

A RESPONSE TO THE PROPOSED
SINGLE EQUALITY BILL
FOR NORTHERN IRELAND

2. PURPOSE & PRINCIPLES

2.1 – Have you any comments on the Purpose and Principles set out in this chapter?

Chapter 2 clearly states that one key principle of the proposed Single Equality Bill is "*to promote respect for the equal dignity and worth of all, and to facilitate full participation and good relations in society*". While this aim is commendable, I am concerned that many proposals put forward within this document undermine this principle. If all individuals are deserving of equal respect and dignity then it is a flawed approach to single out particular classifications of person and emphasise special measures to promote their "equality" while leaving other classifications of person unmentioned. In effect your proposals create a hierarchy of discrimination! Someone who is discriminated against in a job interview on the basis of his / her gender (for example) is provided with greater legal protection than someone who is discriminated against in a job interview on the basis of his / her physical appearance. This is inherently unjust in that while all are victims of discrimination, not all are provided with equal levels of legal recourse. This undermines genuine equality, and instead of judging cases on the nature of the crime (i.e. discrimination) the law creates disparities. A person who discriminates on the basis of religion, age, gender etc is effectively deemed a greater criminal than a person who discriminates on the basis of physical appearance or social/economic status. Such situations will always arise when legislation singles out certain classifications of person or personal attributes for "protected" status instead of seeking to promote equality for all before the law.

Equality is best served when law judges the nature of the crime committed against the victim rather than the perceived motives of the perpetrator.

The proposed Bill must also give recognition to the fact that there are cases where wise and informed discrimination is commendable and desirable. Not all discrimination is wrong – your proposals need to acknowledge this explicitly. For example, a charity would be wise to discern carefully who it appoints as its treasurer – it would be justified in discriminating against individuals with a track record of embezzlement. Providers of child care services would be right to discriminate against those with convictions of child abuse when appointing staff to look after children.

The final principle in Chapter 2 states that the proposed Bill is being brought forward in order "*to acknowledge that legislation should be fair to everyone with a balance struck between the demands of the right to equality and human dignity and the right to liberty and other broader social interests*". In promoting equality and diversity, the proposals focus disproportionately on employees and service users with little protection for employers and service providers. If employees / service users are legally permitted to adopt a religious or political affiliation, acquired gender or sexual orientation of their choice, then surely employers / service providers also have the right to run their organisations according to a particular ethos (religious, political etc)?

This must be recognised within the proposals and employers granted rights of discernment in the recruitment (and retention) of staff and the particular users they admit to their services / facilities.

Employers in organisations with a particular ethos must have the freedom to recruit staff whose beliefs and conduct are compatible with that ethos. They must also have the freedom to dismiss staff whose conduct or practices are inconsistent with the ethos. For example, the Vegetarian Society should have the freedom to refuse to employ meat-eaters, and the RSPCA should have the right to dismiss an executive found to be investing in the fur trade. This principle must apply not only to churches and charities but to all organisations / service providers with a particular ethos. An important precedent is set by the case, in England, of O'Neill versus the Governors of St Thomas More Roman Catholic School in Bedfordshire¹. In this case an unmarried woman who taught religious education in a Roman Catholic school became pregnant by a priest who visited the school. The teacher was lawfully and fairly dismissed by the school governors, and this decision was upheld by an employment tribunal. Your proposals must recognise the responsibility of staff / service users to act in accordance with the ethos of the employer / service provider (if it has a particular ethos), and must protect the right of employers to dismiss staff whose conduct undermines the ethos and the right of service

¹ O'Neill v St Thomas More RCVA Upper School and Bedfordshire County Council (1996), IRLR 372, http://www.eoc-law.org.uk/cseng/case_summaries/oneill_v_1_governors_of_st_thomas_more_rcva_upper_school_2_bedfordshire_county_council_1996_irlr_372_eat.asp

providers to prohibit users whose practices go against the ethos. These rights must be protected in any future proposals put forward as a result of this consultation.

3. GROUNDS

The existing "grounds" for discrimination as outlined in Section 75 of the Northern Ireland Act (1998) create a hierarchy of discrimination victims and thereby promote inequality. Personal appearance is often a more innate personal attribute than sexual orientation, and can be a source of discrimination. Those with attractive looks may find themselves in an advantageous position in terms of employment prospects. But, by virtue of Section 75's singling out particular classifications of discrimination victims, the law is currently provides extensive legal recourse for those who are discriminated against on the basis of sexual orientation but scant protection for those discrimination against on the basis of physical appearance. This is essentially unjust and leaves victims of the same crime (i.e. discrimination) unequal before the law. An all-or-nothing approach should be taken by the law - either list every possible classification on which people can be discriminated against, or single-out no class of persons and instead emphasise the merit principle for all.

If the provisions of this Bill are going to single out certain particular classifications of persons (regardless of the points just made) then these must be limited to classifications that the individual has absolutely no control over. Is it fair to group race / ethnic origin, age, and gender alongside religion, political affiliation, sexual orientation, and acquired gender? An individual has no choice or control over his / her age, gender, disability and ethnic origin these are entirely innate

characteristics, whereas with religion, political affiliations and sexual orientation there is an element of control and nurture. A person may be predisposed towards a particular religion, political persuasion or sexual orientation, and his / her life circumstances may have influenced him / her towards a particular identity, but there still is an element of personal control. A person disposed towards a particular religion, political persuasion, or sexual orientation does have control over the extent to which they express and practise that religion, political persuasion or sexual orientation. An individual may be physically attracted to persons of a particular gender, but that does not give him / her the right to engage in sexual intercourse with that person. If the provisions of this Bill are going to single out certain particular classifications of persons then that must not include sexual orientation or acquired gender.

If (regardless of the above comments) the proposals are going to include sexual orientation then please record my dissent when reporting the findings of this Consultation. Please also give an explicit definition of what is meant by sexual orientation. Does it simply mean physical attraction or does it refer to sexual practice? How many sexual orientations are there? Is paedophilia a sexual orientation? Current definitions of sexual orientation are very open-ended and need to be more tightly defined within your proposed Bill in order to protect employers and service providers with a particular ethos.

POLITICAL OPINION

3.1 – In relation to the potential loophole in the "political opinion" ground, do you consider we should:

The existing definition should be amended to exclude all political opinions / affiliations that support the use of illegal violence, whether or not these are connected with the affairs of Northern Ireland.

3.2 – please explain the reasons for your preference:

Political opinions and affiliations supporting illegal violence and terrorism should not be offered protection in the terms of equality legislation. Those organisations whose main methods / aims are to intended to overthrow the law (through illegal means), should not be protected by that law. Northern Ireland society has suffered much at the hands of terrorism and paramilitarism over the last 30 years, this behaviour must not be legitimised nor must legal recognition be granted to those organisations that have perpetrated violence.

POSSIBLE NEW GROUNDS

3.3 – Should a new ground of "marital or family status / dependants" be included in the Bill?

No

3.4 – If "Yes", should such a ground:

I do not believe that this new ground should be included, but if it is going to be included (regardless of the previous answer) then it must follow the lines of Option B and reflect the definition as included in the Republic of Ireland's Employment Equality Act. It must not include cohabiting couples.

3.7 – Please explain the reasons for your answer:

I do not believe that "marital or family status / dependants" should be included in this Bill, but if it is going to be included then it must reflect the definition laid out in the Republic of Ireland's Employment Equality Act. It must apply to married couples only and not cohabiting couples, those in so-called civil partnerships, or any other relationship aside from monogamous heterosexual marriage. The State should not be legitimising any other type of relationship or awarding legal rights and privileges to those who have not made a life-long legal commitment to their spouses in marriage.

Couples must make the legal commitment of marriage before they can expect the legal benefits and rights that are extended to married couples. To move away from this standard would create injustice - why award rights and privileges to cohabiting couples and not to two people who share a house in a non-sexual relationship? Do two friends sharing a house need to be sexually active in order to qualify for these legal entitlements and privileges? If we shower legal benefits and privileges on some relationships outwith marriage, then surely the law must extend these to all relationships outside of marriage or treat citizens unequally!

3.8 – Which specific new ground or grounds do you consider should or should not be included in the Bill?

Should be included:

This Bill (and other Equality Measures) should not single-out out classifications of person. By highlighting specific grounds of discrimination this Bill creates a hierarchy of victims and thereby undermines the principle of equality. If your proposals are going to single-out grounds of discrimination (regardless of my feedback) then both "sexual orientation" and "gender reassignment" must be removed from the categories laid out.

If your proposals are going to continue to include these two categories, then please record my dissent when the findings of this Consultation are reported. Also, if sexual orientation is going to continue to be included in the proposals then why are the proposals excluding the following grounds of discrimination:

- PHYSICAL APPEARANCE
- SOCIAL / ECONOMIC STATUS
- MANNERISMS
- PERSONALITY

Surely Equality Legislation cannot include sexual orientation and yet exclude physical appearance, mannerisms and personality when they

are also potential grounds of discrimination in employment and the provision of goods, facilities and services?

Should not be included:

No single groups should be identified when implementing so-called equality legislation. Either all people (whatever their innate characteristics & identity) are equal, or there is a hierarchy of 'more' and 'less' protected groups. The latter scenario promotes inequality. However if, as seems likely, groups are going to be singled out, then only those characteristics that are completely innate should be covered. "Sexual Orientation" and "Gender Reassignment" should be removed from existing legislation and "Gender Identity", "Past Convictions", and "Genetic Predisposition" must not be included as new grounds.

3.9 – If you listed a ground or grounds, please explain why you consider this ground or grounds should or should not be included in the Bill?

If sexual orientation and / or gender reassignment are to be included as grounds within this Bill, then how can the following personal attributes be excluded? In these circumstances the following grounds must also be included in the Bill:

PHYSICAL APPEARANCE

A person's physical appearance can have as serious an impact on a person's life chances and opportunities as can ethnic origin, political affiliation, religion, sexual orientation, gender etc.

This is not a far-fetched statement, and many people do experience discrimination and prejudice as a result of their physical appearance. Until 1994 Chicago-based United Airlines discriminated against female flight attendants by requiring them to stay thinner than their male colleagues. Some female attendants lost pay and while others were sacked for being overweight. Although United Airlines had "maximum weight requirements" for both male and female flight attendants, stricter requirements were imposed on the women compared to the men².

This issue has been taken so seriously in the USA that job discrimination laws now remove all legal rights from potential employers to request information about the "age, gender, race, religion, marital status, health, physical appearance, or personal habits" of job applicants³.

Historically, many countries had laws prohibiting "ugly" or "unsightly" people from appearing in public⁴. Such a law would be unthinkable today. But in many aspects of life today great emphasis is placed on appearance. Image consultancy, spin doctoring, and cosmetic surgery are up-and-coming industries. There is thus an increasing danger that those whose physical appearance does not meet the expected

² Weight Standards May Constitute Sex Discrimination, Laura S Scott, http://library.lp.findlaw.com/articles/file/00305/008990/title/Subject/topic/Constitutional%20Law_Equal%20Protection/filename/constitutionallaw_2_1875, see also www.careerjournal.com/myc/survive/20000906-voros.html

³ <http://in.jobstreet.com/career/writing/resume5.htm>

⁴ If Looks Could Kill: Looks Discrimination in Employment by Don D Sessions, Employee Rights Attorney, Mission Viejo, California, <http://www.job-law.com/articles/7304.cfm?vPage=7304>

standard of the majority can, and do, find themselves discriminated against.

It is not paranoia to suggest that employers can discriminate on the basis of looks – cases of this have been identified. In November 1994, the ABC news program "20/20" used hidden cameras to expose looks discrimination in hiring decisions⁵. The "20/20" crew sent two men and two women – one member of each team better looking than the other member – on job interviews with identical experience and resumes. In five cases out of five, the more attractive woman got the job; in three chances out of three, the more attractive man was hired.

Good looks often exert a "halo effect" on others – the notion that everything that comes in such an attractive package must be good. Studies indicate this preference is unconscious and is displayed even by infants, who tend to gaze longer at a picture of a more attractive face than at a less attractive one⁶. But discrimination does not have to be intentional to be unlawful.

Given the above, if legislation is being established and consolidated to prohibit discrimination on grounds of ethnicity, religion, political affiliation, sexual orientation, gender then physical appearance must be added to this list. There is evidence of discrimination in society on

⁵ If Looks Could Kill: Looks Discrimination in Employment by Don D Sessions, Employee Rights Attorney, Mission Viejo, California, <http://www.job-law.com/articles/7304.cfm?vPage=7304>

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the basis of physical appearance and from school age people face bullying and harassment because they are perceived to be too fat, or too thin, or too ugly by their peer group. According to recent research, 21% of people in Britain are clinically obese⁷ and surely measures must be set in place to protect this minority from discrimination in employment and public services, goods and facilities.

SOCIAL / ECONOMIC STATUS

In addition to physical appearance, there are other grounds on which discrimination can, and does, take place. Social / economic status (and place of residence) is another factor which can lead potential employers to discriminate against fully qualified applicants. Research carried out by a Centre for Social Policy & Research in Australia identified discrimination both by potential employers and an educational institute against applicants from a particular neighbourhood⁸. Employers may be prejudiced on the basis of an applicant's address – applicants living in certain neighbourhoods may be disadvantaged because their particular housing estates are perceived to have a bad reputation. This may partially explain why unemployment rates are higher in many inner-city housing estates than the national average. As persons are expected to give their address on job application forms and application forms for educational

⁷ BBC News, 23rd April 2003, <http://news.bbc.co.uk/1/hi/health/2970461.stm>

⁸ Barriers to Employment: Why jobs are hard to get if you live on the High Rise Estates in the City of Yarra, by David Holdcroft (January 2003), Ignatius Centre for Social Policy & Research, <http://www.jss.org.au/research/documents/BarrierstoEmploymentJan03.pdf>

institutions, legal measures should be introduced to outlaw discrimination on the basis of this information.

MANNERISMS

Further factors that can lead to discrimination against people in employment and the provision of public goods, facilities and services are personal habits and mannerisms. Employers may be "turned off" by someone with a nervous twitch and may (unintentionally) discriminate against such a person on this basis. Likewise employers or service-providers may have a personal aversion to nail-biting, or the wearing of make-up and if faced with the choice of two equally qualified applicants may discriminate on the basis of personal habits. A person's bitten nails may be the outward expression of stress within their life circumstances. They may find themselves orientated towards this habit and therefore should discrimination be allowed on such grounds? Accent should be included within this ground of discrimination. Individuals often have little control over the way they speak and employers can have aversions to particular accents. Some people prefer what is termed a 'public school' accent and others detest it. Similarly some people find a broadly spoken accent attractive while others find it repugnant. In the scenario of a job interview it is hard for a candidate to disguise their accent and this can lead to discrimination in the selection and recruitment of staff.

PERSONALITY

What about personality - employers and service providers may look more favourably on individuals with a lively, more effervescent and dynamic personality, than on those with a quiet and reserved nature! Arguably people have less control over their personalities than they do over their sexual orientation. Personality is an innate characteristic that can impact upon one's life chances and opportunities. It ought to be included in anti-discrimination measures if the law is going down the route of singling out particular groups and classifications of person.

3.10 – Please state why you consider that other legislation and / or other mechanisms that currently exist offer inadequate protection for any new ground or grounds that you feel should be covered in the Bill?

There is currently no specific legislation in place in Northern Ireland to prevent discrimination on the basis of (1) Physical Appearance, (2) Social / Economic Status, (3) Mannerisms, and (4) Personality and yet these attributes can be the grounds of discrimination within society and particularly in the labour market.

3.11 – Should we extend the existing provisions on equal pay (currently restricted to men and women) to another ground or grounds in the Bill?

No

3.13 – Should we repeal the Equal Pay Act (NI) 1970 and re-enact the provisions in this Bill?

No

4. SCOPE

4.1 – Which option should be used in determining the scope of the Bill?

It should be limited to the scope of the EU Directives and existing NI anti-discrimination legislation - Option A

4.2 – Please explain the reasons and outline any possible implications (advantages and disadvantages) for your choice

The scope of the Bill should be limited to that of existing directives and anti-discrimination legislation. Sections 75 and 76 of the Northern Ireland Act 1998 should not be included in the terms of this Bill. It is right and desirable that the scope of protection should differ according to the individual grounds of discrimination. This is because with some of the 'grounds' of discrimination there is a greater element of personal control than with others. Also, there may be greater need for exemptions in regard to discrimination on the basis of certain 'grounds' compared with others. For instance a person cannot alter their ethnic origin, race or age, however they do have control over the extent to which they practice their sexual orientation. In cases of gender reassignment there is a significant degree of individual decision-making and choice - therefore it must not be treated on the same basis as race or age, or afforded the same level of protection in regard to all goods, facilities and services.

4.3 – Should the Bill define "employment", "self employment" and "occupation"?

Yes

4.4 – If you answered "YES", should "employment" be defined using the definition in current legislation, namely "employment under a contract of service or apprenticeship or a contract personally to do any work"?

Yes

4.5 – If you answered "YES", should the Bill define the concepts more broadly to include relationships, which do not technically constitute a contract to allow for the inclusion of some marginal workers and volunteers?

No

4.6 – If a broader definition is to be used should it exclude volunteers?

Yes

4.7 – Should the Bill **not** define the above concepts but leave it to the Tribunals to decide on a case-by-case basis?

No view

4.8 – We would welcome your views on any other way of dealing with these employment concepts

Employers / Service Providers should be allowed discretion when dealing with volunteers. They should not be forced to accept particular volunteers, especially when the beliefs or conduct of those volunteers is not compatible with the ethos of the organisation.

Employers operating to a particular ethos must also be allowed to discriminate in the recruitment / retention of staff against those whose beliefs, affiliations or practices undermine the Organisation's ethos. A key precedent is set by the case, in England, of O'Neill versus the Governors of St Thomas More Roman Catholic School in

Bedfordshire⁹. A single woman who taught religious instruction in a Roman Catholic school became pregnant by a local priest. The teacher was lawfully and fairly dismissed by the school governors, and this decision was upheld by an employment tribunal. The rights of employers to operate to an ethos and the responsibility of staff not to contravene that ethos must be laid forth in the proposed Bill.

MEMBERSHIP AND INVOLVEMENT IN ORGANISATIONS OF WORKERS OR EMPLOYERS

4.9 – Should the Bill extend these provisions to some of all of the other grounds?

No

4.10 – If 'Yes', which grounds?

Employer and Worker Organisations should have the freedom to develop their own ethos (political, religious or other), and so should be free to refuse membership to an individual or group whose beliefs or conduct undermine that ethos. This already applies to a political party and a church, and must apply to professional organisations to.

If extending this provision to other grounds, these must not include sexual orientation, gender reassignment, gender identity, past convictions, or genetic predisposition.

⁹ O'Neill v St Thomas More RCVA Upper School and Bedfordshire County Council (1996), IRLR 372, http://www.eoc-law.org.uk/cseng/case_summaries/oneill_v_1_governors_of_st_thomas_more_rcva_upper_school_2_bedfordshire_county_council_1996_irlr_372_eat.asp

**VOCATIONAL GUIDANCE AND VOCATIONAL TRAINING, INCLUDING
PRACTICAL WORK EXPERIENCE**

4.11 – Should the Bill extend this provision to some or all of the new grounds?

No

4.12 – Are you content that the associated exceptions are carried through to the Bill?

Yes, all existing exceptions must be carried through to the Bill

4.13 – Please explain the reasons for your answers and if you answered "Yes" to question 4.11 list the new grounds to be covered.

It is vital that Training and Educational Service Providers are granted the liberty to operate according to their ethos – they should not be forced to accept staff or students who openly contravene the ethos of those bodies, or whose conduct is incompatible with the views of the Service Provider / Employer. For example a Theological Training Institute or Bible College ought to be able to discern whom it accepts as students on the basis of religious beliefs and conduct (including sexual practice). Political Parties are permitted to bar from membership those whose conduct is detrimental to the overall ethos of the Party, or those who openly support other parties. The same must hold good for Educational / Vocational Training Service Providers who operate to a particular ethos.

SOCIAL PROTECTION, INCLUDING SOCIAL SECURITY AND HEALTHCARE AND SOCIAL ADVANTAGES

4.14 – Do you consider that the Bill should:

Not define these concepts but leave it to the courts to decide on a case-by-case basis?
(paragraph 27 option a)

Yes

Define the concepts along the lines set out in paragraph 27 option (b)?

No

4.15 – Please explain the reasons for your answer:

There may be circumstances in which it is wise for a healthcare provider to discriminate in the allocation of limited medical / healthcare resources. Some people knowingly engage in risk-taking behaviour in relation to their health. In so doing they should forfeit the guarantee of equal healthcare provision with someone who has been careful to avoid risk-taking behaviours – especially where medical resources are limited. It is fundamentally unjust to treat those who are persistently reckless in the same manner as those who are consistently prudent. The proposed Bill must make provision for this.

Cigarette smoking has a detrimental affect on an individual's health and well-being. This fact is well documented and publicised. A smoker is 2.24 times more likely to develop cancer than a non-smoker¹⁰. Cancers of the lung, throat, mouth, oesophagus, kidney, pancreas, cervix, and bladder are more common among smokers than non-smokers. 30% of cases of coronary thrombosis are caused by smoking and 9 out of 10 in the UK who require heart bypass operations are either current or former smokers¹¹.

¹⁰ Dr Gavin Petrie, *Smoking – Health Risks*, http://www.tiscali.co.uk/lifestyle/healthfitness/health_advice/netdoctor/archive/000417.html, ©1998-2004, NetDoctor.co.uk

¹¹ Dr Gavin Petrie, *Smoking – Health Risks*, http://www.tiscali.co.uk/lifestyle/healthfitness/health_advice/netdoctor/archive/000417.html, ©1998-2004, NetDoctor.co.uk