

1. BACKGROUND

The Equality Coalition is a civil society alliance of over 100 NGOs and trade unions, co-convened by the Committee on the Administration of Justice (CAJ) and UNISON. In coming together, our aim is to promote equality and compliance with the Section 75 equality duty within Northern Ireland. The Equality Coalition provides a forum for unity between sectors when campaigning for equality, while allowing for the diversity of its members' work and views. Since the advent of Section 75, we have engaged extensively with public authorities in relation to their equality scheme commitments.

2. RECOMMENDATIONS SUMMARY

Our recommendations focus primarily on how we feel the Equality Commission ('the Commission') should be using their enforcement powers strategically and pro-actively. Additionally, we have several suggested changes to the content of the policy:

- In summary, we recommend an alternative policy approach centred on the Commission instead adopting an overarching strategic enforcement strategy – this would avoid the present policy working in isolation. Such a strategic enforcement strategy would coordinate the use of the anti-discrimination legislation covered in the current draft policy, alongside other aspects of ECNI enforcement, including Section 75 Paragraph 11 investigations, and powers over Article 2 of the NI Protocol. This strategy could also address persistent areas of discrimination, as well as anticipated new areas of concern.
- Additionally, Equality Coalition members recommend a number areas of concern which would benefit from inclusion in such a strategic enforcement strategy.
- In terms of the present policy on legal assistance we recommend that the Commission explicitly state if certain discretionary criteria are more significant than others. If not, the Commission should clarify how each criteria are weighted in determinations to support cases. We also recommend that one factor (the extent to which the Commission has supported previous cases) is rephrased to afford greater clarity.

3. AN OVERARCHING STRATEGIC ENFORCEMENT STRATEGY

In discussion with the Commission on the current draft policy (in September 2021), it was confirmed to the Equality Coalition that the Commission does not have a broader overarching strategic enforcement strategy, within which the present policy could fit as a key element of the Commission's broader strategic vision. We would recommend the adoption of such a strategy - in fact, the Coalition views this as essential to maximize the Commission's potential impact to reduce discrimination and to protect vulnerable people in Northern Ireland. This strategy should encompass the variety of enforcement options available to the Commission, including legal action under the anti-discrimination statutes covered by the present draft policy, as well as Section 75 enforcement, Paragraph 11 "own initiative" complaints, and the functions conferred on the Commission as a 'Dedicated Mechanism' to enforce commitments made under Article 2 of the NI Protocol to the UK-EU Withdrawal Agreement.

4. PRIORITIZATION IN THE CURRENT LEGAL ASSISTANCE POLICY:

If developed, we would recommend that a strategic enforcement strategy highlight a range of key priority areas for enforcement-type intervention. In the interim, we would urge the Commission to highlight priority areas for the use of legal assistance powers within the legal assistance policy.

The closest that the current draft policy comes to doing the above in terms of case assistance is by referencing the priorities in the Commission's Corporate and Business Plan. However, this potentially involves complainants cross checking an alternative document, which sets out broad priorities for a the Commission's wider work, beyond both legal assistance and enforcement in general.

The priority areas in the current Corporate plan are:

1. Employment
2. Education
3. Access and participation
4. Mainstreaming and championing equality

There is further detail then set out on each in the Corporate Plan. These identified priorities in the Corporate Plan are linked to a Programme for Government (PfG) that did not exist at the time the Corporate Plan was adopted, nor does it exist at present. In the current mandate, only an outcomes framework for a PfG has been consulted on. A draft PfG was also included in the New Decade New Approach Agreement, but it has not been adopted by the NI Executive to date.

Whilst we can see some merit in using similar indicators, we would question whether the Commission as an independent body should align its strategic priorities, and its subsequent enforcement priorities for anti-discrimination legislation, with the Executive's PfG, which will be subject to political agreement and is likely consequently to exclude key equalities issues.

Rather it is recommended that the strategic enforcement policies identify key areas where there is persistent discrimination, both in the sense of areas with identified long-term patterns of discrimination, or areas where cases which are emerging as a concern (but may not be widespread). It is also recommended that ECNI engage closely with trade unions in the development and implementation of strategic enforcement.

5. SUGGESTIONS ON AREAS OF CONCERN FOR ECNI ENFORCEMENT INTERVENTION

Equality Coalition members have highlighted the following particular areas of concern during our recent meetings with the Commission:

- The anticipated increase in racial profiling in access to public services post-Brexit. Entitlements may be increasingly disaggregated, with differentials created between different groups of EU citizens.
- Concern about racial discrimination emanating from hostile environment measures that may not even apply in NI, but are assumed to do so because of their application in

England and because guidance on them is sometimes nonetheless circulated in NI. This includes the fields of housing and employment.

- The lack of protection for abortion seekers around accessing goods and services, specifically the lack of protection regarding employment (i.e., time off work).
- Concern around the move from online learning to mandatory in person learning by universities, and the impact on disabled students or students with caring responsibilities who are not being provided with practical levels of reasonable adjustments. There is concern that advances which had been made for disabled students in accessing online learning will be rolled back.
- Concern over increasing religious and political discrimination.

6. THE CRITERIA IN THE DRAFT LEGAL ASSISTANCE POLICY

The Commission has significant discretion over which cases are provided with assistance. Therefore, the discretionary criteria in case assistance are very important. It is currently unclear if weight is given to particular discretionary criteria, or if they are all weighed equally when considering a case for assistance. We believe that it is important for the legal assistance policy clarify this. Additionally, in conversation with staff from the Commission on this policy, reference was made to an assessment process whereby a case was scored 1-5 on the discretionary criteria. There is currently no mention of this in the policy; we recommend that it is described and included in the policy to afford greater transparency on how support decisions are made.

Several factors are mentioned more than once in the policy, again, it is not clear if these factors are more important than the other listed discretionary criteria. If so, this should be clearly stated.¹

We agree with most of the discretionary criteria, aside from the references to the Corporate and Business plan (which we believe should instead be dealt with in the manner suggested above).

The factor referenced in 5.2 and 5.4 (f) should be clarified and rephrased. This currently states:

“5.2 The Commission will also consider the extent to which it has supported same or similar cases. This means that the Commission may support cases where the issue has been the subject of repeated complaints to the Commission; or alternatively past support for the issue may mean that the cost of supporting another similar application is not justified.”

The examples of the use of the factor appears to be to demonstrating that this is both a factor *for* assistance and *against* assistance. However, we feel that this factor should be

¹ For example, section 5.1 references discretion being given to areas set out in the annual Business Plan, and section 5.2 references the extent to which the Commission has previously supported same or similar cases. However, these two factors are also listed in section 5.4. Indeed, reference to the Business plan is mentioned twice in section 5.4.

rephrased for clarity. The example for when this factor would be used to justify assistance relates more to an issue of significant concern, or persistent discrimination, rather than to whether the Commission had previously supported a similar case. We recommend that the factor be re-worded to say:

“The Commission will also consider the extent to which it has supported same or similar cases. Past support for the similar issue may mean that the cost of supporting another similar application is not justified. However, if the issue has been the subject of repeated complaints to the Commission, this may justify assistance regardless of past support.”

In addition, we believe it would be useful for the Commission to include new discretionary criteria which explicitly states that a portion of the annual legal assistance may be dedicated to cases which address issues of persistent complaints. Another suggestion is that 5.4 (b) further clarify what is meant by ‘statutory objectives’, as the statutory grounds for case assistance are so broad.

Finally, we recommend that Section 14 be modified to include a commitment to public consultation in the event of amending the policy.

-ENDS-

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