

Clarification on Legislation Governing the Display in the Workplace, including the Council Chamber, of clothing or other items which might be deemed offensive.

1. Introduction

1.1 Further to the meeting of Council on 3rd July 2018, the Chief Executive undertook to submit to the next meeting of the Strategic Policy and Resources Committee a report providing clarification on the legislation governing the display in the workplace, including the Council Chamber, of clothing or other items which might be deemed to be offensive.

1.2 The following report outlines the current legislation, guidelines and policies which are relevant to the above issue and which can assist members in considering approaches to promote and maintain a good and harmonious environment.

2. Legislation

2.1 The Fair Employment and Treatment (NI) Order 1998 places an obligation on employers and employees to take all reasonable steps to prevent harassment in the workplace, as defined by law as “unwanted conduct which has the purpose or effect of violating dignity or creating an intimidating , hostile, degrading, humiliating or offensive environment “.

2.2 Belfast City Council’s approach to promoting and maintaining a good and harmonious working environment, takes the following into consideration:

- Section 75 of the Northern Ireland Act 1998
- The Fair Employment and Treatment (NI) Order 1998
- The Fair Employment in Northern Ireland Code of Practice
- Guidance from the Equality Commission on Promoting a Good & Harmonious Working Environment

2.3 With effect from September 1997, Management and Trade Unions have mutually agreed a Joint Declaration of Protection, a copy of which is attached at Appendix **One**.

3. Guidance from the Equality Commission and Council’s Application of the Guidance

3.1 The Equality Commission defines a good and harmonious working environment as “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.”

3.2 The promotion of a good and harmonious applies to all forms of religious belief and political opinion and including the two traditional community backgrounds in Northern Ireland. It is also intended that the overarching principles of the policy should be applied to other aspects of identity including race, gender, disability, sexual orientation and age.

3.3 There is also acknowledgement that both corporate and individual responsibility,

extends not only to those who work for the organisation but also to third parties and including those who engage with it, for example, by using or delivering services, or as clients or customers.

The report states:

3.4 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.

The very restrictive nature of a “neutral” environment may give rise to other problems for employers. As one example, if an employer has a policy that is so rigid that it prohibits workers from wearing marks of religious observance of the sort that believers commonly wear (such as crosses, kippot, turbans or Muslim veils), then that may indirectly discriminate against persons of a particular religion, or who are members of particular racial groups. The risk of this will be particularly high where employees are genuinely obliged by the tenets of their religions to wear such emblems and so find themselves in a dilemma as their religious duties conflict directly with the conditions of their employment.

For employers, it is likely to be easier to justify a policy, and thus avoid acts of unlawful indirect discrimination, where the policy is not unconditionally strict and seeks only to prohibit the display of emblems which have the potential to disrupt the harmonious working environment. Where the wearing of an emblem, particularly a religious one, is not likely to cause such disruption, then it may be difficult to justify a restriction unless there are other substantive grounds (e.g. “health and safety” reasons may justify restrictions in certain circumstances).

Consequently, employers may find it preferable to facilitate diverse expressions of identity in a sensitive way which does not disrupt a good and harmonious working environment. Such an approach should be founded on choices that are reasonable, fair and appropriate at that time and in that place. Ultimately it will be for each employer to reach an informed decision as to where and when such boundaries should be set with the guidance outlined below intended to assist this decision-making process.

Workplace Emblems

Likewise there are certain symbols and emblems which, if their display is sanctioned within the workplace, may help create an environment that is perceived to be more welcoming to one community than the other, whether intended or not. These may include:

- Posters, pictures, portraits and displays that contain or incorporate emblems more closely associated with one or other of the communities; or*
- Religious tracts and emblems*

Once more at any particular point in time it is impossible to provide a definitive list of “do’s and don’ts” with regard to such symbols, given their variety and the range of situations in which they are found. Instead, the Commission would hope that decisions made by employers in relation to workplace emblems are supported by sound and objective rationale in keeping with their underlying equality policies.

With this in mind, the Commission recommends that where an employer is seeking to provide or maintain fair participation, or to ensure that all services and facilities are widely utilised by all sections of the community, there is sensitivity concerning displays wholly or mainly associated with one section of the community.

Symbols which are not likely to disrupt a good and harmonious working environment

For Employees

There are many ways in which we convey our religious or political identity to others. In this category would fall emblems that may be associated primarily with one religion or community but are not directly linked to community conflict. Such marks of identity are unlikely to be regarded as creating an intimidating or hostile working environment.

There are many examples of such emblems, including:

- Marks of religious observance, insignia associated with organisations attached primarily to one religion, community or culture (e.g. crosses, crucifixes, ashes, kippot, turbans, Muslim veils, pioneer pins, Christian Union badge, fáinnes, dreadlocks)*
- Marks of remembrance, celebration or commemoration (e.g. poppies, shamrock)*

Whether any mark of religious observance is regarded by a particular faith or religious belief system as “obligatory” or a matter of personal preference may be open to debate and could be a factor to be considered by an employer in certain circumstances. As previously noted, when these and other marks of identity are displayed with decorum (and, if appropriate, during the designated time) and with a sense of due proportion then they are unlikely to create or sustain a hostile environment. It would be unacceptable however if an individual was made to feel uncomfortable for wearing or not wearing any of these particular emblems or if these emblems were being flaunted before or forced on someone for not wearing them. At the same time, there may be occasions where the display of a particular item may be inappropriate for reasons relating to a genuine

occupational requirement (e.g.health and safety) and these other factors must also be taken into account.¹

3.5 The Council's Joint Declaration of Protection states that unauthorised displays of posters, graffiti, flags and emblems or the circulation of material or articulations of slogans or songs which are likely to give offence or cause apprehension to a particular group of employees are prohibited.

3.6 The Equality Impact Assessment relating to Belfast City Hall: Promoting a Good and Harmonious Environment 2012 recommends that:

"In designated work areas (e.g. staff offices, kitchens), further to the Fair Employment and Treatment Order 1998, an obligation should fall on the Council to provide an environment where 'no worker feels threatened or intimidated on grounds of religious belief and/or political opinion'; the display of materials more closely associated with one community than another should be avoided"

4. Northern Ireland Local Government Code of Conduct for Councillors

4.1 The code of Northern Ireland Local Government Code of Conduct for Councillors (27th May 2014) outlines 12 principles which Councillors must observe. These are intended to promote the highest possible standards of behaviour for Councillors. They include the following:

4.2 Equality

You should promote equality of opportunity and not discriminate against any person by treating people with respect regardless of race, age, religion, gender sexual orientation, disability, political opinion, marital status and whether or not a person has dependents.

4.3 Promotion of Good Relations

You should act in a way that is conducive to promoting good relations by providing a positive example to the wider community to follow and that seeks to promote a culture of respect, equality and trust and embrace diversity in all its forms.

5. Equality Impact Assessment – Belfast City Hall: Promoting a Good and Harmonious Environment

5.1 Members will also be aware that an Equality Impact Assessment relating to Belfast City Hall: Promoting a Good and Harmonious Environment was undertaken in 2012 and the recommendations adopted by Council. The recommendations are attached at Appendix **Two**.

5.2 These recommendations are more concerned with items or artefacts on display within the City Hall as a whole. It does allow for temporary displays and recommends that the

¹ Promoting a Good and Harmonious Environment: A Guide for Employees and Employers. Equality Commission NI

Council shall continue to liaise with local communities to facilitate the provision and management of temporary exhibitions in the City Hall and its grounds, and to ensure that these exhibitions are deemed appropriate.

5.3 The only recommendation which specifically mentions the Council Chamber was that it should be preserved in its current form. However, the report also advised that there was a need to consider the building not as a whole but as the sum of its parts, and including areas that are used for a wide range of diverse functions. It was recommended that displays within each of these areas or zones should be appropriate to that use or function, and this included the Council chamber. It acknowledged that within each area or zone the duty of care towards visitors, those attending functions, service users, service providers, elected members and Council staff will vary. In reaching a decision on appropriate displays, it advised that each of these various duties of care could not be ignored.

6. Conclusion

6.1 The City Hall including the Council Chamber should be considered a workplace environment given that staff are situated and working within these locations. In addition, they are used by clients, customers, third parties and members of the public. Therefore, the good and harmonious environment is required to be promoted within these settings by all who use them.

6.2 While there is no definitive or exhaustive list about what is deemed offensive given the variety of emblems etc. which exist and the fact that context often plays a part, the current BCC Joint Declaration of Protection and the guidance from the Equality Commission should be taken into consideration along with the duty to promote equality and good relations.

6.3 In addition, as outlined in the Code of Conduct for Councillors, the promotion of a culture of respect, equality and trust and the embracing of diversity in all its forms should be sought.

6.4 Furthermore Members should display civic leadership on compliance with Section 75 of the Northern Ireland Act 1998 and how we promote equality of opportunity and good relations