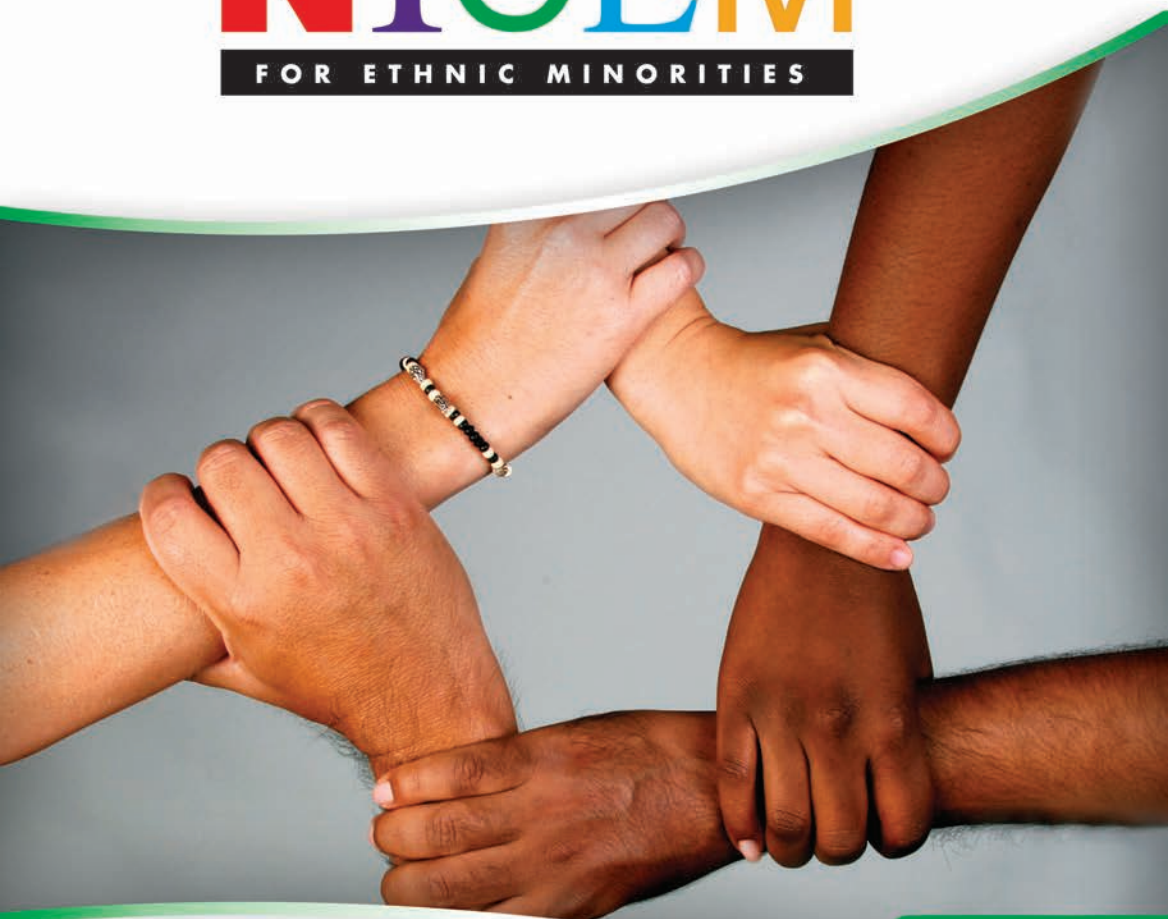


● Northern Ireland Council

N1CEM

FOR ETHNIC MINORITIES



WHEN THINGS GO WRONG

How to use complaints and enforcement to improve
equality for you, your family and community

Booklet
Number
3
Human Rights and Equality
Framework Booklet Series



Introduction

Other booklets in this series explain how you can help public bodies meet their equality responsibilities.

This booklet gives you information on how to engage with public bodies when you feel they have not met their equality and good relations duties, or have discriminated against you. It also provides information on where to get help and support.

It is not legal advice but this material should give you enough information to talk to the public body about any concerns you have, and to explore what options are open to you if that does not work. If you feel you need legal advice specific to your situation you should contact a specialist adviser.

What can I do if I think a public body is not promoting equality?

There are a number of things you can do to affect the way a public body acts and the decisions it takes. You can contact them directly, or ask your elected representative to raise the issue, or you can alert the media to the problem. You could organise your community to sign a petition or to take part in a demonstration. These can be very effective forms of 'advocacy' and public campaigning.

This booklet cannot explore all of these different options. It will instead focus on those methods that help you deal directly with a public body by using complaints and enforcement methods. But you should not forget that there are other options open to you, as they can be very useful.



What can I gain from bringing a complaint?

If you think you have been discriminated against, you can bring a court case and, if successful, you can both stop the discrimination from continuing (or happening again) and get compensation.

The equality and good relations duties work differently. Public bodies are legally bound to comply with the equality duties, so policy makers are required to consider (“have due regard to”) equality when making decisions (see other booklets in this series).

This is not just refraining from certain actions, but should mean that better decisions are made – ones that can have a positive effect on equality. A complaint can help to make this happen.

Sometimes a public body will proceed with a decision/policy that has a negative impact on equality, but this will be considered acceptable, if the action is reasonable in the circumstances.

This could mean that a problem you are concerned about will persist. Even then the equality duties mean that you should be able to find out why this is so, and what was done to try and prevent it. The duties also mean that the issue will continue to be monitored so that, if circumstances change, the decision can be looked at again.

If you think you have been discriminated against...

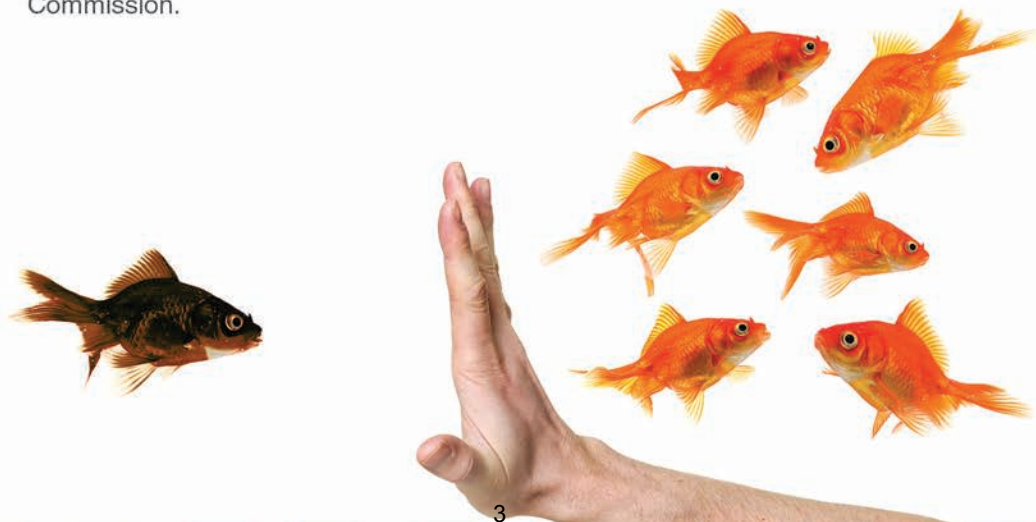
You may want to first raise the issue informally, using the guidance below on how to do this. This may solve the problem, but if it does not, you can take the organisation to court.


If you are an employee, you will need to make sure that you have used the internal grievance procedures. If these do not provide a solution, then you can take your employer to an Industrial Tribunal. You can get advice, and possibly support, from the Equality Commission on what action is open to you. If you are a member of a trade union, they can also help.

BEAR IN MIND:

A discrimination claim in employment must be brought within three months of the act complained of.

If you have a problem with how a public service is provided, then you would need to bring your case to the County Court. This would need to be done within six months and again you can get free and confidential advice from the Equality Commission.





If you want to bring a complaint using the equality and good relations duties, there are three routes you can take:



1

You can raise the issue informally and directly with the public body



2

You can make a formal complaint under the equality duties to the public authority and, if necessary, to the Equality Commission for Northern Ireland (must be within 12 months)



3

You can use the courts to challenge the decision (must be 'promptly' which means three months or sometimes less)

1. Raising the issue informally and directly with the public body


Thing to think about:

- ✓ your issue and who it affects (just you, your whole family, your community?)
- ✓ why you think this is an equality issue
- ✓ your evidence (e.g. an independent research report). Use this to show that the problem is serious and that it is not just your opinion
- ✓ what evidence the public authority should have used, but didn't (if appropriate). If you don't have evidence you can still raise the issue, but you will probably need to at least be able to show gaps in the evidence the public authority used, such as no information about the effect on your community.

If you want to argue for a particular solution, be clear what that solution is and why it would be reasonable for the public body to take that action.

If you need help doing this, you can contact the Equality Commission for advice. You should talk to the Equality Commission as early as possible in any case. They can help you to be sure that you are contacting the authority in the most effective way.

Then: raise your concern with the public body directly, explaining why you think there is a problem, what it is, and offering to help them to think about how it could be fixed.



Tip: *If you do not know who to contact look up the Equality Scheme (see leaflet 2). The Scheme can usually be found on the authorities website and will include a named contact person.*

If you belong to an organisation - maybe a local community group - ask them if they have dealt with the public body before; they may know someone who could help.

You can talk to the authority in person, by telephone or by e-mail – whatever route works best for you. If you do contact them by e-mail or letter, i.e. in writing, this can also become the first step in making a formal complaint.

Tip: *If you need language support or translated materials you can request these.*

Once you have established contact, make sure that you keep a note of who you contacted, what was said, when, and what happened.

It is important to do this quickly, as there are time limits to making a formal complaint and to using the law. While you may have no intention of taking a case to court at the moment, you should still stick to the timeframes, since the longer it takes for a decision to be questioned the harder it is to change it.

If this works: excellent, you will also want to follow up to make sure whatever is agreed, is put into practice. You may also want to keep in touch with the person you dealt with so that they know they can come to you or your organisation (if you belong to one) and talk to you before a problem arises in the future.



2. Making a formal complaint under the equality duties

The legislation provides a specific complaints mechanism that looks at problems created for the equality and good relations duties. You can only use this to complain that a public body has 'breached its approved Equality Scheme' i.e. not done what it said it would do when writing its Scheme such as monitoring, consulting or assessing impact.

Each Scheme also contains a general commitment by the public authority to implementing the equality and good relations duties themselves, not just the processes designed to help them do this properly.

There have not been many complaints made on the grounds that a public authority has breached this general commitment, but the Equality Commission has said that it could be breached if the public authority acts in an extreme or clearly unacceptable manner (for example, if it acted in an overtly sexist, racist, homophobic or sectarian way).


HOW TO MAKE A COMPLAINT

The Equality Scheme will set out details on how the public authority handles complaints. You will probably find it easiest to follow this mechanism, which should ensure that you receive an appropriate response within a reasonable timeframe.

a) Be clear what it is you are complaining about and why

As with raising the issue informally, be clear about what your issue is, and why it is an equality issue. Also be clear about:

- ▶ what aspect of the Scheme you think has not been done; and
- ▶ how you are directly affected by this failure.



The Equality Commission can give you advice on what you should include in your complaint. It is useful to contact the Commission for advice before lodging your complaint, since they may be able to help with drafting.

Tip: Turn to the last page of this booklet for a sample complaints letter, based on a model produced by the Equality Commission.

b) Contact the public body with details of your complaint

You will need to put your complaint in writing and give the public authority a reasonable amount of time to respond – usually one month. The Equality Scheme will say who to contact and how.

Send a copy of your complaint to the Equality Commission as well. They may be able to offer the public authority advice that will help it to respond more effectively to your complaint.

c) Making a complaint to the Equality Commission

You may be satisfied with the response from the public authority. Maybe the practice you were unhappy with has been changed; or perhaps you have received a satisfactory explanation that you were unaware of before. In such a case, you do not have to do anything else.

If you are not satisfied with the response, perhaps because you do not think the public authority took your evidence seriously enough, or because they did not give you enough information about the grounds for their decision, you can take the complaint to the Equality Commission. The Commission has a legal duty to enforce the equality and good relations duties.



To pursue a complaint, you have to:

- ▶ have first raised the issue with the public body
- ▶ state clearly what aspects of the Equality Scheme have not been implemented, and
- ▶ be able to show that you are directly affected by the decision.

A complaint to the Equality Commission must be made in writing. You should talk to the Commission about how best to do this before submitting a complaint, as they may have a format they prefer or a form that you can use to ensure that you meet the requirements for submitting a complaint.

The Commission must either investigate your complaint or explain to you why it has decided not to. When it investigates, it will talk to all of those concerned, including you and the public authority. You should be ready to discuss the issue further and provide additional information if asked.

BEAR IN MIND:

You must take action within twelve months of when you first knew about the problem or the Commission cannot investigate.

When an investigation is complete, the Commission must write a report and send copies to the public authority, to you, the Secretary of State, and the Northern Ireland Assembly. It also usually publishes the report on its website. If you are worried about anything being made public you should talk to the Commission about this at the start before you make the complaint.



WHAT CAN AN INVESTIGATION ACHIEVE?

If the Equality Commission finds a public authority has 'failed to comply with an approved Equality Scheme' it can use the investigation report to make specific findings and recommendations for action by the public authority.

The findings of such investigations cannot be enforced in court, but the Commission can ask the Secretary of State to issue 'directions' to make a public authority take appropriate action.


WHAT IF I AM NOT 'DIRECTLY AFFECTED', BUT MY FAMILY AND COMMUNITY ARE?

To make a complaint you must be 'directly affected'. This means that you believe the decision, policy or action of the public body affects you personally.

However, the Commission also has the power to do an investigation without a complaint, though it will only do this where it thinks that the issue is strategic, i.e. it could have a wide impact.

The Commission will also consider using this power where no-one directly affected can be easily identified. Where those affected will find it very difficult to bring a complaint, such as young children, the Commission has said that it will prioritise these cases for using its power to investigate.

If you think that your complaint fits this category, contact the Commission and discuss it with them, providing as much evidence as you can.



3. Using the courts to challenge the decision

The equality and good relations duties are 'statutory duties' – which means that they are required by law – so the failure of a public authority to meet these duties can be challenged in court.

A complainant can bring a 'judicial review', to review a decision by a public body you consider has not been made properly. This includes that it was not made in accordance with legal obligations such as the equality and human rights duties.

BEAR IN MIND:

A case must be brought 'promptly'. Generally this means within three months, but it could be less depending on the specific facts and circumstances of the case. So if you want to bring a case you need to act quickly.

Judicial review is usually a last resort and you should try to use other complaints mechanisms first. However, this option does not limit you to complaining about a public body's compliance with its Equality Scheme.

A court challenge is a direct one, asking if the public body has actually considered equality and good relations in practice, not just if they have the right processes in place to do this.

WHAT CAN THE COURTS DO?

If the court finds that the public body has not considered equality and good relations before making a decision it can order the public body to reconsider that decision.

It cannot tell the public body what to decide, but will indicate why the way the decision in question was unlawful and the evidence that should have been considered.

A judicial review can also help to clarify the law, so that other public authorities do not make the same mistakes. Previous cases have established important principles, such as that the equality duties need to be considered before a decision is made, that they must be considered in substance and with rigour, not as a tick box exercise, and that the duties cannot be delegated to others.

Expert organisations, such as community or voluntary groups, human rights groups or the Equality Commission can make legal interventions in cases to argue for more positive interpretations of the law. These organisations may also be able to help you with advice if you think you want to bring a judicial review.



Equality duties in action

SOUTHALL BLACK SISTERS CHALLENGE FUNDING DECISION (R (KAUR AND SHAH) V LONDON BOROUGH OF EALING 2008

A local authority in London proposed funding changes which threatened the survival of Southall Black Sisters, an organisation which for many years has supported ethnic minority women who suffer domestic violence. The local authority tried to justify this on equality grounds: saying it was changing from community specific services (in this case, a service largely aimed at women from black and ethnic minority groups) to an 'open to all' service.

Two women users of the services of Southall Black Sisters challenged this on the grounds that the local authority had not met its race equality duty when taking the decision and had misunderstood what was needed for equality by taking a 'one size fits all' approach.

The two women argued that Ealing Council had not complied with their race equality duty by failing to assess the equality impact before it decided its new funding criteria. It was also argued that Ealing Council had failed to appreciate that the Race Relations Act permitted the targeting of funding to organisations providing services to disadvantaged/under-represented ethnic groups, as a form of lawful positive action. The court emphasised that the promotion of community cohesion and integration was not in conflict with the equality duties.

Ealing Council conceded near the start of the hearing, accepting that the Equality and Human Rights Commission's (who intervened in the case) position on relevant law was correct and, further, that there was no conflict between cohesion and equality in the provision of specialist services to an ethnic minority community.



GETTING HELP AND SUPPORT

Making a complaint about a public authority on whose services you depend can be quite daunting. The law can also be very technical. There are a range of different places you can go to for help and support, that include voluntary and community organisations, human rights groups, trade unions and your elected representatives.

GETTING SUPPORT FROM VOLUNTARY AND COMMUNITY GROUPS

If you are a member of a local community group or an ethnic minority group, contact them to see if they can give you information or support. Some may have staff who can give you advice, or others may have received training on equality laws and be able to help you understand them better. You may find that others in your community have used the complaints processes explained in this booklet, and be able to give you first hand information on the pitfalls.

There are also specialist organisations, who have specific roles to give advice or to work on public policy. Some may also be able to help you access legal advice, especially if your case could be strategic and set a precedent for others to follow.

NICEM is one of these, and you can use the contact details at the back of this booklet to get in touch.

If you are not sure which organisation to approach, the Equality Coalition can offer general advice. It is made up of all the equality groups listed in section 75 of the Northern Ireland Act 1998, and also considers multiple identities (for example, you might also be concerned about a policy's impacts on older women with disabilities). In addition, the Equality Coalition can refer you to other specialist practitioners, as its membership includes most organisations working on equality. You can use the contacts below under 'useful contacts' to get in touch.



ASKING YOUR TRADE UNION FOR HELP

Trade Unions have a specific role to support their members. Many will have local equality reps as well as employed Equality Officers. They may be able to provide advice and support, including in some cases legal support, if you are facing equality issues in your workplace.

To receive support you normally need to be a member of the trade union. There are a number of trade unions in Northern Ireland, representing different groups of employees depending on the sector in which they work. If you are unsure which trade union you should join you can contact the Irish Congress of Trade Unions. You can also find contact details under 'useful contacts' below.

GOING TO YOUR ELECTED REPRESENTATIVES (YOUR MLA OR LOCAL COUNCILLOR) FOR HELP

The elected MLA ('Member of the Legislative Assembly') for your area (regardless of whether you voted for them or not) is there to help local residents with their problems. Most will have an office in the area, known as a constituency office where you can go for advice and support and to ask them to raise issues on your behalf. For major issues they can ask questions in the Assembly (see leaflet 5 in this pack).

Their role as an elected representative gives them important access to public authorities on your behalf, or, where appropriate, they can help you to make a complaint to the Equality Commission.

Similarly, your local council has elected Councillors who may be able to help. If your concern is with services provided by the local council then the Councillor may be able to raise the problem directly. They can also help you to make complaints to the Equality Commission, or they can complain themselves if appropriate. You can find contact details for your Councillors on the local authority website.

Useful Contacts

Equality Commission for Northern Ireland

Equality House, 7 - 9 Shaftesbury Square, Belfast, BT2 7DP

Tel: +44 (0)28 90 500 600

Tx: +44 (0)028 90 500 589

Fax: +44 (0)028 90 248 687

Email: information@equalityni.org

www.equalityni.org

Northern Ireland Council for Ethnic Minorities (NICEM)

1st Floor Ascot House, 24-31 Shaftesbury Square, Belfast, BT2 7DB

Tel: +44 (0)28 9023 8645

Fax: +44 (0)28 9031 9485

www.nicem.org.uk

Belfast Migrant Centre

2nd Floor, Ascot House, 24-31 Shaftesbury Square, Belfast, BT2 7DB

Tel: +44 (0)28 9043 8962

Fax: +44 (0)28 9067 7910

Email: info@belfastmigrantcentre.org

Equality Coalition

c/o CAJ

2nd Floor, Sturgen Building, 9-15 Queen Street, Belfast BT1 6EA

Tel: +44 (0)28 9031 6016

Email: equalitycoalition@caj.org.uk

Northern Ireland Committee Irish Congress of Trades Unions

4-6 Donegall Street Place, Belfast BT1 2FN, Northern Ireland

Tel: +44 (0)28 9024 7940

Fax: +44 (0)28 9024 6898

Email: info@ictuni.org

www.ictuni.org



SAMPLE COMPLAINT LETTER TO A PUBLIC AUTHORITY

Alleged failure to comply with an approved Equality Scheme by a Public Authority
(You can contact the Equality Commission and/or the other groups explained above for help in completing the details of this letter).

Address of person making complaint

Address Line 1

Address Line 2

Postcode

Name of person who deals with complaints (as outlined in the public authority's Equality Scheme)

Name of Public Authority

Address of Public Authority

Date: 01-01-12

Dear (insert name of person who deals with complaints)

Complaint under Schedule 9, Paragraph 10 of the Northern Ireland Act 1998

I am writing to make a complaint under Schedule 9, Paragraph 10 of the Northern Ireland Act 1998. I consider that you have failed to comply with [indicate which section of its Equality Scheme you consider the public authority may have failed to comply with] of your approved Equality Scheme. [Give reasons for the complaint and how you are directly affected] Please let me know the date when you plan to complete and report on your investigation into my complaint.

I look forward to hearing from you soon.

Yours sincerely

(Remember to send a copy of the complaint to the Equality Commission and keep a copy for your own records.)



Notes





To find out more about any of the information contained in this leaflet
please contact:

Northern Ireland Council for Ethnic Minorities
1/F Ascot House,
24-31 Shaftesbury Square,
Belfast, BT2 7DB.

Ph: +44 (0) 28 9023 8645

Fax: +44 (0) 28 9031 9485

www.nicem.org.uk

Date of publication: November 2012

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NOTICE

This booklet is intended to explain how the law works in practice. It is not however a legal document and many of the terms have been simplified for easier understanding.