



Religious Belief and Political Opinion Discrimination Law in Northern Ireland - A Short Guide

Equality Commission

FOR NORTHERN IRELAND

Religious belief and political opinion discrimination law in Northern Ireland - a short guide

This short guide provides some basic information about the law on discrimination on grounds of religious belief and political opinion in Northern Ireland. It does not attempt to describe every detail and should not be taken as an authoritative statement of the law. Further information is available from the Equality Commission. Details of some of our other publications and how to contact us are given at the back of this booklet.

The Equality Commission for Northern Ireland

The Equality Commission has responsibility for enforcing the **Fair Employment and Treatment (Northern Ireland) Order 1998 (as amended)**, and working for the elimination of unlawful discrimination on grounds of religious belief and political opinion. It also has general duties with regard to promoting equality of opportunity and affirmative action, as well as a duty to keep under review the operation of the Order.

The law

The Fair Employment and Treatment (Northern Ireland)

Order 1998, as amended, makes discrimination on grounds of religious belief and/or political opinion unlawful in the following areas:

- employment
- the provision of goods, facilities and services
- the sale or management of land or property
- further and higher education
- partnerships and barristers.

What is religious or political opinion discrimination?

Discrimination is not simply unfairness. To be discriminated against means to be treated less favourably than others.

The Fair Employment and Treatment Order (Northern Ireland) Order 1998 outlines situations where individuals may complain that they have been discriminated against on grounds of religious belief and/or political opinion.

It may be that individuals believe that they are less favourably treated than others because they are Catholic or Protestant or because they are presumed to be from either of these communities; or because they are presumed to be nationalist, republican, loyalist or unionist; or indeed individuals may be discriminated against precisely because they do not hold any of these beliefs or opinions. Political opinion is not limited solely to Northern Ireland constitutional politics and may include discrimination on grounds of a political opinion relating to the conduct or government of the state, or matters of policy, eg, conservative or socialist political opinions.

The Order defines three types of unlawful discrimination:

- **Direct discrimination** is where a person, on grounds of religious belief or political opinion, is treated less favourably than others are, or would be, treated in the same or similar circumstances. An example of this might be where the best candidate at interview was not appointed to a job because of their religion, while a less able candidate of a different religion was offered the post.
- **Indirect discrimination** arises where a provision, criterion or practice is applied or would be applied equally to others but which has the effect of putting people of a particular religious belief or political opinion at a disadvantage and which cannot be justified. An example of this might be where an employer whose workforce is wholly or mainly drawn from one community restricts promotions solely to internal candidates.
- **Victimisation** means treating someone less favourably than others because they have, for example, complained of alleged discrimination or have assisted someone else to do so. An example might be where someone is dismissed because they were a witness for a colleague in a fair employment complaint. This dismissal would be discriminatory.

People who believe that they may have suffered unlawful discrimination may take legal action. Legal proceedings are decided by an independent Tribunal, the Fair Employment Tribunal, or by a court.

Employment provisions

The Order applies to all employers, including sub-contractors and franchises, regardless of size. It is unlawful for an employer to discriminate on grounds of religious belief or political opinion:

- In **recruitment and selection** including arrangements for deciding who should be offered employment, in the terms on which employment is offered or by refusing or deliberately omitting to offer a person employment
 - In the **terms and conditions of employment**
 - In relation to **access to benefits**, including opportunities for promotion, transfer, training or any other benefits, or the refusal of those opportunities
 - By **dismissing** an employee or causing him/her any other detriment
 - After the employment relationship has come to an end.
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Harassment

Harassment is explicitly defined in the 2003 amendments to the Fair Employment & Treatment (NI) Order 1998. Harassment is where an individual, on grounds of religious belief or political opinion, engages in unwanted conduct which has the purpose or effect of violating the dignity of another or which creates an intimidating, hostile, degrading, humiliating or offensive environment for the other.

Harassment on grounds of religious belief or political opinion in Northern Ireland is commonly called 'sectarian harassment'. It can take subtle or overt forms, for example, singing of sectarian songs, sectarian remarks, comments, isolation or non co-operation, erection of flags, bunting, etc.

Complaints of sectarian/religious harassment may be made against the employer as well as the harasser. In certain circumstances, individual employees can be held personally liable to pay compensation awards.

Employers may be liable for any sectarian/religious harassment committed by their employees in the course of their employment even if they did not know about the harassment or would not have approved of it, had they known. Employers can successfully defend a sectarian harassment case only if they can show they took such steps as were reasonably practicable to prevent the harassment happening.

Do these provisions apply only to employers?

No. Bodies and organisations other than employers are prohibited from discriminating including:

- vocational organisations (for example, trade unions and professional bodies)
 - people selecting people for employment by others
 - people for whom work is done under contract
 - people providing training services
 - employment agencies and bodies conferring qualifications which are needed for or facilitate employment.
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Exceptions

Not all types of employment are covered by the fair employment and treatment legislation. These are examples of some exceptions to the legislation:

- any employment or occupation where the essential nature of the job requires it to be done by a person holding or not holding a particular religious belief or political opinion, for example, posts with duties of a religious and evangelical nature
 - clergymen and ministers of religion
 - the recruitment of teachers in schools.
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Affirmative action

Affirmative action is a key mechanism for change contained in the fair employment legislation. Affirmative action measures are designed to address under-representation in the workplace and ensure fair participation regardless of community background. This may involve the adoption of practices aimed at encouraging fair participation, for example, including a statement welcoming applications from the under-represented community in an organisation's job vacancy advertisements or modifying practices that may discourage fair participation.

To ensure the active practice of fair employment in Northern Ireland, the law places five **key duties on employers** with eleven or more employees:

- **Registration** with the Equality Commission
- **Monitoring** the religious composition of the workforce and applicants for posts and returning these statistics annually to the Equality Commission
- **Reviewing** the composition of the workforce and employment practices every three years to ensure that each community is enjoying fair participation in employment
- Taking **affirmative action** if an under-representation of one community is identified within the workforce
- **Setting goals and timetables** to assist in evaluating progress towards fair participation.

Detailed advice and information on these duties is available to employers free of charge from the Equality Commission. Employers should consult and follow the advice of the Fair Employment **Code of Practice**.

For further information on recommended good practice for employers, trade unions and employment agencies, see the *Code of Practice: Fair employment in Northern Ireland; the Model Equal Opportunities Policy; the Model Harassment Policy; Fair Employment: Employers' Key Duties; and A Step by Step Guide to Monitoring* which are available from the Equality Commission, free of charge, or on the Commission's website – www.equalityni.org.

Goods, facilities and services

It is unlawful for service providers who offer services to the public to discriminate against a person on grounds of religious belief or political opinion in relation to the provision of goods, facilities and services. A service provider cannot refuse to provide goods, facilities or services (either for payment or not) or offer them at lower quality on religious or political grounds. Examples of such services include:

- access to and use of any place which members of the public are permitted to enter
 - accommodation in a hotel, boarding house or other similar establishment
 - facilities by way of banking or insurance or for grants or loans, credit or finance
 - facilities for training
 - facilities for entertainment, recreation or refreshment
 - facilities for transport or travel
 - the services of any profession, trade or business or any local or other public authority.
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Premises and land

It is unlawful for anyone selling or managing property or premises to discriminate on grounds of religious belief and/or political opinion. For example, it would be unlawful for a landlord to refuse to rent to or to evict someone on the basis of their religion or political opinion. Similarly, anyone selling land or premises, either by advertisement or through an estate agent, may not discriminate either on the terms on which land or premises are offered, or by refusing to sell to someone on the basis of religion or political opinion. There are some exceptions to these provisions, for example, they do not apply to people who are renting out part of their own home in which they live or premises which come within the legal definition of 'small premises'.

Further information can be obtained by contacting the Equality Commission.

Further and higher education

It is unlawful for either a university or an institution of further education in Northern Ireland to discriminate against its students or people applying to be admitted as students. For example, it is unlawful to refuse to accept a person as a student on the basis of religious belief or political opinion or to admit him/her on less favourable terms than other students. Existing students of further and higher educational establishments cannot be refused access to the benefits of that institution nor can they be excluded or subjected to harassment on the grounds of religious belief and/or political opinion.

Making a complaint

People who believe that they have been subjected to discrimination on the grounds of religious belief or political opinion in employment have a right to make a complaint to the Fair Employment Tribunal.

Complaints about discrimination in the other fields, including goods, facilities and services, premises and land, and further and higher education, can be made to the County Court.

Anyone who believes that they may have been the victim of unlawful discrimination should seek advice as soon as possible as **time limits** apply to legal proceedings.

Under the fair employment legislation, complaints relating to discrimination in employment should be made to the Fair Employment Tribunal either within **3 months** of when the complainant first had knowledge of the act complained of, or within 6 months of the date of the act. Crucially, it is the earlier of these times which applies.

In most cases this will mean that people who wish to take legal action about a Fair Employment complaint must do so within 3 months.

In certain exceptional cases the Tribunal might extend these deadlines but simply not knowing that there were deadlines is insufficient reason for an extension of the deadline.

Complaints about discrimination in the field of goods, facilities, services, premises and further and higher education must be made to the County Court within **6 months** of the date that the discrimination took place.

The Equality Commission can provide free and confidential **advice and assistance** to people who believe that they have been discriminated against for a reason relating to religious belief and/or political opinion. Assistance by the Commission ranges from simply giving advice to arranging for legal representation in some cases. The Commission does not decide whether discrimination has in fact occurred; this is for the Fair Employment Tribunal or the County Court to decide.

Help for employers and service providers

The Commission provides free general advice to employers and service providers on recommended good practice under the fair employment and treatment legislation and the Code of Practice. It can also provide free training to employers and has a wide range of information leaflets to help employers and service providers understand their responsibilities in this area. The Commission also has a library service which is available to the general public.

Further information

The following publications are all available free of charge from the Equality Commission:

- *Code of Practice: Fair Employment in Northern Ireland*
- *Model Equal Opportunities Policy*
- *Model Harassment Policy and Procedure*
- *Fair Employment: Employers' Key Duties*
- *A Step by Step Guide to Monitoring.*

The Commission also provides a wide range of other publications in different formats in the areas of disability discrimination, racial discrimination, sex discrimination, sexual orientation discrimination, equal pay and statutory duties on public authorities. For full details, see our website – www.equalityni.org - or contact our Information and Advice team.

Contacting the Commission

If you need help or advice or would like to find out more about the Equality Commission and its work, contact us at

The Equality Commission for Northern Ireland
Equality House
7-9 Shaftesbury Square
Belfast
BT2 7DP

Telephone: 028 90 500 600

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Website: www.equalityni.org

You can also use **Typetalk** to contact us.

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