days	17.2	21.2	16.7	12.5	
No flag	7.0	15.4	0	6.3	
Neutral flag	15.8	28.8	3.7	12.5	
No flag or neutral flag	10.9	19.2	0	25.0	
Other or no answer	3.1	5.8	1.9	0	

<b>Q6b Which of the following policy options would you prefer for the Duncrue Complex? Responses from those employed at the Duncrue Complex only (108)</b>					<b>%</b>
	<b>All</b>	<b>C</b>	<b>P</b>	<b>Other</b>	
No change <sup>74</sup>	70.4	21.4	94.6	65.0	
Flag days	5.6	10.7	1.8	10.0	
No flag	7.4	28.6	0	0	
Neutral flag	9.3	25.0	0	15.0	
No flag or neutral flag	4.6	14.3	0	5.0	
Other or no answer	2.8	0	3.6	5.0	

<sup>73</sup> i.e. fly the Union flag on designated days plus 4 additional days

<sup>74</sup> i.e. fly the Union flag on designated days plus 4 additional days

