

**Submission to the Working Party's
Consultation Paper
on Equality Commission for Northern Ireland**

23 February 1999

Introduction

NICEM is a voluntary sector, membership-based umbrella organisation representative of minority ethnic groups and their support organisations in Northern Ireland. The Council is committed to collective action informed by people's experience and analysis of their circumstances. In pursuit of equality of opportunity and equity of treatment, NICEM works for social change in relation to racism and in particular to the elimination of racial discrimination.

NICEM welcomes the Working Party's consultation paper on the Equality Commission for Northern Ireland. We appreciate the tight working schedule and the government's political determination to push the amalgamation.

1. General Comment

1.1 NICEM is sceptical on the consultation process based on the experience of the White Paper "Partnership for Equality" in which all submissions strongly opposed to set up the Equality Commission (80 opposed, 18 support and the rest did not address the amalgamation). The Government then claimed in the House of Commons debate that it got the overwhelming support from the key sector such as the Fair Employment Commission and the Northern Ireland Council for Voluntary Action (representing the voluntary sector). We do hope that this consultation is genuine and listen to the views from different minority right constituencies.

1.2 The consultation process is far below the standard that set up under the existing PAFT or the future Equality Scheme. Under Article 4(2)(b) of the Schedule 9 of the Northern Ireland Act 1998, the Equality Scheme requires for "assessing and consulting on the likely impact on policies adopted or proposed to be adopted by the authority on the promotion of equality of opportunity." NICEM doubts whether Article 4(2)(b) has been employed in this process nor the consultation paper has been highlighted the like impact of the Equality Commission towards the race and disability issues, as well as resources implication. The Strategic Priority, in the consultation paper, fails to address the adverse impact on racial and disability issues once the Equality Commission is set up; nor proposed any measures such as positive action programmes, capacity building programmes, empowerment programme and confident building programme to both the race and disability constituencies. This, in effect, water down the credential of the Working Party who intends to included in its final report to the Minister outline draft proposal for guidelines on the Equality Scheme (paragraph 22 of the Consultation Paper).

2. Strategic Priority Areas

2.1 Review and harmonisation of the existing anti-discrimination legislation

The Working Party fails to address the fundamental issues of amalgamation of the existing equality agencies, i.e. review and harmonisation of the existing anti-discrimination legislation in their Strategic Priority areas.

Without review and harmonisation of the existing legislation, the physical amalgamation will create more foreseeable internal conflicts which base on the operation of four independent legislation and the fifth one under the Northern Ireland Act which will have power to policing the Equality Scheme. To the practical least, the new Equality Commission is still running four sets of application forms for complainants and questionnaire procedure. NICEM cannot see any amalgamation without tackling the core issue of harmonisation of the legislation.

Moreover, the existing legislation, in particular gender, religion and political opinion and race, were drafted in the 70's. These legislation have already out-dated and cannot fit to the new circumstances in the next millennium (thank you for the previous government not to amend these legislation despite different reviews taken place in both the EOC and CRE in the Great Britain). Recently, the Home Office has initiated to review of the Race Relations Act 1976 and also the recommendations from the Sir Macpherson's Report on the death of Stephen Lawrence on policing.

At the European level, the European Commission will propose two Directives in June 1999 which will fundamental change the anti-discrimination legislation in the UK, if the fifteen Member States agree upon it. These include a Directive on non-discrimination in the field of employment (the least controversial one) and a Directive on race in the areas of education, housing, the provision of goods, facilities and services. These provisions are under Article 13 of the Amsterdam Treaty and the protected groups are similar to the PAFT constituencies.

Also the Council of Europe by the end of the 1999 will propose an additional Protocol or Protocols on Article 14 of the European Convention of Human Rights and Fundamental Freedom. The proposed Article 14 will be a free standing clause which will have the horizontal effect. As a result, both Article 13 of the EU and Article 14 of the Council of Europe will fundamental change our anti-discrimination legislation. Thus, harmonisation must take into account of these changes.

And finally the time-table for the review and harmonisation of the legislation, objective speaking, will be the more rational time-scale and indicator for the full amalgamation of the Equality Commission (towards the elimination of separate directorate). At least, NICEM propose at such time, then there should be a major review of the full amalgamation by employing the mechanism of the equality scheme.

2.2 The Strategic Priority areas fail to address the adverse impact of race and disability constituencies in the new Equality Commission

As a result, the Strategic Priority areas will further marginalise the issues of race and disability simply because empowerment and capacity building for these constituencies have never taken place and institutional discrimination is still the daily life experience of these constituencies. For example, how the new Equality Commission can help those who cannot speak English or the Travellers when she or he has been discriminated based on the colour or as a Traveller.

Moreover, there is no assurance mechanism to put race and disability on board, in particular staff from EOC and FEC. There is no mechanism to ensure that these staff will have mandatory training on the issues of race and disability. NICEM strongly

feels that the new Equality Commission should put race and disability into the Strategic Priority in order to get the confident building from the constituencies.

2.3 Employment and Employability; Goods, facilities, services; and housing / premises

The Strategic Priority on Employment and Employability; and Goods, facilities, services; and Housing / Premises is virtually the key provisions of the existing anti-discrimination legislation. Then what is the strategic priority ?

2.4 Goods, facilities and services

It must recognise that both EOC and FEC have been developed a lot of the testing cases based on the employment and employability. Regarding goods, facilities and services; and Housing / Premises, there is very little case law have been developed in this area. One of the great difficulties is the House of Lords decision on Amin [1983] 2 AC 818. In Amin it was decided that (by majority of three to two) the expression “provision of goods, facilities and services” in the anti-discrimination statutes applied only to activities or matters analogous to those provided by private undertakings. As a result, any person holding a statutory office, as it applies to an act done by a private person, will exempt from the anti-discrimination statutes even though discrimination has been proved. Therefore, a lot of the government departments and agencies will be exempted under the Amin decision.

NICEM strongly doubts whether the Working Party has the knowledge in this area if the proposed strategic area has not been addressed the Amin decision.

2.5 Combating discrimination

Without capacity building and empowerment of the constituencies on race and disability, can NICEM not see any effect to combat discrimination simply because there will have very little formal complaints from these constituencies.

2.6 Mainstreaming equality in legislative, economic and social policy

Mainstreaming of race in legislative, economic and social policy has never taken place. As a result, ethnic minorities suffer a lot. Even with the introduction of the race relations legislation, there is very little progress so far to benefit ethnic minorities in terms of economic and social policy. The key issue is core funding for ethnic minorities and resources allocation to meet the special needs of ethnic minorities in the key social policy such as education and training, health and social services, housing, policing, welfare benefits, etc. Moreover, the new Equality Commission should closely monitor the two pieces of policy on mainstreaming, namely the new equality scheme and the targeting social needs. The Equality Commission, if review and harmonise the anti-discrimination legislation, should consider a radical change under the existing legislation in relation to the positive action programme.

2.7 Public Sector Statutory Duty

The key purpose of the public sector statutory duty is to ensure that any decision making, policy and legislation from the public authority must be equality proof. The public sector statutory duty reflects the success of the PAFT constituencies lobbying campaign for such a change. NICEM has a clear position that public sector statutory duty is the key monitoring system to ensure mainstreaming equality in legislative, economic and social policy. The key issue now is that without additional resources from the government, NICEM cannot see how the new Equality Commission accomplishes its statutory duty to policing the new equality scheme which is a huge area of work?

3. Executive Structure

NICEM welcomes the proposed structure based on separate Directorates and amalgamation in the areas of support services, legal services, external relations and the new public sector statutory duty. In viewing the importance of the new public sector statutory duty and it covers a huge area of work, NICEM propose to have a separate Directorate on public sector statutory duty in order to ensure sufficient staff and resources allocation to its work, as well as strategic priority.

4. Guidelines on Equality Schemes

NICEM opposes any guidelines on equality schemes in its final report to Minister of the Working Party simply because there is no consultation from the PAFT constituencies. Moreover, NICEM strongly doubts the Working Party has such an expert knowledge in this area. The last, but not the least it will pre-empt the new Equality Commission.

5. Consultative Council

The Consultative Council was created at the House of Lords debate in which the government introduced it without consultation to any PAFT constituencies. NICEM opposes such consultative council without consultation. Moreover, if the new Equality Commission cannot handle very well with such a body, it will undermine the work of the new Equality Commission. Or other extreme situation in which the Equality Commission can make use of such body to by-pass the PAFT constituencies on key consultation.

Since we cannot change the reality and it is now by law to set up such body. NICEM will then propose the Consultative Council, with membership from PAFT constituencies, rather than separate Consultative Council for race, disability, gender and religion and political opinion.

NICEM further proposes that the Consultative Council should have a role on specific issues rather than the overall work of the Equality Commission.

For further information of this submission, please contact Mr. Patrick Yu, the Executive Director of NICEM at 73 Botanic Avenue, Belfast, BT7 1JL.

