Equality Coalition

# SCREENED OUT WITHOUT MITIGATION

## RETURNING EQUALITY IN NI TO THE MARGINS

# Contents

## Introduction

The Terms of Reference framed this research as:

> *a report for the Equality Coalition on the current operation of the Section 75 Equality Duty and the 'Call-in' Mechanism within Northern Ireland's 11 local councils.*

This notion of an equality duty emerged from the broad 'equality agenda' of the peace process that was subsequently embedded in the Good Friday Agreement (GFA). Thus, the research brief invited a review of the record of local councils on equality following the implementation legislation for the GFA. This legislation established the 'Section 75' statutory equality duty on designated public authorities in Northern Ireland, including local councils.

The LGIU (Local Government Information Unit) provides a useful overview of current councils in Northern Ireland:[1]

> Since 2015, Northern Ireland's local government system comprises 11 City, Borough or District Councils.
>
> Belfast City Council is the smallest council at 132 square kilometres, while Fermanagh and Omagh is the largest council in Northern Ireland, with a size of 2,857 square kilometres.
>
> In terms of population, the 2021 census showed Belfast City Council was the largest council in Northern Ireland, with a population of 345,400, while Fermanagh and Omagh District Council had the lowest population at 116,800.
>
> Councils in Northern Ireland are responsible for approximately one-sixth of the powers and spending that councils in Wales, Scotland and the Republic of Ireland have.
>
> Ards & North Down council has the highest percentage of people aged over 65 at 22.1 per cent. Mid-Ulster council has the highest percentage of people aged under 15 at 21.7 per cent.

These councils – and their operation of the equality duty and the 'call in' mechanism – are the focus for this research.

A commitment to promote equality – and to robustly address inequality – was one of the three 'pillars' of the GFA.[2] As UN High Commissioner for Human Rights Mary Robinson suggested at the time, the GFA moved equality and rights from the 'margins to the mainstream' in official policy terms. The importance of equality to the overall project was clear with the consideration that there *might* be a department of equality at Stormont. The GFA left this option moot:

> *It would be open to a new Northern Ireland Assembly to consider bringing together its responsibilities for these matters into a dedicated Department of Equality*

[1] LGiU 'Local government facts and figures: Northern Ireland' www.lgiu.org

[2] Although what was meant by equality remained inchoate. While it predated Great Britain on sectarian discrimination legislation (initially limited to 'fair employment'), NI had only just caught up with GB in terms of the scope of equality interventions on the eve of the GFA. For example, the 1997 Race Relations (NI) Order meant that race discrimination was outlawed for the first time even though it had been unlawful in GB since 1965. Gender (Sex Discrimination (Northern Ireland) Order 1976) and disability discrimination (Disability Discrimination Act 1995) had been outlawed in parallel to GB legislation. The reach across novel 'lines of difference' in NI was obviously substantially increased by the nine categories named in S75.

The GFA also envisaged a specific role for a new equality commission. This was crucially given the role of a 'safeguard':

> *(e) an Equality Commission to monitor a statutory obligation to promote equality of opportunity in specified areas and parity of esteem between the two main communities, and to investigate individual complaints against public bodies.*

This Commission was given no wider brief regarding 'good relations' in the GFA.[3] The *Northern Ireland Act* 1998 established the Equality Commission for Northern Ireland (henceforth ECNI).

This legislation also established the 'Section 75' (henceforth S75) statutory equality duty on designated public authorities in Northern Ireland, including local councils.[4] This measure was based on the laudable aim of 'equality proofing' everything that the state did. Instead of identifying and correcting inequality after the fact, this was supposed to anticipate and remedy inequality *before it happened*.[5]

Despite this – nearly thirty years after the GFA – Northern Ireland remains a far from equal place. The Northern Ireland Government's own recent assessment *Northern Ireland Poverty and Income Inequality Report, 2023/24* (Department for Communities/NISRA 2025) confirms this reality. Poverty in Northern Ireland has not disappeared – rather the most recent data suggests that absolute poverty is *increasing*. Furthermore, a recent report from QUB showed NI much worse off than GB on range of poverty measures. This cited two local authority areas as being the worst in the UK state:

> *The researchers found two local authorities in Northern Ireland – Derry and Strabane, and Belfast – have more deprived areas than any of the other 374 local authorities in England, Scotland or Wales and the rest of Northern Ireland. (RTÉ News 2025a)*

Most analysis also reveals some of the unequal impacts of poverty. For example, the Department for Communities tells us: 'The long-term trend shows that children are at a higher risk of living in poverty than the overall Northern Ireland population in both relative and absolute measures'. Moreover, the 'family type at the highest risk was 'single with children', at 38%' (Department for Communities/NISRA 2024).[6]

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[3] The GFA also reduced the essence of equality interventions to more traditional 'sectarian differential' challenges: '(iii) measures on employment equality included in the recent White Paper ("Partnership for Equality") and covering the extension and strengthening of anti-discrimination legislation, a review of the national security aspects of the present fair employment legislation at the earliest possible time, a new more focused Targeting Social Need initiative and a range of measures aimed at combating unemployment and progressively eliminating the differential in unemployment rates between the two communities by targeting objective need'.

[4] The GFA itself indicated: 'Subject to the outcome of public consultation underway, the British Government intends, as a particular priority, to create a statutory obligation on public authorities in Northern Ireland to carry out all their functions with due regard to the need to promote equality of opportunity in relation to religion and political opinion; gender; race; disability; age; marital status; dependants; and sexual orientation. Public bodies would be required to draw up statutory schemes showing how they would implement this obligation. Such schemes would cover arrangements for policy appraisal, including an assessment of impact on relevant categories, public consultation, public access to information and services, monitoring and timetables [and] the formulation of a general obligation on government and public bodies fully to respect, on the basis of equality of treatment, the identity and ethos of both communities in Northern Ireland….'

[5] This development was also notably in advance of the Public Sector Equality Duty in Great Britain when the 2010 Equality Act consolidated over 40 years of domestic equality law into a single act (Gov.uk 2024).

[6] We get some sense of the shifting calculus on this, however, when we find in the 2023 report that: 'The family type at the highest risk [of poverty] was single female pensioner, at 31%'.

This focus on children in poverty in Northern Ireland is confirmed by other sources. NICCY estimates that a quarter of Northern Ireland's children is living in poverty. This has profound implications for their future live chances:

> *That is almost 1 in every 4 children in Northern Ireland living in a family which struggles to provide for their basic needs, providing a warm, adequate home, nutritious food, appropriate clothing and pay for childcare costs. Children whose parents often have to get into debt to pay to make ends meet and do not have the means to save money for unexpected costs or family outings. Children in poverty are twice as likely to leave school without 5 good GCSEs. They are also more likely to suffer poor mental health and have fewer years of good physical health. (NICCY 2024, original emphasis)*

As JRF pointed out in its action plan for the current executive:

> *Some groups are impacted by poverty much more than others, with disabled people locked out of the labour market, carers being at huge risk of poverty, and nearly 4 in 10 single-parent families being in poverty.*

This is a stark reminder of just how unequal Northern Ireland remains. It is also a further reminder of the *differential* impact of poverty on different groups.

This *inequality of inequality* – its concentration within easily identifiable groups and communities – resonates directly with the targeted intent of S75. For example, JRF identified immediately *three* S75 categories as disproportionately impacted by poverty – disability, age and family status. Its report also identified 'people in ethnic minority households having much higher poverty rates' (2022: 28-9) and that the 'poverty rate varies by religion' (2022: 15). In summary, S75 has ended neither poverty nor inequality in and for different S75 constituencies across Northern Ireland. On this, there is a *prima facie* case to answer for all public bodies across NI, *including local councils.* Arguably this question is particularly pertinent at council level because for decades before the GFA local government had been the embodiment of sectarian discrimination and inequality. Thus, juxtaposed to the broader persistence of inequality, there is every reason to ask how well or otherwise S75 is working at local council level in NI.

## NI Local Councils and Historical Discrimination

Local councils in Northern Ireland were at the epicentre of historical sectarian discrimination. Following partition, one of the key symbols of the emergent Northern Ireland state was the gerrymandering of councils. Local councils that had previously been nationalist under a democratic franchise became unionist under and more restricted and gerrymandered franchise. By 1924 all local councils were unionist controlled. Derry was often presented as a paradigmatic example:

> *Derry was a special case, and the [1920 local election] result there was hailed as one of the most significant of all. Unionist gerrymandering traditionally ensured that, despite a 65 per cent Catholic/nationalist majority, unionists dominated the corporation. In 1920, sensing that PR might offer a historic opportunity, the Nationalist Party and Sinn Féin united on a single nationalist ticket with the support of Labour. The nationalists won a majority of two, leading to the historic election of the city's first Catholic mayor since 1688. The result was greeted by wild nationalist celebrations and, combined with numerous other unexpected nationalist and Labour victories across the six Ulster counties that would become Northern Ireland, was seen as a major rebuff to plans for partition. However, the Government of Ireland Act of December 1920 and the establishment of Northern Ireland, including Derry, in June 1921 put paid to the high hopes of January 1920. PR was abolished for local elections in Northern Ireland in 1922 and in 1924 unionists recaptured control of Derry Corporation.*[7]

The wider embedding of this kind of structural sectarian discrimination created an entirely new ethos for local government in the new Northern Ireland state. For the next fifty years councils operated in an expressly sectarian manner that was continuously sensitive to the threat of local democracy. This approach was summed up in 1948 by the Unionist MP EC Ferguson:[8]

> *The Nationalist majority in the county, i.e., Fermanagh, notwithstanding a reduction of 336 in the year, stands at 3,684. We must ultimately reduce and liquidate that majority. This county, I think it can be safely said, is a Unionist county. The atmosphere is Unionist. The Boards and properties are nearly all controlled by Unionists. But there is still this millstone around our necks." (Irish News, 13th April 1948, cited in The Plain Truth 2nd Edition).*[9]

By the 1960s, civil rights campaigning began to challenge this explicitly sectarianised and anti-democratic approach to local government. Thus in 1964 right at the start of civil rights interventions, the *Campaign for Social Justice* cited the example of Londonderry Corporation in its pamphlet *The Plain Truth*:

> *The Corporation has 167 salaried staff, of which 136 are Conservative and Unionist and 31 Nationalist. The Unionists draw Salaries totalling £111 ,960 as compared with £18,910 drawn by Nationalist staff. There are 17 heads of departments and not ONE Nationalist among them, and of the 35 people employed in the Guildhall, not ONE is a Nationalist.*

[7] UCC: The Irish Revolution Project, 'The Victory of Sinn Féin: The 1920 Local Elections' www.ucc.ie

[8] Erne Cecil Ferguson (1911–68) was Stormont MP for Enniskillen (1938–49) resigning in 1949 to become crown solicitor for Fermanagh (1949–68).

[9] The Plain Truth observes this process of 'liquidation'. Observing that by 1969, 'At the present time the [nationalist] majority is down to about 200'.

Of course, this history is also a reminder of how much things have changed in the interim. The idea of the Derry Guildhall having not a single Catholic employee working there is a stark reminder of sectarian discrimination and gerrymandering at its nadir.

In this way, sectarian discrimination at council level – specifically anti-Catholic discrimination – was both the hallmark of this regime and the key catalyst for its collapse. Reform implemented in response to civil rights campaigns was supposed to address this head on. Once again, local councils were central to this context. Much of this intervention was about limiting the power of local councils to discriminate. The *Commissioner for Complaints Act (Northern Ireland) 1969* established the *Northern Ireland Commissioner for Complaints* with powers to investigate grievances against local councils and public bodies.

These organizations and roles changed significantly over the period of Direct Rule – including the integration of the Ombudsman and Commissioner for Complaints offices. But the legislation and related institutions continued into the post-GFA era, albeit supplemented by a widening of rights and protection from discrimination commitments in the GFA. (In particular, the singular focus on sectarian discrimination was widened to include a range of other grounds.) These broad functions were amalgamated in the *Public Services Ombudsman Act (Northern Ireland) 2016.*[10] This consolidated the former offices of Assembly Ombudsman and Commissioner for Complaints into a single office. The act also expanded the functions of the newly consolidated office:

> *The ombudsman's function is to investigate complaints about most public services in Northern Ireland. The complainant must usually have exhausted the complaints process of the public body first. The Ombudsman may look at complaints about health care, social care, education, housing, local and central government, and on the clinical judgment of health and social care professionals.*

There is, therefore, still a wider connection in the 'post-S75' era to the old Commission for Complaints paradigm which was a direct response to discrimination at local council level in Northern Ireland.

[10] An Act to Establish and make provision about the office of the Northern Ireland Public Services Ombudsman; to abolish the offices of the Northern Ireland Commissioner for Complaints and the Assembly Ombudsman for Northern Ireland; to provide that the Northern Ireland Public Services Ombudsman is, by virtue of holding that office, the Northern Ireland Judicial Appointments Ombudsman; and for connected purposes.

## The Section 75 Equality Duty and the 'Call-in' Mechanism

Earlier reformism was radically accelerated by the politics of the peace process and the GFA which foregrounded equality as a foundation for peace. Section 75 of the *Northern Ireland Act 1998* gave effect to the wider equality and human rights commitments made in the GFA. The purpose of the S75 duty is to oblige public authorities to equality impact assess proposed or revised policies. On the back of such assessments – where such policies are likely to constitute an 'adverse impact' (i.e. a discriminatory detriment) on one or more of nine protected equality grounds – the public authorities must consider alternative policies or mitigating measures.[11]

A whole infrastructure of S75-related interventions has evolved for public authorities in Northern Ireland – this includes Local Councils. This infrastructure comprises *equality schemes, screening* and *EQIAs, audits of inequalities*,[12] *annual progress reports*[13] and *action plans*[14] and *reviews of equality schemes.*[15]

At council level all this activity is framed by the council's equality scheme. ECNI explains the role of the scheme:

> *This is a statement of the public authority's commitment to fulfilling its Section 75 statutory duties, setting out how they are going to ensure that equality and good relations are promoted in everything they do. This should include procedures for measuring performance.*

This research confirms that most councils meet most of their formal obligations on the equality scheme and related issues. Some – like Derry City and Strabane, Armagh City, Banbridge and Craigavon City, and Mid Ulster councils – have also conducted an audit of inequalities as recommended by ECNI to produce 'a more strategic picture of inequalities they may may be able to influence' (Derry City and Strabane District Council 2024; Armagh City, Banbridge and Craigavon Borough Council 2023). In short, therefore, there is no question that there is a volume of S75 equality duty activity going on across local councils.

The trouble is, however, that none of this extensive infrastructure appears to inform any analysis of some of the most basic evidence of continuing inequality at council level. Here there is an existing evidence base that raises issues that would have been of concern *even before the GFA.*

[11] Section 75 requires public authorities to have due regard for the need to promote equality of opportunity between: persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation; men and women generally; persons with a disability and persons without [and]; persons with dependants and persons without.
[12] 'It is intended to produce a more strategic picture of inequalities that a public authority may be in a position to influence, rather than examining inequalities on a policy by policy basis. It should be similar to other approaches undertaken by organisations to review and evaluate their performance, to make decisions about the way forward and to prioritise actions over time'. Councils commit to such audits in their equality schemes, but few confirm their completion and fewer still make these available to public scrutiny.
[13] 'Public authorities should report to the Equality Commission on the implementation of their equality scheme, including progress on delivery of actions they have identified to promote equality of opportunity and good relations'.
[14] 'It may be helpful for a public authority to develop an action plan which details measures relevant to their functions, to promote equality of opportunity and good relations and address inequalities for the Section 75 categories.Action plans should outline the desired outcomes that a public authority aims to achieve with related performance indicators and timescales'.
[15] 'Within five years of submission of an equality scheme to the Commission public authorities must conduct a review of their equality scheme and inform the Commission on the outcome of the review. We provide guidance on these five year reviews to ensure consistency and allow further assessment of the effectiveness of the Section 75 statutory duties'.

When we undertake a cursory overview of fair employment data at council level, we find a suggestion of stark inequalities in terms of both community background and gender. As we shall see – *half of all councils* appears to have disproportionate numbers of Protestant or Catholic employees. Moreover, there is also widespread gender inequality across councils – *eight out of eleven* councils have less than 45% women employees. Four – including Belfast City Council – have a profound underrepresentation of women employees – less than 40%.

Even though this data is returned to the ECNI, it too appears to fail to ask the councils to address these most basic – and traditional – fair employment questions. This raises the question of why there is now such a stark contract between equality infrastructure and equality outcomes at council level nearly 30 years after S75 was introduced. In other words, we must ask why all the evidence of activity screening for equality so obviously fails to address inequality even when it presents itself starkly through statutory monitoring data. It bears emphasis that these kinds of inequalities were central to the equality agenda *before* the advent of S75.

The principle of S75 proofing is relatively simple and the distinction between screening and EQIAs follows from that. The methodology for such impact assessments recommended by the Equality Commission is the two-stage process of first Equality Screening and, where adverse impacts are found, moving to a broader Equality Impact Assessment (EQIA). The general purpose of equality screening is to determine whether a policy requires mitigation and/or a more comprehensive equality analysis, in the form of an EQIA. Every screening ends in a screening decision which either 'screens out' the policy – meaning it does not require an EQIA, or will 'screen in' the policy, and then proceed to an EQIA. If a policy is screened out it may still entail some mitigation if relatively minor equality impacts are recognised. Otherwise, it will be 'screened out without mitigation'. EQIAs are generally rare and can take a long time to be completed. It is not unusual to see an EQIA start in one year and finish in another.

The legislation added a second subordinated limb to the statutory duty regarding 'good relations', even though this was not referenced in the GFA.[16] While the legislation ties the impact assessment duty to the equality limb of the duty, the Equality Commission has recommended that public authorities also include 'good relations impacts' questions in screening. More generally, the Commission has emphasised a wide reading of the good relations duty, insisting: 'Public authorities must recognise the inter-dependence of equality and good relations'. This notion of 'inter-dependence' was not mentioned in the GFA and is problematic in terms of wider human rights and equality principles. It precludes any possibility that equality might impact negatively on 'good relations', however the latter is constructed. Nevertheless, this assertion now constitutes the core infrastructure for S75 equality screening at council level.

Specifically at council level, the arsenal of equality and minority rights protections was notionally increased with the appearance of the call-in mechanism in 2014. In that year local government was reorganised in the Local Government Act (Northern Ireland) Act which created 11 new Councils – with increased powers – from 26 predecessor councils. This process included a 'call-in mechanism' as a new intended minority-rights protection mechanism under section 41 of the act. Call-in is essentially a process for Councillors to exercise veto power over a decision or policy made by Council.

[16] Public authorities must also have regard for the desirability of promoting good relations between persons of different religious belief, political opinion or racial group. This narrow construction of good relations appears unusual in comparison. The GB equivalent PSED covers all the categories. Likewise, there is a defined notion of good relations (tackling prejudice and promoting understanding) in the MLA code of conduct which covers *all* the S75 categories. https://www.niassembly.gov.uk/your-mlas/code-of-conduct/the-code-of-conduct-and-the-guide-to-the-rules-as-amended-on-23-march-2021/ As a further complication, the Race Relations Order also has at Article 67 a second 'good relations' duty specifically on councils and race.

Section 41(b) of 'call-in' requires a 'supermajority' vote where a threshold is determined to be met of a 'called in' policy that would 'disproportionately affect adversely any section of the inhabitants of the district'.[17] Secondary legislation giving greater legal certainty to the application of this duty was blocked.[18] Nevertheless the concept is framed in a similar way ('disproportionally affect adversely') to Section 75, save that 'disproportionate' implies a more significant detriment. The duty is exercised by 15% of councillors 'calling in' relevant council decisions. The Council is then obliged to source a 'legal opinion' from a lawyer to determine whether that threshold is met. If the legal opinion determines it is met, then the decision must be retaken with a requirement of a 'supermajority' of 80% of councillors in agreement. Until recently, the mechanism had been used very infrequently to address either equality or good relations issues.[19]

[17] As Cave observed at the time, this 'disproportionally affect adversely' provision (s41(1)(b)),'is key to the new protection provided under the Bill. Where in the past the make-up of councils has not been equally proportionate to all sides of the community, this section is included to form a safety net to ensure that one section of the community is not impacted adversely compared to others' (2013: 2).

[18] Secondary legislation was presented to the Assembly in 2016 that would have tied the definition of 'disproportionately affect adversely' to decisions that risked incompatibility with the ECHR, EU law or equality provisions of the Councils' Equality Scheme. It was blocked by the DUP tabling a 'Petition of Concern'.

[19] A similar call-in mechanism was provided for in the Local Government Act 2000 for both England and Wales and consolidated in the Localism Act 2011. The process is the same in England and Wales in that local authorities can 'call-in' a decision which has been made by the executive but not yet implemented. Reconsideration of a decision is based only on the fact that a decision was not reached due to failure of the process. There is no similar element in relation to the 'disproportionate impact on a section of the community' that is provided under the Local Government Act (Cave 2014).

## CAJ & Equality Coalition interventions on S75 and the Call-in Process

CAJ and the Equality Coalition have produced several reports critiquing the operation of the Equality Duty, including *'Unequal Relations'*, '*Equal to the Task'* and the *'Equality Duty Enforcement Project'* report. This current research draws on this related work by CAJ and the Equality Coalition. In 2013 *Unequal Relations?* asked and answered the question: has 'good relations' been allowed to undermine equality? The analysis detailed the problems caused by the ECNI recommended 'good relations' impact assessment methodology. The report recommended ECNI review its definition and interpretation of good relations in strategic guidance and bring it in line with international standards. Here the key referent was the Council of Europe:

> *Promoting good relations between different groups in society entails fostering mutual respect, understanding and integration while continuing to combat discrimination and intolerance.*

ECNI guidance to local councils was subsequently issued in 2015 (ECNI 2015). This referenced the ECNI working definition of good relations, as: 'the growth of relationships and structures for Northern Ireland that acknowledge the religious, political and racial context of this society, and that seek to promote respect, equity and trust, and embrace diversity in all its forms'. It bears emphasis, however, that the absence of a binding legal definition for 'good relations' continues to be problematic, particularly at council level. Councils – and other public authorities – have been tasked with both proofing for and delivering something that has proved difficult to define in law, at least in the Northern Ireland context. Insofar as it is possible to define good relations -and have it as a duty to, for example, tackle prejudice – an even greater problem is created by the notion that it is possible to measure good relations 'impacts'.

Given this ambiguity, after consulting on their new Equality Schemes, several district Councils proposed adopting the changes recommended by the Equality Coalition and departing from the ECNI recommended methodology on 'good relations impact assessments'.[20] This led to considerable discussion on changes to the scheme including intervention from the elected bodies of the Councils. Ultimately several Councils – Mid Ulster, Derry & Strabane, and Fermanagh & Omagh – departed from the ECNI methodology on 'good relations' and accepted recommendations from the Equality Coalition submission on equality schemes (including adding Disability Discrimination Act questions) (Equality Coalition 2021). These changes meant that the equality schemes essentially adopted the English definition of 'good relations' with its framing as, 'tackling prejudice and/ or promoting understanding'.[21] These schemes were ultimately approved by ECNI, in the context that they met the criteria in the legislation.

The Equality Coalition's *Equal to the Task?* (2018) provided an overview of the application and impact of enforcement powers over the S75 statutory equality duties and made recommendations to improve effectiveness. This report laid the foundation for the *Equality Duty Enforcement Project* (Equality Coalition 2022). The EDEP was a three-year project launched in 2017 designed to support the work of Equality Coalition members to take

[20] Although ECNI had other approved Equality Schemes that departed significantly from the Model Scheme (notably the PSNI and Ulster University schemes), ECNI was resistant to changing its good relations methodology.

[21] The public sector equality duty (PSED) is imposed on UK public bodies by section 149 of the Equality Act 2010. Among its three core duties 'A public authority must, in the exercise of its functions, have due regard to the need to … foster good relations between persons who share a relevant protected characteristic and persons who do not share it'. In England, Scotland and Wales these nine 'protected characteristics' are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

forward complaints and other interventions to ensure Northern Ireland's S75 public sector equality duty is complied with; and to share and embed CAJ's human rights-based approach and legal expertise with other Equality Coalition members.

Besides these projects, there has also been an Equality Coalition involvement in legal intervention on S75 issues. CAJ and Equality Coalition member groups Conradh na Gaeilge and PILS were recently involved in legal proceedings – specifically a First-Tier Tribunal – to challenge the legal opinion (which determines whether a call-in has merit) being kept secret (First-tier Tribunal General Regulatory Chamber Information Rights 2024). This involved a legal opinion in a call-in in Belfast City Council which held that it would 'disproportionally affect adversely' a section of the community to have to look at Irish alongside English on Council leisure centre signage. The Council was obliged to make the opinion public. CAJ suggests that this intervention has set a precedent on future access to these call-in opinions, but the judgement is case and fact specific. In the event of the refusal of access to other call-in opinions, it seems likely that these would have to be fought on a case-by-case basis.

Along with this specific interest in the recent use of 'call-in', the sustained engagement of CAJ and the Equality Coalition with S75 mechanisms allows some sense of patterns of concern. This has identified broad issues regarding the operation of the equality duty including: very limited use of the duty in general and EQIAs in particular as a safeguard over policies that have discriminatory detriments; the frequent use and misuse of the 'good relations' limb of the policy to block equality and rights-based initiatives; screening either not being conducted or being conducted in a tokenistic 'tick box' fashion; and limited enforcement of S75 breaches by the Equality Commission.

A key part of the goal of this report was to independently determine whether the broader patterns identified by CAJ and the Coalition are also found at a local council level. In this regard, the experience of Equality Coalition members was a key resource in the research. Equality Coalition members took part in a focus group discussion at the beginning of the research. This was followed by more focussed interviews with member organisations that reported engaging with S75 mechanisms at local council level.

In the experience of the Equality Coalition, application is far from uniform across different councils:

> *In my experience, screenings are becoming more common, but there is significant variation among councils regarding the number and type of policies screened. For example, … it seems Belfast city council had 35 policies screened in 2022-2023, while Derry had 13 – and to give you a sense of the scope, these councils probably have the highest number of screenings. Many councils still treat screening as something that happens primarily to internal HR type policies.*

At the core of this problem is the apparent absence of any qualitative filter on the scale of impact. Thus, something like a council budget which has profound implications across all equality constituencies is hardly addressed at all, while other micro decisions are subject to intense scrutiny. The Equality Coalition suggests:

> *[The issue is the operation of decisions] regarding the criteria for when policies should be 'screened in' or 'screened out'. The misapplication of these criteria is relevant to the issue of screening/EQIA being misused regarding good relations. We see this primarily when polices that don't need rigorous scrutiny are manipulated through good relations 'impacts' into going through a comprehensive equality analysis, contrasted with highly impactful policies such as the budget being given an extremely light touch.*

Arguably this outcome was not the 'enactors intent' of S75. This legislative intervention made the bold commitment to underwrite the promise of equality embedded in the GFA. Certainly, the mechanism was not designed to privilege good relations dimensions *over* equality dimensions – any good relations impact was to be made 'without prejudice' to equality. Nor was it intended to refocus attention from macro-scale decision-making to micro. But it appears, *prima facie*, that this is what has happened. As we turn to examine the record of local councils in more detail, it helps to begin with some sense of how equal or otherwise they are.

# S75 and Local Councils

## Baseline Data

There are various data sets offering some sense of potential equality issues at council level. As ECNI itself points out the evidence base for any audit of inequalities will include: 'Key inequalities identified in a public authority's own workforce and public life positions' (ECNI 2012: 7). By far the most robust data for council workforce and protected characteristics we have comes from ECNI 'fair employment' monitoring data on community background and gender. Councils also collect related data on council grade which allows a basic indication on socio-economic position, insofar as grade can be regarded as a proxy indicator for class. It bears emphasis, however, that while class is clearly a major determinant of equality and inequality it is *not* one of the protected characteristics. The 'ND' or 'non-determined' figures also provides a proxy indicator on ethnicity, representing as it does people who are not represented by the notions of 'Protestant' or 'Roman Catholic' community background.

ECNI data provides an accurate profile of each council workforce for community background and gender. This in turn allows a basic reading of broad equality and inequality on these issues. Moreover, while the intersectionality of these different issues is not routinely placed in the public domain disaggregated at the level of individual councils, it is possible to provide quite sophisticated intersectional analysis of community background, gender and class based on existing ECNI monitoring figures (if, as suggested, council grade is regarded as a broadly accurate proxy indicator for class).

Currently, this 'fair employment' information places community background in the public domain and provides a profile of individual councils as well as the ability to compare the performance of those councils. In terms of 'fair employment' the most recent monitoring report records for 'District Council Employees' as a 'section' of the monitored workforce:

> *In 2022, while members of the Protestant community [51.3%] continued to account for the majority share, the Roman Catholic community share continued to increase [48.7%].*[22]

ECNI also provides a snapshot of trends in fair employment for district councils in its analysis of 'Applicants, appointees, promotees and leavers':

> *Members of the Roman Catholic community comprised the majority of applicants [54.0%] and for the tenth consecutive year, the majority of appointees [53.5%].*
>
> *As with every year across the period from 2008, members of the Protestant community [53.0%] comprised a greater share of leavers from the monitored workforce.*

For the overall Council workforce including ND or 'Non-Determined' (total 10,582) we get a breakdown of Protestant 48%, Catholic 46% and ND 6%. In terms of the straight Catholic/Protestant split, Catholics remain under-represented across aggregated district councils.

[22] ECNI 2024: Fair Employment Monitoring Report 33 'Sectors and Reports: District Councils'

Each council is also a 'specified authority' in the context of fair employment monitoring and thus provides a council specific profile on 'community background'. This allows a simple 'trigger' where it appears that 'Protestants' or 'Roman Catholics' are markedly under-represented within a council workforce.[23] For example, currently six councils – i.e. over half of all councils – still have a representation of less than 30% Protestants or Catholics. While this is not necessarily evidence of discrimination, we might expect it to trigger immediate concern (see Appendix One). While the whole NI population is not necessarily the only comparator – we can also ask how these figures compare to the Protestant and Catholic populations in the actual council district or in the councils 'travel to work area. (Even from this perspective, however, there are immediate issues – all four councils with marked Catholic under-representation are in the Belfast Travel to Work area when Belfast itself has a Catholic plurality among people of working age.)

| Individual Councils - Employment by Community Background 2022 | | | | | | |
|---|---|---|---|---|---|---|
| **Council** | **Protestant** | **Roman Catholic** | **Non Denom.** | **Total** | **[%P]** | **[%RC]** |
| Antrim & Newtownabbey | 454 | 134 | 50 | 638 | [77.2%] | [22.8%] |
| Ards & North Down | 663 | 120 | 63 | 846 | [84.7%] | [15.3%] |
| Armagh Banbridge & Craigavon | 642 | 620 | 78 | 1340 | [50.9%] | [49.1%] |
| Belfast District & City | 1097 | 1011 | 115 | 2223 | [52.0%] | [48.0%] |
| Causeway Coast & Glens | 342 | 242 | 35 | 619 | [58.6%] | [41.4%] |
| Derry City & Strabane | 190 | 636 | 37 | 863 | [23.0%] | [77.0%] |
| Fermanagh & Omagh | 291 | 480 | 55 | 826 | [37.7%] | [62.3%] |
| Lisburn & Castlereagh | 495 | 194 | 71 | 760 | [71.8%] | [28.2%] |
| Mid & East Antrim | 450 | 172 | 46 | 668 | [72.3%] | [27.7%] |
| Mid Ulster | 326 | 484 | 44 | 854 | [40.2%] | [59.8%] |
| Newry Mourne & Down | 157 | 756 | 32 | 945 | [17.2%] | [82.8%] |
| Total | 5107 | 4849 | 626 | 10582 | 51% | 49% |
| (Green indicates <30% Protestants; Orange indicates <30% Catholics) | | | | | | |

*Source: ECNI 2024, Fair Employment Monitoring Report 33*

Fair employment monitoring also provides an overview of gender equality across councils.[24] Here we find similar evidence of inequality and potential discrimination.

| Individual Councils - Employment by Sex/ Gender 2022 | | | | | |
|---|---|---|---|---|---|
| **Council** | **Male** | | **Female** | | **Total** |
| Antrim & Newtownabbey | 324 | 50.8% | 314 | 49.2% | 638 |
| Ards & North Down | 518 | 61.2% | 328 | 38.8% | 846 |
| Armagh Banbridge & Craigavon | 812 | 60.6% | 528 | 39.4% | 1340 |
| Belfast District & City | 1364 | 61.4% | 859 | 38.6% | 2223 |
| Causeway Coast & Glens | 351 | 56.7% | 268 | 43.3% | 619 |
| Derry City & Strabane | 513 | 59.4% | 350 | 40.6% | 863 |
| Fermanagh & Omagh | 427 | 51.7% | 399 | 48.3% | 826 |
| Lisburn & Castlereagh | 456 | 60.0% | 304 | 40.0% | 760 |
| Mid & East Antrim | 358 | 53.6% | 310 | 46.4% | 668 |
| Mid Ulster | 526 | 61.6% | 328 | 38.4% | 854 |
| Newry Mourne & Down | 547 | 57.9% | 398 | 42.1% | 945 |
| (Blue indicates <45% women; Red indicates <40% women) | | | | | |

*Source: Information request to ECNI 2025*

[23] The same assessment can also be made for the increasingly important but more complex 'non-determined' category.

[24] This data was supplied in response to an information request to ECNI on 31/05/2024.

There is a less obvious metric in this case for any 'trigger' for the marked under-representation of either men or women. But it bears emphasis that women form a small majority of the people of working age.[25] Yet women form a minority of employees in *every* council. Women form only 41.4% of employees across all District Councils. Eight of eleven councils have less than 45% women employees. Four – including Belfast City Council – appear particularly unequal.

Even at face value these data should signal an issue for investigation. Ten out of eleven councils appear to be performing poorly on fair employment or gender equality or both. We might expect this observation to immediately demand critical review in the manner framed by S75. These equality issues appear systemic, of course, and cannot be explained by one or two policies. At the very least, however, these data indicate a need for Council hiring policies to be screened for potential adverse impact, and for mitigations to be proposed to redress the sectarian and gender imbalances across different councils.

These existing data sets can provide important new equality data which should be in the public domain since it provides significant evidence about how well individual councils deliver on core aspects of equality. But this data could also be used in a cross tabulation by sex/gender for individual councils in terms of both 'community background' and council grade (as a proxy indicator for class). However, ECNI suggests:

> *The Commission is not able to provide a further breakdown of the monitoring data. This is because sub-dividing the monitoring data will create small numbers in certain staffing groups which could be used to identify sensitive personal information.*[26]

It is true that when there is a risk that monitoring will disclose elements of personal data organisations need to have a 'handling small numbers policy' to prevent sensitive personal information being put into the public domain. At the same time, however, there are multiple statistical techniques to protect personal information while at the same time revealing core equality concerns raised through monitoring.[27] In other words, even with the limited statutory monitoring data that we have, it is possible to imagine a much more dynamic and creative review of the statutory duty.

In addition to the robust data that is available from fair employment monitoring, there are other sources of relevant data on council employment and S75 categories. The Local Government Equality & Diversity Group of the Local Government Staff Commission (LGSC) commissioned *Equality, Diversity and Inclusion in Local Councils Baseline & Impact Study September 2022* (LGSC 2024). This provides what is the closest overview of data on equality and diversity in terms of all the S75 protected equality grounds across the aggregated eleven councils. As its conclusion suggests:

> *A comprehensive baseline and ongoing monitoring of diversity in Local Councils is possible, but this will require a commitment of the time and resources required to start to gather all of the information requested using a consistent methodology on an ongoing basis. (LGSC 2024: 22).*

[25] In 2022, women represented 52.5% of the Northern Ireland workforce.
[26] Research communication 24/06/2024.
[27] For example, ONS suggests: 'Common strategies for disclosure control (SDC) are outlined … but it should be noted that there is a large methodological literature on SDC, and no specific methods are mandated by the policy. Generally speaking, approaches which avoid suppressing or perturbing the data are to be preferred. Common SDC techniques include: collapsing categories to reduce the sparsity of the table …; aggregating the data over a greater period of time, or a larger geographical area (non-perturbative); rounding to a specific base to avoid very small numbers (usually three or five) (perturbative); suppressing very small numbers (usually numbers less than three) (perturbative).' (ONS 2021).

The flipside of this conclusion is, of course, that this current baseline is far from complete. The conclusions signal some of the limitations:

> *All 11 Councils engaged positively in the research, indicating a commitment to establish a baseline, to highlight the successes and challenges and to share good practice. However, a comprehensive baseline on equality, diversity and inclusion in local government in Northern Ireland is not possible as most of the data required is currently not gathered. The main priority for Councils is on gathering data which is required for statutory reports. The limited data currently available makes it difficult for Councils to measure progress and demonstrate the impact of good practice. (LGSC 2024: 21)*

The study was able to establish the first baseline, with a complete data set from all Councils, on full-time and part-time employees by 'Sex Profile' and 'Community Background'. As we have seen, councils are already obliged to collect this data by law as part of their fair employment return. If nothing else this illustrates the advantages of statutory monitoring. Besides this the research was able to establish a range of data across other protected characteristics:

> *The baseline on the incomplete data sets of employees by category is as follows: 7 Councils provided known figures for a breakdown of Community Background across the workforce including a significant number of 'unknown'. 6 Councils provided known figures on Racial Group Profile of employees, including large numbers in the 'prefer not to say/unknown' category. 6 Councils provided known figures on Sexual Orientation and the vast majority of these were 'prefer not to say/unknown'. 6 Councils provided known figures on Marital Status of employees, including large numbers in the 'prefer not to say/unknown' category. 6 Councils provided known figures on Dependents/Caring Responsibilities of employees, including large numbers in the 'prefer not to say/unknown' category. 21; 5 Councils provided known figures on Gender Identity; 5 Councils provided known figures on Disability of employees and the vast majority of these were 'prefer not to say/unknown'. 4 Councils provided known figures on the breakdown of the workforce on Disability with high numbers of 'prefer not to say/unknown'. (LGSC 2024: 21-2)*

In addition to this range of workforce baseline data, the research attempted some other broader relevant data on elected members (LGSC 2024: 22).

While this local council workforce data set is obviously characterised more by its omissions rather than by the detail it provides, it offers at least a template which might be completed in a more comprehensive baseline. Most obviously, it illustrates that such data could and should be available at individual council level. In other words, baseline data should be provided disaggregated at individual council level so that councils – and their residents – can begin to assess their performance on fair employment and equality across all the protected equality grounds.

This baseline data also allows more complex intersectional assessments. We can already observe that there are stark gender differences when we look at the difference between men and women employed in full time and part time work. But these kinds of complex inequality intersections are likely to be observed across *all* the protected equality grounds. Moreover, a core element of equality proofing should be a sensitivity to the implications of such intersectionality. (For example, any policy change that might radically alter the proportions of full-time and part-time workers in the council would immediately also have implications for gender equality.)In other words, equality proofing would be greatly enhanced if this sophisticated intersectional data were provided at the individual council level. This would signal inequalities in terms of each of the protected characteristics of community background and gender (as well as class). But it could also identify potential inequality on a more complex intersectional basis across these different characteristics.

## Equality Screenings and EQIAs in Local Councils

The TOR for this report encouraged an analysis of which policy decisions have been equality screened and subject to EQIAs at individual council level followed by an analysis of the general patterns in outcome. The Annual Return from each Council to the Equality Commission is a key source of information as are the published equality screening quarterly reports and EQIAs on the websites of each Council. Some decisions on equality screening are also tracked in Council Minutes.

Unfortunately, there is no central repository for completed screenings or EQIAs. ECNI was requested to supply this information as part of the research process but was unable to provide it. One immediate conclusion is that some statutory organization – most obviously ECNI – should be tasked with collating all this material and making it accessible online.

All completed equality screenings *should* be published online. For some councils this is the case.[28] Others simply list what they have screened without links to the screening.[29] Others simply list their response to 'screening outcome' with a relentless repetition of 'screened out, no mitigation'.[30] And still others have links to some screenings and EQIAs but not others. When requested to supply copies as they are obliged to do, some councils respond quickly and helpfully to requests for related information while others do not. Some turn a simple information request into a formal freedom of information request which turns a simple process into something much more complicated and drawn-out. In combination, therefore, it is difficult to generate a definitive list of recent S75 activity at council level. It seems likely that this will only be achieved by a body able to use its statutory powers to force councils to comply. More positively, unlike some public authorities, the councils are still making their returns to ECNI (ECNI 2024a: 'Appendix 3').

We can establish a broad sense of the patterns from this data. Belfast City Council had 35 policies screened in 2022-2023, while Derry had 13. The numbers across different councils appear to be increasing but are still limited to around 200 per year across all councils. Far fewer policies have been subject to an EQIA. Even in a council like Newry, Mourne and Down where there has been a significant number of screenings, there has been no EQIA over the past three years. Across the different councils there have been a very small number *ever*.

| Screening & Equality Impact Assessment by Council 2022/23 | | | | |
|---|---|---|---|---|
| **Council** | **No. Policies Screened in Year** | **Policy Consul. w/ screening assessment** | **Policy Consul. w/ EQIA presented** | **Consultations for an EQIA** |
| Antrim & Newtownabbey | 13 | 1 | 0 | 0 |
| Ards & North Down | 32 | 32 | 1 | 4 |
| Armagh Banbridge & Craigavon | 19 | 3 | 0 | 0 |
| Belfast District & City | 16 | 12 | 1 | 0 |
| Causeway Coast & Glens | 16 | 15 | 1 | 0 |
| Derry City & Strabane | 13 | 4 | 0 | 0 |
| Fermanagh & Omagh | 14 | 0 | 0 | 0 |
| Lisburn & Castlereagh | 39 | 0 | 0 | 0 |
| Mid & East Antrim | 21 | 0 | 0 | 0 |
| Mid Ulster | 16 | 1 | 0 | 0 |
| Newry Mourne & Down | 33 | 0 | 0 | 0 |

*Source: Public Authority Statutory Equality and Good Relations Duties Annual Progress Reports to the Equality Commission for Northern Ireland 2022-23*

[28] 'Equality Screening Reports' https://www.belfastcity.gov.uk/council/equality-and-diversity/equality-screening-reports#711-3

[29] 'Equality Screening Reports' https://www.derrystrabane.com/about-council/equality/screening/equality-screening-reports/screening-reports-2023-24

[30] 'Policy Screening' https://antrimandnewtownabbey.gov.uk/council/equality/

The default outcome of screening process is the decision 'SCREENED OUT – NO MITIGATION'. In other words, most of the time the screening process suggests that whatever the *grounds* for the screening, the *outcome* is that councils change nothing about the relevant policy.

Even when there is some mitigation involved, the process often appears random and arbitrary. Take for example Lisburn & Castlereagh City Council screening its Performance Improvement Plan 2023/24'. Here the outcome was:

> *As people who do not have English as a first language may have difficulty understanding the PIP, translation will be provided if required. We will make reasonable adjustments for people with certain disabilities as required. For example, the PIP can be provided in accessible formats as requested/required. If an older person has difficulty understanding the PIP, additional efforts will be made to help to ensure they are not disadvantaged.*

Likewise, in the 2025 'Public Consultation Policy' of Armagh City, Banbridge and Craigavon Borough Council:

> *The aim of the policy is to improve the services and operations of the Council by understanding the views of our stakeholders who are affected by our decisions. It sets the context and guiding principles on public consultation for Council.This policy will be available for all our customers. However, it is possible that those of a different race, older and younger people and those with a disability may require assistance.As a mitigation, different consultation methods will be considered, a range of formats will be available on request and assistance from staff will be available where required.*

In other words, even when the need for mitigation is recognised, the intervention often appears limited. Notwithstanding the awareness associated with screening and the importance of some of the mitigations involved, it is difficult to find any examples of radical changes to policy that look like equality interventions.

## Screened in without justification?

Alongside this tendency to use 'screened out without mitigation' as a default outcome, we find other examples of 'screening in' without any equality justification. Indeed, we find specific concerns in the Irish language community around the use of S75 mechanisms to undermine rather than support equality. As Conradh na Gaeilge suggests:

> *Decisions regarding the Irish language or bilingual signage are frequently 'screened in' in Council's equality assessments. There is significant concern among the Irish speaking community and human rights NGOs (CAJ, PPR & PILS) about the reasoning behind the determination that policies in relation to the Irish language (a bilingual sign) could meet a legal threshold of a disproportionate adverse impact. 'Screening in' methodology has risks institutionalising prejudice, intolerance and sectarianism in the Council's policy making process.*

Moreover, Conradh suggests that the community is not aware of any more positive impacts of screening and EQIA: 'We aren't aware of any EQIA assessing the positive impact of these policy decisions'.[31] In other words, in terms of the Irish language community the mechanisms often appear used to institutionalise sectarianism rather than advance equality.

We find, therefore, a special enhanced and apparently invented equality screening process in Belfast for bilingual signage not applied to any other type of policy decision in council. When challenged this elicits a somewhat defensive response to an information request to Belfast City Council regarding equality screening regarding certain bilingual street signs. As the Equality Coalition argues, this suggests:

> *They really don't want to provide screening exercise – are claiming it is a 'draft' although it was presented to Cllrs for a decision on same– we suspect it is quite loose and they don't want to release same. This confirms that there is no other process in Council where individual policy decisions are routinely subject to individual equality screening exercises. It also confirms that it is not all bilingual signs that are subject to screening just when an 'initial assessment' is made that there should be a screening.*

This is symptomatic of a broader tendency in which the Equality Duty is rarely being used properly (or at times *at all*) to scrutinise the types of polices that it should be (i.e. those with significant equalities impacts). It is being deployed more frequently (and fully) to deal with issues that are politically contested – triggering considerations of alternative policies on good relations or other grounds that are not 'adverse impacts' on equality.

### ***Case Study:*** *Screening Development of the Mackie's Site*

We can usefully follow the S75 screening process in action in one case involving an Equality Coalition member. This involves the Participation and Practice of Rights project (henceforth PPR) trying to encourage Belfast City Council to equality screen its 2019 consultation on plans for the Mackie's site. This narrative draws on the PPR consultation response; its complaint to Belfast City Council; and the Council's reply. In the consultation response PPR made clear the way in which this council's decision *could* be framed by S75 concerns:

> *The former Mackie's site is a large area with ample space for development to fulfil interdependent types of rights, including housing, health, environmental and others. Pitting 'shared spaces' against, and prioritising it above, the promotion of equality is a breach of the Council's statutory obligations under Section 75 of the Good Friday Agreement. The city's spaces must be as open, green, shared and welcoming as*

[31] Although more recently the Belfast City Council bilingual signs in Translink screening form did identify positive impacts.

*possible; but they must also be used to meet acute housing need and to fulfil Belfast residents' fundamental right to adequate housing. The two sets of rights are inter-related, and the two types of development can coexist and mutually reinforce each other. In a city where housing need has been growing year on year, in an area with concentrated housing need adversely impacting the Catholic community, where housing supply continues to fall short of making a dent in the increasingly acute shortfall, and where thousands of families and their children are officially recognised as homeless, the decisions to [dispose of undeveloped brownfield land as 'open space' and to exclude social housing] constitutes a prima facie failure of Belfast duty bearers' to fulfil their obligations under domestic and international law and standards. These include the obligation to pay "due regard" to the need to promote equality when exercising its functions – including urban regeneration and planning.*

In a related intervention, PPR specifically requested a review under Belfast City Council's Equality Scheme regarding (a) the lack of equality screening of the 'Reconnecting Open Spaces' design and (b) the screening decision not to proceed with an EQIA on the wider Green and Blue Infrastructure Plan and Belfast Open Spaces Strategy (under which the 'Reconnecting Open Spaces' fell). In response, Belfast City Council refused to move to an EQIA.

In other words, this episode suggests that even when an NGO spends considerable time and effort helping councils to engage with their own equality commitments and their obligations under S75, they may be ignored. The PPR reading of this process is informative:

*We would say that our S75 intervention with BCC didn't work – the S75 concerns we raised around the impacts of housing stress and homelessness (including around religious community, age, etc) were not taken on board, and Council in no way shifted its planned actions / policy.*

PPR analyses why this intervention was unsuccessful:

*In large part because Council refused to consider the opportunity cost on those S75 groups of choosing to pursue one policy (a greenway) over another (permitting housing development) for the piece of land in question.Basically, the parameters within which Council considered S75 were so narrow as to be meaningless – they only considered the impact of the greenway on S75 groups, NOT the impact of choosing the greenway policy over another, alternative and more responsive, policy, on S75 groups. Their policy choice was taken as a given in their analysis, and there was no genuine critical thought about that choice or the decisions that led up to it.*

PPR also suggests there is an alternative way to do this even within the current framing of S75:

*In this instance, Council should have taken the evidenced S75 concerns that we raised seriously as a first step in evaluating their policy development – and therefore genuinely considered whether they were making the best possible use of the Mackie's site. Instead, their S75 evaluation exercise was limited to the letter of policy (greenway) as proposed. And who's harmed by a greenway?! Except the kids growing up in housing stress or homeless, and predominately Catholic local housing stressed / homeless population that could've lived there if they'd instead chosen to use the land to build houses… but the way BCC is allowed to implement its section 75 obligations, it was able to sidestep ever asking itself that question, even when we presented it to them.*

PPR also suggests that there are broader lessons to be learned:

*the way S75 obligations are implemented doesn't require the public authority to ask, 'what decision would equality demand? 'Instead, they can get away with focusing on the wording of the specific proposal in front of them, and only that – without considering the substance of the decision making.*

This episode resonated with PPR's broader work around 'affordable housing'. Here the concern was that:

> *at a time of growing acute housing need, the new definition of 'affordable housing' was skewed towards intermediate products for people with intermediate incomes, rather than meeting objective need (we included the way that need is evidenced in S75 groups such as religious community and age); and also that affordability was pegged to market values, not to income – meaning (from lessons learned in other places, including England, where this had been implemented previously, that people could quickly find themselves priced out of their local areas with gentrification etc.)*

Alongside the Mackie's case this work around housing and homelessness provides a broader PPR critique of how S75 is – and is not – working:

> *it seems that S75 is being treated as a tick box exercise rather than a real opportunity for critical reflection and review of policy choices and decision making. Evaluations of S75 impacts are allowed to focus on the wording of the proposed policy only – not on the actual content of decision making underlying the policy. Feedback is not taken on board in any meaningful way (other than perhaps to change the wording around decisions), leaving the decisions themselves unchanged.*

In combination, therefore, this case offers evidence of a context in which S75 is clearly not working to deliver equality on core issues.

Of course, in this case there are other perspectives – for example, environmental activists might disagree. But this case study highlights that the S75 process is not being sufficiently engaged with, to allow an examination and proper assessment of potential impacts because of different policies and that it appears that rather than being used prior to decisions being made to inform policy, S75 processes happen after decisions are already made.[32]

Moreover, it is difficult to challenge this process. As the Mackies site example illustrates, even when an NGO is comparatively well-resourced and has specific competence in working with S75 mechanisms, it can be very difficult to get a council to address its own decisions. This, despite these decisions having profound implications in terms of one or more equality constituency.

[32] In this context, the Brown Principles on 'due regard' are particularly relevant: https://www.equalityni.org/Employers-Service-Providers/Public-Authorities/Section75/Case-Law/Legal-Case-2#:~:text=B.-,The%20Brown%20principles,90.%20%E2%80%A6

# Call-in Mechanism and Local Councils

## Recent call-ins in Practice

The TOR for this research anticipated 'an analysis of the use of the 'disproportionately adversely affect' limb of 'call-in' – s41(1)(b) – by local councils'.[33] The arrangements for call-in are laid down by Section 41(1) of the Local Government Act (Northern Ireland) 2014:

> *Power to require decisions to be reconsidered*
>
> *41.—(1) Standing orders must make provision requiring reconsideration of a decision if 15 per cent. of the members of the council (rounded up to the next highest whole number if necessary) present to the clerk of the council a requisition on either or both of the following grounds—*
>
> *(a)that the decision was not arrived at after a proper consideration of the relevant facts and issues;*
>
> *(b)that the decision would disproportionately affect adversely any section of the inhabitants of the district.*
>
> *(2) Standing orders must require the clerk of the council to obtain an opinion from a practising barrister or solicitor before reconsideration of a decision on a requisition made wholly or partly on the ground mentioned in subsection (1)(b).*

Where a request for a call-in under s41(1)(b) meets the threshold of support required, the Chief Executive is required to seek independent legal advice on the validity of the call-in. Where the opinion confirms that the call-in has merit, the opinion is circulated to Council members and the decision of the Committee is included in the next meeting of full Council for decision. The matter under review is then subject to decision by a qualified majority vote of at least 80% of the members present and voting to support the decision.

It bears emphasis that call-in is a legal mechanism *specific to local councils*.[34] In so far as it constitutes an additional minority rights protection in NI law, this too is confined to the actions of councils. This suggest a *prima facie* case for vigilance regarding its use since it is a mechanism that cannot be employed in other contexts – whether to facilitate or block equality initiatives.

While the use of the call-in mechanism is a relatively new development, we can make some specific observations.[35] While all the legal opinions involved are not yet available, the 'call-in' request forms filled in by councillors are available from Councils, and Council Minutes track their outcomes. At present, there is a relatively small number of cases across councils.

We can also offer a few tentative generalisations. A review of the use of council minutes does not reveal anything particularly significant beyond the high-profile cases that are already in the

[33] This research does not address the 'other limb' of call in in s41(1)(a) relating to when procedures have not been followed.) Respondents did, however, suggest that some of these call-ins will relate to planning applications. There is currently a specific issue with this in that after council planning officials deny a planning application (probably because it does not meet the legal requirements, or will have a negative environmental impact), councillors can overturn this (possibly through the call-in mechanism) and thereby grant the planning application. The audit office has flagged that this system is ripe for fraud and misuse. The structure of planning enforcement that investigated fraudulent planning applications and could pass cases on to the PSNI was disbanded when the planning function was decentralised and given to councils. Planning enforcement is now a discretionary function of councils.

[34] One high-profile example of call-in under 41 (1) (a) that entered the public domain involved the decision of Derry City Council to award community peace activist, Jon McCourt, the freedom of Derry City and Strabane (BBC News 2023a; 2023b). In the event, the original decision was confirmed following call-in. In this case the use of call-in appears more an opportunity to signal political distance from the decision than to suggest a lack of proper consideration of the facts.

[35] For background, see 'Implementing the 'Petition of Concern' (S469) CAJ Briefing Note, January 2018'

public domain. In practice, the mechanism often appears to offer councillors a 'second bite at the cherry' if they allow a decision to be made and then decide that they disagree with the decision (or face pushback from constituents on same). It is also the case that the call-in mechanism is already structuring council business. It is part of council standing orders. It is now often built into monitoring forms. It is also often integrated into council procedures. For example, councils will recognise that a decision has been made pending the duration of a possible call-in.[36] Likewise, Belfast City Council at least has a formal 'call-in requisition form' to support the call-in process.

This research used freedom of information requests to establish the patterns of use across different councils. One FoI established the number of times that the 41(b) mechanism had *ever* been used by each council. This information is detailed below in Table One.

**Table One: Opinions under Section 41(b) since 2014[37]**

| Council | Number of opinions under Section 41(b) | Detailed Response |
|---|---|---|
| Antrim & Newtownabbey | 0 | The Call-in process has not been used on a Council decision since the legislation was enacted in 2014. |
| Ards & North Down | 3 | The Council has received 3 call-in requisitions under section 41(1)(b) of the Local Government Act (Northern Ireland) 2014 and obtained an opinion from a practicing barrister or solicitor in line with section 41(1)(b) 3 times, since the legislation was enacted. |
| Armagh Banbridge & Craigavon | 12 | The number of times that the Council has obtained an opinion from a practicing barrister or solicitor under subsection (1)(b) of the Act is twelve (12). |
| Belfast District & City | 12 | Since the Local government Act (Northern Ireland) 2014 was enacted, the Council has obtained an opinion from a practising barrister or solicitor, before reconsideration of a decision on a requisition made wholly or partly on the ground mentioned under 41 1) (b) i.e. 'call-in' on the basis that a 'decision would disproportionately affect adversely any section of the inhabitants of the district', a total of 12 times. |
| Causeway Coast & Glens | 19 | Causeway Coast and Glens Borough Council (CCGBC) has now completed a search of its records and can confirm that it obtained a Solicitor or Barrister's Opinion regarding an Article 41(1)(b) Call-in approximately 19 times from the formation of CCGBC in 2015. Furthermore, and although not a legislative requirement, Council also obtained an opinion or advice from a Solicitor or Barrister regarding an Article 41(1)(a) Call-in only, approximately 14 times from formation of CCGBC in 2015. This was due to complex queries raised within the Article 41(1)(a) Call-in. |
| Derry City & Strabane | 2 | The Council does not hold a central schedule of all call-ins received, however I have undertaken a trawl of files in relation to Calls-in received and so far as I am able to ascertain the Council has only had to obtain the opinion of Counsel in relation to a Call-in received under section 41(1)(b) of the Local Government Act (Northern Ireland) 2014 on 2 occasions. |
| Fermanagh & Omagh | 4 | |

[36] See, for example, Derry City Council: 'In response, the Lead Legal Services Officer advised that the minutes were distributed to Members in order for the call-in period to commence as soon as possible, therefore so that any actions which arose from that meeting which was delegated by the Planning Committee could be implemented in 7 days' time assuming there was no call-in submitted.' C548/22 Special Planning Meeting held on 14 December 2022

[37] This FoI sought to, 'establish the number of times (if at all) the Council has obtained an opinion from a practising barrister or solicitor under subsection (1)(b) of the Act. I want to establish how often this mechanism has been used by the Council since the legislation was enacted in 2014.

| | | |
|---|---|---|
| Lisburn & Castlereagh | 6 | The Council has obtained opinion from a practising barrister on 6 occasions |
| Mid & East Antrim | 3 | Council's Legal Services have records of three requests for decisions of Council to be reconsidered in accordance with S41 of the Local Government (N) Act 2014. Each call-in dealt with issues under both Section 41(a) and (b) of the Local Government Act (NI) 2014. A barrister's opinion was obtained in respect of each of the three matters. The requests for reconsideration of Council decisions were made in 2018, 2021 and 2022. In house Legal Services were first provided for in MEABC in late 2016 and we do not hold any details of how often, if at all, the call-in mechanism was used by Council prior to that time. |
| Mid Ulster | 1 | We can confirm that the use of call-in and legal opinion sought has been exercised once since April 2015. However, on this one occasion, the call-in did not have merit. Please see attached link to relevant Council minute (Ref C80.15) - CMIS > Meetings Calendar. |
| Newry Mourne & Down | 1 | Newry, Mourne and Down District Council holds the following recorded information in relation to your request: Council has identified one instance within scope of your request |

A second FoI established recent patterns of use across councils during the most recent council mandate. This FoI provides the details presented in Table Two below.

| **Table Two: Use of the Call-in Process in the Recent Mandate**[38] | |
|---|---|
| **Council** | **Use of the call-in process in the recent mandate** |
| Antrim & Newtownabbey | The Call-in process has not been used on a Council decision since 18 May 2023. |
| Ards & North Down | Since 18 May 2023, one call-in requisition has been submitted which had the sufficient support of 15% of Councillors, but in November 2024 the requisition was deemed inadmissible as it was out of time when received.<br>Once successfully called in, in line with the current Standing Orders, a decision is always referred back to Council for reconsideration. Since 18 May 2023, one decision was referred back to Council for reconsideration. |
| Armagh Banbridge & Craigavon | Since 18 May 2023 the Council has received 2 call-ins that were successfully requested in that they were supported by 15% of Councillors<br>Since 18 May 2023 there have been no call-ins that have been referred back to Council for reconsideration after a legal opinion deemed that the call-ins had merit under the legislation |
| Belfast District & City | 1. Since 18th May, 2023, the Council has received 1 successful call-in.<br>2. The abovementioned call-in did not have merit. |
| Causeway Coast & Glens | The call-in mechanism has been successfully requested once since 18 May 2023. The call-in mechanism has been referred back to Council for reconsideration once since 18 May 2023. |
| Derry City & Strabane | Council has not used the call-in process during its most recent mandate. |
| Fermanagh & Omagh | (a) the number of times that a call-in has been successfully requested by a sufficient number (15%) of Councillors - 3<br>(b) the number of times a decision has been referred back to Council for reconsideration after a legal opinion has deemed that call-in to have merit under the legislation - 3 |
| Lisburn & Castlereagh | Since May 2023 the call-in mechanism has been successfully requested on two occasions.<br>In relation to the two call-in instances above, following legal opinion one was referred back to Council for reconsideration and the other was deemed to be invalid therefore, reconsideration was not required. |

[1] This FoI request sought 'statistical information regarding the number of times the Call-in process was used on a Council decision during its most recent mandate (i.e. since 18 May 2023). This includes both: the number of times that a call-in has been successfully requested by a sufficient number (15%) of Councillors and the number of times a decision has been referred back to Council for reconsideration after a legal opinion has deemed that call-in to have merit under the legislation.'

| | |
|---|---|
| Mid & East Antrim | Council has not had any 'call-ins' over this time-period. |
| Mid Ulster | I can confirm that the call-in mechanism has not been exercised within Mid Ulster District Council since the commencement of the current Council term (i.e. May 2023) to present. |
| Newry Mourne & Down | Newry, Mourne and Down District Council holds the following recorded information in relation to your request: To date there have been no requests for call-in during the Council's most recent mandate. |

The research confirms that the mechanism has been used infrequently in most councils since its inception. The mechanism has been utilised in several 'hot-button' call-ins that have been in the public domain – two such cases are detailed below. Thus, there has been some call-in activity around controversial decisions connected to traditional political divisions – notably Irish language signage and the display of the Union Flag. Outside of this, however, there is little evidence of the 41(b) mechanism being either used or abused.

At one level, this suggests that the call-in mechanism *does* operate as a minority rights protection. But there are several caveats. First this process involves a subjective and sometimes secret opinion by a solicitor or barrister. Second, it only works in a very specific political context. Thus – whatever the size of the minority that might need protected – it requires 15% of elected councillors to support the call-in. In other words, minorities that cannot command this level of political support are offered no protection. The mechanism involves a very specific algorithm to work. *If* a given minority has the support of 15% of elected councillors it may work, any less and it does not. In other words, the mechanism functions only crudely – and in a limited manner – as a 'minority rights protection'.

The flip side of this observation is that 15% of councillors also have the power to call-in *any* decision for vexatious reasons. This kind of abuse would not, of course, constitute a 'minority rights protection'. Rather it might provide a mechanism that could make council business effectively impossible. Furthermore, it also threatens to undermine some genuine minority rights issues – such as Irish language signage. In this case, the use of call-in seems less designed to protect a minority than to ensure that the delivery of a minority right is made as difficult and bureaucratic as possible.

Despite the potential for wider abuse there is not a great deal of evidence suggesting that this is a current problem. At most, some call-ins attract criticism as a waste of Council time and resources. We find this dimension of the legislation in action in the single 'call-in' processed in Mid-Ulster:

> *The Chief Executive stated that following discussion and decision at the last meeting of the Council an admissible 'call in' had been received under sections 41 1(a) and 1(b) of the Local Government Act 2014 in relation to the issue. Legal opinion had been received under 41 1(b) and had been circulated to all members in advance of the meeting. It was noted that the 'call in' did not have merit. He continued that while the Model Standing Orders suggested that the decision could be implemented following receipt of the legal opinion, the advices he received noted that this would be contrary to the 2014 Act and that the decision would still need to be reconsidered and decided upon by a simple majority. As the Model Standing Orders were silent on the matter, he advised that a 'call in' under 41 1(a) also needed to be reconsidered and decided upon by a simple majority. To assist with considerations the financial impacts were included for Members. It was noted that the costs of using multiple languages on branding during the interim period was negligible. Councillor S McGuigan stated that he had brought the original proposal and having listened to the comments that the Chief Executive made he and his party thought the matter around the call in was a waste of time and money as those making the call in would*

*have been aware of the outcome in other Council areas. (C57/15 Interim arrangement for Flags, Emblems and Corporate Branding).*[39]

It remains the case, however, that the potential reach of the mechanism is huge – much wider even than the current S75 equality constituencies. *Any decision* that 'would disproportionately affect adversely *any section* of the inhabitants of the district' might be subject to call-in.

### ***Case Study:*** *Ards and North Down flags policy 'call-in'*

In 2024, following a proposal by unionist representatives, Ards and North Down Council took a decision to have the union flag flown at various locations in the borough all year round. This followed years of discussion around this issue including the Council undertaking an EQIA on 'Proposed Revisions to the Council's Policy on the Flying of the Union Flag' (Ards and North Down Council 2022). The policy was expected to be introduced. But some councillors called-in the motion on the basis that this could have an adverse impact on a section of the community. The *Newtownards Chronicle* details the subsequent operation of the call-in mechanism in this case:

*Ards and North Down Council has abandoned plans to fly the union flag from war memorials and civic buildings all year round. The decision, led by the Alliance Party and backed by the Greens and SDLP, sparked a wave of anger from Unionist politicians last week, as well as a flags protest outside Bangor City Hall. In a midnight debate last Wednesday, the council decided to undo a change that Unionists voted through in January. That change would have seen the union flag flying from 13 war memorials and five civic buildings all 365 days of the year. The council will instead stick to its current rota, which sees the flag flying from four civic buildings all year round.... Unionists voted for that to be altered to all year round on all war memorials and council-owned buildings, but Alliance called in that vote for a second debate. Due to the mechanics of the council's call-in policies, the year-round flags move then needed a supermajority of 80% of councillors voting for it to pass for a second time. At last week's midnight debate on the issue, less than 60% of politicians voted in favour of the change. Officials had listed the debate to be heard in secret, arguing that legal advice obtained as part of the call-in procedure meant that the public and press should be barred from knowing what happened.*[40]

There was, however, resistance to this call-in related reversal of policy. The Council was accused of acting irrationally and breaching Article 2 of the Windsor Framework. In legal representation submitted as part of this challenge it was contended: 'It could not be rationally said that flying the union flag 365 days per year satisfied the legal test for disproportionate adverse impact on any section of the community.'[41] This case also raised freedom of information issues as campaigners sought to reveal the identity of the councillors who had made the call-in.[42] Crucially, it also illustrated the interplay – and potential contradictions – of S75 and the call-in mechanism:

[39] Minutes of Meeting of Mid Ulster District Council held on Thursday 26 March 2015 in the Council Offices, Circular Road, Dungannon

[40] Newtownards Chronicle 2024. 'Council Ditches Year-round Flags Move' May 2, 2024.

[41] Belfast Live 2024. 'Jamie Bryson launches legal challenge over council's 365 days a year flag ban' 26 July 2024.

[42] Newsletter 2024 'Ards and North Down councillors demanded secrecy over flags policy 'call-in'' Newsletter 22 July 2024.

> *At the full council meeting this week, a recorded vote on the Councillor Irvine proposal showed 21 elected representatives in support, all from the unionist parties, and 13 against from Alliance and the SDLP. This was well short of the 80 percent threshold required to overturn the call-in…. Councillor Irvine asked Alliance councillors before the vote to abstain to allow a new equality impact assessment to go ahead, without success. The council debate at the full meeting this week was originally intended to be 'in committee', that is, held away from the public and press, due to sensitivities surrounding the legal advice on the flag policy and the call-in. Unionist votes however took the matter out of restricted items and made it open to the public, on the proviso no legal advice was referred to. All documents surrounding the item remain unavailable to the public. (Kenwood 2024)*

On one side, there was a clear indication of EQIA as a mechanism to support the desired policy:

> *Councillor Irvine said: "I am happy to go with the recommendations from the council that we go for the equality impact assessment before we make the final decision. I took it for granted we were to do an EQIA as it was a Section 75 topic. I would ask the ones who made the call-in to let it go for the EQIA and a consultation." DUP Alderman Stephen McIlveen said: "There is a bit of a charade going on here. This is a call-in, signed in by Alliance and the SDLP, and they wouldn't have done that if they didn't want to stop this proposal, and they have the numbers to do that, as we have to pass this with a qualified majority…. He said: "It was made very clear to anyone who was in the Corporate Committee that we will require an EQIA, this is a fresh decision, it was minutes that all of us in this chamber read, and we knew the rules of the game when making the decision." He said: "I mention to Alliance members if they were going to go through the costs of an EQIA or make a call-in at an earlier stage, and of course they brought the call-in at an earlier stage than they did previously, whenever we went to the enormous expense of having a large amount of public consultation. (Kenwood 2024)*

On one side, there was a clear indication of EQIA as a mechanism to support the desired policy:

> *Alliance Councillor Martin McRandal said: "We were criticised by some for calling this decision in, but we have been vindicated on that. We used the call-in mechanism for both of its intended purposes, that is, as a check for decisions that are arrived at after proper consideration of the relevant facts and issues, and that it would disproportionately adversely affect any section of the inhabitants of the borough…. "The proposal to fly the flag 365 days a year at all war memorials is, we believe, contrary to Section 75 Good Relations policy. Flying the flag at remembrance events is to highlight the significance of the period, and flying the flag could risk undermining this. (Kenwood 2024)*

In the end this call-in failed on a technicality since the call-in papers were submitted beyond deadline.[43] Despite this, however, the episode provided an important example of the potential use of call-in in this kind of context. Indeed, some of the debate in council focussed on the 'trading' of the call-in for another EQIA on the flags policy (Kenwood 2024). More generally, it was an important moment in the use of S75 and 'call-in' as different – and potentially contradictory – equality (and 'good relations') mechanisms at council level.

[43] Belfast Telegraph 2024. 'Jamie Bryson claims victory in High Court challenge over block on Co Down war memorials flying Union flag' 1 Nov 2024.

## ***Case Study:*** *Call-ins and Irish signage in Belfast*

There appears to have been a particular use of the call-in mechanism in relation to Irish language signage within Belfast City Council. In other words, in terms of all the many human rights and equality issues that might 'disproportionately affect adversely any section of the inhabitants', there has been a focus on Irish or dual language signage in engaging the call-in process. In response to a 2023 freedom of information request to Belfast City Council, Conradh na Gaeilge was informed:

> *The total number of call-ins received from June 2015 to date is 15. Of those, 4 have related to the Irish and/or dual language signage, namely:*
> *Consultation on Signage – Andersonstown, Lisnasharragh, Olympia and Templemore Leisure Centres – Options Paper;*
> *Erection of Dual Language Street signage at Clifton Street;*
> *Update on Dual Language Street Signs;*
> *Physical Programme Update – Forth Meadow Greenway dual language signage.*[44]

This dynamic has continued to the present. CAJ and Equality Coalition member groups Conradh na Gaeilge and PILS were recently involved in legal proceedings in relation to the use of 'call-in' in one of these cases. In this case, a Belfast City Council decision was made to have bilingual signage on Olympia Leisure Centre. This decision was challenged via call-in on community impact grounds. The call-in was found to have merit in a commissioned legal opinion. CAJ and Conradh na Gaeilge asked Belfast City Council to see the legal opinion under FoI. This was denied. They then appealed to the ICO and were denied. They then took the ICO to the tribunal and won.[55] Conradh na Gaeilge outlines their concern with this case:

> *The refusal to disclose the legal opinion was a matter of concern for us given that it brought not only the council's transparency of processes into question, but it also demonstrated the potential for the 'legal opinion' obtained during call-ins to be flawed, dependent on their own personal interpretation of 'disproportionate adverse impact'. We therefore challenged the refusal to disclose at every possible level; firstly internally within the Council, then with the Information Commissioner, both of whom upheld the initial decision. We then challenged the decision of the Information Commissioner in a tribunal case which was won and resulted in Belfast City Council disclosing the call-in requisition form as well as the legal advice.*

The decision made clear the significant implications of use and misuse of call-in:

> *In assessing the balance of public interest the Council has not established significant interest in withholding the information beyond the inbuilt interest in the protection of the relationship between the client and the legal adviser. The circumstances of the case, the fact that the legal advice effectively overturned the majority vote in the Council points towards the value of a public explanation….The ability and preparedness of UK bodies to explain to their own population how they are (or are not) meeting their aspirations is a substantial matter of public interest far outweighing the public interest of legal privilege and, given the circumstances, doing no harm to that interest.*

PILS makes clear the import of this process:

> *On 01 February 2024, the First-Tier Tribunal ordered Belfast City Council to disclose the legal advice it relied on to block dual language signs at the Olympia Leisure Centre. The practical impact of Conradh na Gaeilge's successful challenge was felt within*

[44] Belfast City Council's response to a Freedom of Information request. 8 June 2023.
[55] Case Reference: EA/2023/0009.

> *weeks: Belfast City Council published the legal advice it had previously refused to disclose, on three separate occasions. The widespread media coverage generated by this appeal brought the little-understood 'call-in' mechanism out into the open…. In October 2024, Belfast City Council re-took its decision in favour of installing signs in both Irish and English in the Olympia Leisure Centre. Once again, this decision was called in by DUP council members but the subsequent legal advice found that there was no merit in the suggestion that bilingual signage would 'disproportionately affect adversely any section of the inhabitants of the district'.*[46]

More broadly, the specific activity around the use of call-in in terms of Irish language signage hints strongly at a reading which suggests the mechanism is being used to block rights rather than advance equality. This process is ongoing, but it already suggests a particularly distorted notion of equality.

After 5 years since the issue of dual language signage at Olympia Leisure Centre was first raised, a meeting of Belfast City Council approved and ratified the motion for dual language signage at Olympia. The most recent committee decision to approve bilingual signage at Olympia Leisure Centre was again subject to a call-in. The latest stage in this saga was presented as a 'last gasp' intervention to prevent Irish signage at the location (Newsletter 2024).

However, the legal advice that emerged from this was very strong, deeming that neither grounds of the call-in had merit and suggesting that language should not be assessed by the standards set by Section 75. Rather this would be an issue intended to be dealt with by the incoming Irish Language Commissioner:

> *It is therefore our opinion that the call-in does not establish that the decision would disproportionately affect adversely any section of the inhabitants of the district, because each ground of call-in relies on and is linked to s.75, and it is our opinion that Parliament did not intend the categories under s.75 to be engaged by language issues, and instead intended any language issues to be dealt with by the relevant Commissioner via the mechanisms set out in Parts 7B and 7C of the Northern Ireland Act 1998.*[47]

It remains to be seen whether this ends the particular focus on call-ins and Irish language signage. Certainly, the concentration of call-in activity based on Irish language signage seems far from the intent of the mechanism to provide an extra level of minority rights protection at council level. Rather it acts as a mechanism to prevent or delay measures that are clearly minority rights issues themselves.

[46] PILS provides a useful narrative of this case at: https://pilsni.org/casework/cnag-caj-olympia/
[47] *'Opinion In the Matter of a Call-in Wholly or Partly Under Section 41(1)(b) of the Local Government (NI) 2014'*

## Patterns and conclusions on S75 and Call-in Local Councils

While they are very different mechanisms – S75 applies to all public authorities, call-in is specific to local councils – their current operation at council level raises similar issues. As we have seen there can also be a complex and contradictory interface between the two mechanisms at council level. They are both mechanisms designed to address inequality and potential unfairness in policy and decision making. But there is evidence to suggest that they are not always working effectively to do that. Moreover, there is evidence that both have issues with a focus on good relations subverting equality of opportunity. Both suffer from a lack of external oversight.

When we review recent screenings and EQIAs at local council level there is little sense of any pattern or strategy in the *use* of these S75 mechanisms. The default outcome of screening process is the decision 'SCREENED OUT – NO MITIGATION'. Most of the time the screening process suggests that whatever the grounds for the screening – i.e. whatever the trigger for undertaking a screening – the outcome is that councils feel obliged to *change nothing*. The broader implication is that very little that councils do in response to the equality duty has any impact on inequality.

Other than screenings and EQIAs, the interface between councils and S75 investigative mechanisms is minimal. There have been a small number of complaints made and paragraph 10 investigations into councils (Equality Coalition 2022: Annex One).[48] In short, therefore, while there is some evidence of good practice across councils in the sense of S75 mechanisms encouraging reflection on policy that might make outcomes more equal, in general the sense is of a box-ticking exercise which results in little change at all.

Likewise, the general concern in relation to call-in is confirmed in this research. In the context of the widespread secrecy of opinions, an inconsistent and lay interpretation of 'disproportionally affect adversely' may be occurring. In the absence of the secondary regulations, the concept is often interpreted with little reference to discriminatory detriment. As such the 'call-in' process risks becoming an alternative 'political veto' rather than a minority rights protection. Paradoxically it may increasingly be used to *block* rights-based initiatives that are disliked, for whatever reason, by different political parties.

Regarding the operation of the mechanism, it is difficult not to agree with the assessment of an earlier 'call in' opinion for Derry City Council by David A Scoffield QC:

> *I have previously set out what I consider to be two key difficulties with the section 41(2) requirement for a legal opinion to be provided on the section 41(1)(b) test. Firstly, section 41(1)(b) is about whether the decision disproportionately affects adversely any section of the inhabitants of the district. This is an empirical question, which a practising lawyer providing legal advice is not well equipped to answer. Indeed, this is the type of matter which, in my view, would be much better addressed through equality screening and/or a full equality impact assessment. Secondly, section 41(1)(c) also asks whether any effect is disproportionate. Although there are well recognised legal tools to analyse*

[48] The Equality Commission has powers (under paragraph 10 and 11 of Schedule 9 of the Northern Ireland Act) to investigate complaints that public authorities have failed to comply with their equality schemes from people who are directly affected by such failure. It can also initiate such investigations. For example, there was a Paragraph 10 investigation into Mid and East Antrim Borough Council in 2018. This investigation followed a complaint that Mid and East Antrim Borough Council had failed to comply with its equality scheme commitments when it revised its pricing policy to align fees in leisure centers across the Borough following the reorganization of local government. The complainant believed that the new concessionary rates negatively affected older people. The Commission investigation found a failure to comply with its equality scheme, as the Council did not assess the potential equality impacts of the new policy. It should have followed the equality scheme commitments from early in the development of the policy to ensure it considered the impact of the planned changes on various groups of people, including older people. ECNI Para 10 Investigation – Complainant & Mid and East Antrim Borough Council www.equalityni.org

*the proportionality of a measure, determination of this question ultimately resolves to a matter of judgment. Again, this is generally not the function of legal advice.*[49]

As this opinion suggests, it routinely appears that the issues that call-in is supposed to address would be better addressed through existing equality mechanisms framed by S75. If this is correct, one option is that the 41(1)(b) mechanism be repealed, and the substantive issues it addresses at council level returned to existing equality mechanisms.[50]

An alternative option, however, would involve the qualification of disproportionate adverse affect by the regulations to only cover policies which would constitute a discriminatory detriment (on a S75 or other protected characteristics under equality and human rights law – such as language or class/socio economic status). This was indeed what the regulations in the *Local Government (Standing Orders) Regulations (Northern Ireland) 2016* would have done:

> *"a)a call-in made in accordance with section 41(1)(b) of the 2014 Act where a practising barrister or solicitor has opined under section 41(2) of that Act that there is a risk that the decision is outside the powers of the council, or is incompatible with EU law or Convention Rights (within the meaning of the Human Rights Act 1998(5)), or is not in compliance with the council's equality scheme in so far as it relates to equality of opportunity (within the meaning of section 75(1) of the Northern Ireland Act 1998(6))*

This failed to pass because of a DUP petition of concern, and it remains a draft item of legislation.[51] If implemented, this approach would retain the call-in mechanism as a minority rights protection specific to councils and *in addition* to S75.

[49] This opinion (Scoffield 2016) was put in the public domain by Derry City Council in contrast to the subsequent resistance to making call-in opinions public in other councils.

[50] The Local Government Policy Division within the Department for Communities has responsibility for policy relating to the call-in procedure. The Department issued a letter to all Council Chief Executives on 31/10/2023 seeking their views on the current call-in process as well as their views on any additional areas which they consider may benefit from being included in any future Standing Orders Regulations. This information received has not been published by the Department but it, and any subsequent research, will be used to identify and inform any potential changes to the legislation dealing with Standing Orders Regulations and the call-in procedure, which will be subject to the Minister's decision. (Research Communication 25/04/2025).

[51] The Local Government (Standing Orders) Regulations (Northern Ireland) 2016

## Why is S75 not working more effectively at local council level?

This review has suggested that S75 is not working effectively to deliver equality in the manner that was envisaged by the GFA. Nor has the introduction of the call-in mechanism reinforced the commitment to equality at local council level. Of course, equality is rarely simple or uncontested. What it means – and for whom – remains a complex question. Moreover, no local council has total control over all the dynamics of equality and inequality. If wider political strategies are committed to policies that increase inequality, councils, even when they are completely committed to equality, are left in a context in which much of what they can do is about limited mitigation.

In another way, however, this 'excuse' misses the point. Since councils across Northern Ireland are committed to equality and to equality proofing through the equality duty, they must be judged on whether they are delivering equality through S75 (as well as other policies like call-in, of course). As we have seen, inequality is increasing across Northern Ireland rather than reducing. Why we find ourselves in this situation despite thirty years of S75 and equality proofing is, of course, a complex question. But the research identifies three key conceptual challenges for the S75 paradigm.

*First,* it excludes class and socio-economic position. Class position is the most obvious indicator of inequality across Northern Ireland. If there are not other mechanisms outside of S75 to address class inequality, then the whole equality agenda is immediately compromised. In the GFA framing of equality, class (at least by proxy) was supposed to be addressed by *targeting social need* and an *anti-poverty strategy*.[52] This strategy has yet to be implemented.[53] If a public authority is serious about addressing inequality, then it needs to be serious about addressing class difference. This is as true at council level as it is elsewhere.[54] PPR makes this point:

> *An additional weakness of S75 that we and many others have noted is that there is no provision for addressing deprivation or poverty – they're not a S75 category (despite the efforts of a whole range of voices at the time of the GFA to have them included). So, in the system we've got, clear inequality of opportunity issues are framed through (admittedly intersectional) issues of religious community or gender or age instead of, rather than alongside, what they are frequently also, which is related to poverty, deprivation and objective need. The fact that objective need is treated separately from S75 and not within it lays the groundwork for, to give one example, the DFC's decided policy slant in recent years towards providing housing for people on 'intermediate' incomes instead of focusing on responding to growing objective need, which would lead to a focus rather on provision of social housing for the growing numbers of households in housing stress and homelessness.*

[52] The Expert Advisory Group on the Anti-Poverty Strategy recommended such a duty be included in the proposed anti-poverty act: 'The Anti-Poverty Act should make discrimination in the provision of goods and services on grounds of socio-economic status unlawful, and include a 'socio-economic duty' requiring public bodies to take account of socio-economic disadvantage when making strategic decisions'.

[53] Although the framing work for a Northern Ireland anti-poverty strategy was completed some five years ago (Expert Advisory Panel 2020) and a draft anti-poverty strategy was finally agreed by Ministers in the Executive in May 2025 (RTÉ News 2025).

[54] This significance of this elision is not limited to the north of Ireland. In their conceptual analysis for the EHRC Johnson and Tatam address the 'case for class' in the formulation of good relations: 'There was strong and widespread support for the view that the framework should try to cover socio-economic or class differences even though this was not one of the Commission's designated groups. Divisions in terms of class and wealth were seen as deep-seated and often creating more fundamental barriers to good relations than race, religion or belief, or other issues. Class was one of the few areas where open prejudice seemed to be acceptable (frequent references to 'chavs' etc.) and it was even suggested that the Commission might have a role in challenging class prejudice' (2009: 34).

Crucially poverty – which is the most obvious indicator of inequality – is not addressed by S75 mechanisms. More generally class or socio-economic position is only addressed indirectly rather than being seen as a 'characteristic' that is directly constitutive of inequality.

Ironically the call-in mechanism might be employed more directly in this context since it would seem difficult to suggest that class identity – being 'working class' or 'middle class' – is not a section of the population that is often disproportionately affected adversely by all sorts of decisions made by councils. But the limitations of the mechanism that we have already alluded to – including the lack of regulation/definition of discriminatory detriment – appear to preclude any effective new intervention in this context.

*Second*, despite the exclusion of class, the reach of S75 is incredibly wide. The equality constituencies covered by S75 comprise a huge range of different experiences. In Northern Ireland in particular this point is represented with both the integration and the profusion of new equality constituencies. In the 1960s discussion of equality in Northern Ireland was almost exclusively limited to what is now characterised as 'community background'. In other words, it was focussed on equality between British (Protestant/Unionist/Loyalist) and Irish (Catholic/Nationalist/Republican) 'characteristics'. By the time of the GFA there were four constituencies with specific legislative and administrative responsibilities. But the commissions addressing these constituencies were then amalgamated and the list of 'protected characteristics' extended further.[55] Post-GFA this number effectively doubled, listed as: 'the need to promote equality of opportunity in relation to religion and political opinion; gender; race; disability; age; marital status; dependents; and sexual orientation'.

In this sense, the meaning of 'the equality agenda' was much simpler in the 'old days' when equality almost exclusively meant equality between Catholics and Protestants (See Appendix One). But this observation also reminds us that even before the GFA, the notion of 'fair employment' did not encompass a single constituency – it was already constructed out of a complex synergy of 'religious belief' and 'political opinion'. Thus, it extended well beyond religious identity in employment to other grounds; it usually included the grounds 'religious and political discrimination' which were more generally represented as 'community background' in the context of the 'two main communities'.

But it was also clearly about aspects of national identity – particularly Britishness and Irishness. If nothing else, this confirms the impossibility of forcing divisions in the north of Ireland into narrow religious or 'sectarian' categories.

With the GFA, however, something that was already demonstrably complex increased *ninefold* with contemporary equality categories. We get some sense of the scale of the task when we turn by way of example to *Northern Ireland Equality Scheme for HMRC*. This provides a list of 'Example groups relevant to the section 75 categories for Northern Ireland purposes':[56]

[55] The GFA indicated, 'the British Government intends a new statutory Equality Commission to replace the Fair Employment Commission, the Equal Opportunities Commission (NI), the Commission for Racial Equality (NI) and the Disability Council.

[56] HMRC 'Appendix 2: example groups relevant to the section 75 categories for Northern Ireland purposes' www.gov.uk

| | |
|---|---|
| Religious Belief | Buddhist; Catholic; Hindu; Jewish; Muslim, people of no religious belief; Protestants; Sikh; other faiths. |
| Political Opinion | Nationalists generally; Unionists generally; members/supporters of other political parties. |
| Racial Group | Black people; Chinese; Indian; Pakistani; people of mixed ethnic background; Polish; Roma; Travellers; white people. |
| Men & Women Generally | Men (including boys); Transgender people; Transsexual people; women (including girls); those who identify as neither male nor female. |
| Martital Status | Civil partners or people in civil partnerships; divorced people; married people; separated people; single people; widowed people. |
| Age | Children and young people; older people. |
| Persons with a disability | Persons with disabilities as defined by the Disability Discrimination Act 1995. |
| Persons with dependents | Persons with personal responsibility for the care of a child; for the care of a person with a disability; or the care of a dependent older person. |
| Sexual Orientation | Bisexual people; heterosexual people; gay or lesbian people. |

In other words, we are now involved with a category list that is far removed from the monochromatic understanding of equality in NI in the 1960s. HMRC also insists sensibly: *Please note, this list is for illustration purposes only, it is not exhaustive*.[57] This caveat is well-made. If, for example, we drill down on even one of these categories we begin to glimpse infinitude. For example, in terms of people with a disability, the same policy might impact very differently on deaf people or blind people or people with mental health issues or people with hidden and unhidden disabilities. And in terms of racial group, would we really expect any give policy to impact on Travellers or Africans or Roma or refugees in the same way?

This complex multiplicity applies *before* there is any attempt to address issues of *intersectionality*. For example, can we expect screening to focus on the way in which being a Traveller and being disabled might pose specific issues in terms of the delivery of council services? An equality matrix sensitive to this kind of intersectionality cannot but be challengingly complex. This is not a reason not to screen for equality but does hint at the size and complexity of the task if done well. It is precisely this kind of weight that should be lent to the process of equality proofing envisaged in S75.[58]

Once again, the call-in mechanism might be employed more directly in this context since it seems to offer protection to all sorts of 'sections' of the population disproportionately affected adversely by decisions made by councils. This could include a whole series of minorities of interest and location outside of S75 categories.

*Third,* despite this breadth of this reach across different equality constituencies, S75 screening practice now extends messily to include *good relations impacts*. At its heart this juxtaposes something that can be relatively easily measured – equality – with something that remains subjective and essentially contested. (As we have seen, the ECNI tolerates markedly different good relations schemes providing they meet the criteria in the legislation.) This juxtaposition of equality with good relations is both confusing and contradictory.

[57] HMRC adds a further note on 'religious belief': For the purposes of section 75, the term 'religious belief' is the same definition as that used in the 'Fair Employment and Treatment (NI) Order'. (See section 98 of the Northern Ireland Act 1998, which states: 'In this Act…'political opinion' and 'religious belief' shall be construed in accordance with Article 2-(3) and (4) of the Fair Employment and Treatment (NI) Order 1998.' Therefore, 'religious belief' also includes any perceived religious belief (or perceived lack of belief) and, in employment situations only, it also covers any 'similar philosophical belief'.

[58] This is recognised in the wider literature. For example, Davis and Lutz posit 14 lines of difference which might be included in an intersectional analysis and recognise that this list may well be longer (Davis and Lutz 2023).

The current permissive approach to including good relations impacts allows no consideration of the reality that good relations – however constructed – may well be directly in conflict with equality. Put bluntly, delivering equality might well cause 'bad relations' – it certainly has in other contexts. The legislation makes it clear that equality should trump good relations. As we have seen, however, if policies are being screened, assessed, or called in on good relations grounds rather than equality grounds, there may be a directly chilling effect on equality. This chilling effect becomes particularly acute when policies are much more likely to be screened on good relations grounds than equality grounds.

This point is true a fortiori in a situation in which there are insufficient resources to undertake proper equality screening. For example, if statutory organisations – including equality organisations – no longer have the resources to monitor equality effectively, there can be no excuse for using additional resources on good relations monitoring. In this context the legal subordination of good relations should engage immediately. In other words, an appropriate rule of thumb would be that there should be no concern around good relations until equality screening is satisfactorily completed.

The same point can be made in terms of the call-in mechanism. Whatever the merits of good relations between different sections of the population, until equality is provided comprehensively there can be no justification for good relations interventions undermining the delivery of equality.

Behind all this recognition of the effectiveness of S75 mechanism is a basic observation about equality. The operation of the S75 paradigm has often resulted in a one size fits all approach to delivering equality. Yet there is no reason to assume that just because a given measure works with race, it works for gender or disability. Equality requires a tailored response depending on the status equality group involved. In other words, we need to acknowledge that the principal of an equality duty raises an ongoing question of how the law creates a single equality framework providing equality for all while remaining sensitive to when different types of inequality have their own dynamics.  As with the GFA itself, this approach should adopt no hierarchy of equality but rather acknowledge the profound *differences* between diverse – and sometimes profoundly dissimilar – forms of discrimination and inequality experienced by different equality constituencies.

[55] The GFA indicated, 'the British Government intends a new statutory Equality Commission to replace the Fair Employment Commission, the Equal Opportunities Commission (NI), the Commission for Racial Equality (NI) and the Disability Council.

[56] HMRC 'Appendix 2: example groups relevant to the section 75 categories for Northern Ireland purposes' www.gov.uk

## Conclusions

Historically, Northern Ireland was a polity characterised by its reputation for discrimination and inequality.[59] Within this broad characterization, the record of local councils was particularly notorious. Systemic discrimination and inequality at local council level played a key part in the wider conflict that was, in part at least, ended by GFA. As we have seen, a collective endorsement of the 'equality agenda' was central to the Agreement. Section 75 was the key legislative mechanism that gave expression to this equality agenda. This mainstreaming of equality *should* have been consolidated in the interim, not least since – following the St Andrew's Agreement (2006) – *all* political parties now place particular emphasis on the centrality of GFA commitments to political stability and progress.

At one level this commitment to equality appears to have been copper fastened by the functioning of S75 at council level. There is indeed a whole new infrastructure of S75 related work across local councils: *equality schemes, reviews of equality schemes, equality action plans, annual progress reports and audits of inequalities*. As we have seen, however, the low volume of screening and EQIAs at council level implies that there are not really any major problems with inequality across *any* of the protected categories – or indeed, the matrix of sub-categories that each comprises. The default outcome of screening that does take place – 'screened out, no mitigation' suggests little evidence of inequality at all.

This is not, however, the entire story. Northern Ireland, once a byword for discrimination and inequality, has not been transformed into a paragon of equality. Rather, the equality agenda – while radically broadened by the GFA – has been marginalised since 1998. The dominance of the 'screened out without mitigation' approach to equality screening is a function of bureaucratic entropy rather than the presence of justice. We can also find egregious examples of continuing discrimination and inequality that escape the safety net of S75 (See Appendix Two). It is difficult to find anyone asking the crucial question identified by PPR: *what decision would equality demand?*

As we have observed, the record of local councils across Northern Ireland has a specific reference within this wider context. We have noted the long record of discrimination at council level that categorised the history of the state. Rather depressingly it appears that in some councils this has not really changed at all. Despite all the reform since 1969, several council chambers remain very 'cold houses' for non-unionists. In contrast, we might argue that there is a more specific *positive* obligation on councils – as *fora* for the operation of democracy – to proactively embrace and further the equality agenda framed by S75. In other words, it is not unreasonable to suggest that there is a particular obligation on councils to proactively deliver the equality promised by S75. This obligation on local councils is, if anything, strengthened by the existence of the 'call-in mechanism' in so far as it operates as a 'minority rights protection'. This mechanism – additional to S75 – remains *specific* to councils.

[59] Austin Currie recalled arriving at Stormont after he won a by-election for East Tyrone as a Nationalist Party candidate in 1964, one of nine MPs from the party in a parliament where the Ulster Unionist Party held 34 out of 52 seats. He says the Stormont he arrived at to take his seat was "a very alien place".
"Looking at it you could see not one Union Jack flying but two and when you came through the door you saw [former Unionist leader Lord] Craigavon's statue there on the stairs and all around the place it was totally unionist, no sign of any nationalists anywhere," he says. "It was absolutely a cold house for Catholics not only then, it had been from the very beginning, and then of course Stormont was created for the purpose of having unionist domination." BBC News 'NI 100: Life as an MP in the Northern Ireland Parliament' 24 June 2021.

Our research focus on the last three years of local Councils practice, however, suggests that councils remain far from being paragons of good practice on equality. As we have seen, councils ignore the hard evidence provided by fair employment data even when this suggests they should be addressing what appear to be marked inequalities in terms of community background and gender. Moreover, recent activity around the call-in mechanism gives further cause for concern. For example, in Belfast this suggests by default that the *primary* area of interest to equality mechanisms within local councils is the erection of Irish language signage. In this reading, a language rights advance that was formally regarded as part of the equality agenda in the GFA is now the principal equality *concern* for some councils in Northern Ireland.

It bears emphasis that it is impossible to address the specific failures of S75 at council level without a more general review of the operation of S75. In other words, a wider reset of the whole S75 mechanism is required. At present S75 often lends a veneer of equality commitment to government without seriously addressing contemporary inequality, let alone proofing against further inequality. Furthermore, the general failure of S75 to deliver equality is replicated at local council level. We find limited use of the duty in general and EQIAs in particular as a safeguard over policies that have discriminatory detriments; we find screening either not being conducted or being conducted in a tokenistic 'tick box' fashion; and we find limited enforcement by the Equality Commission.

At one level this reality confirms the enormity of the task confronting S75. If state and government are not committed to equality in the sense of feeling obligated to deliver equality of outcome, then equality proofing is always going to be an uphill struggle. It is clearly difficult for both the Equality Commission and public authorities, including councils, to swim against this tide. At the same time, however, it is striking how the GFA institutions that were supposed to guarantee equality are now often gatekeepers for inequality. In this sense, the level of resistance encountered by research simply engaged with trying to establish basic data and information on different equality measures is revealing. This is happening against a background in which the empirical tools for measuring equality are being discontinued rather than reinforced.[60]

This suggests that the equality agenda itself – so central to the GFA – has been side lined. It is no longer a pressing issue for government. More particularly, Section 75 which was the flagship intervention in support of the equality agenda, is not working properly. It is not working in general and, as this research confirms, it is not working particularly well at council level. There are profound questions around the current effectiveness of the S75 and 'call-in' safeguards in the way they have been operationalised within local government in recent years. The radical promise of the equality agenda embedded in the GFA needs to be re-envisioned and reset.

Finally, it bears emphasis that none of this conclusion supports the notion that we should get rid of Section 75 or stop screening for equality. Rather, equality proofing needs to be done much better – more committedly and more comprehensively and more collaboratively. When we revisit the GFA commitments on equality after nearly thirty years, it may seem obvious that these were never likely to be delivered by public authorities 'on their own'. In this sense the NGO voice that was so central to the equality agenda during the peace process needs to be recentred. Third sector actors like the Equality Coalition members need to be recognised as core partners in the effective realisation of the S75 equality duty. It is their voice that is most likely to ask: *what decision would equality demand*? And it is precisely this kind of radical scrutiny that is necessary if the equality commitments made in the GFA and institutionalised through Section 75 are finally to be realised.

[60] For example, the Labour Force Survey 'Religion Report' which presented crucial data in an accessible form was discontinued in 2019. This provided crucial data on fair employment – such as the unemployment differential – which had been central to the equality commitments of the GFA.

## Recommendations

It bears emphasis that the specific challenge of improving the delivery of equality at local council level is part of a wider challenge for all public authorities. The Equality Coalition has already made comprehensive recommendations regarding improving public authorities use of equality schemes (Equality Coalition 2021). These bear repeating:

- Making explicit the factoring in of socio-economic and geographical/rurality considerations into assessments of equality impact;
- The removal of the good relations 'impact' question in screening, and the adoption of more appropriate methodology for good relations;
- Adding a recommended definition of good relations based on the definition of the concept in law in Great Britain and ECNI advice;
- A commitment to take proactive measures, and to the understanding that Section 75 provides for countering disadvantage and targeting disadvantaged groups, including gender specific services for women;
- Explicit inclusion of procurement and employment within the scope of policy decisions to which the scheme applies, along with a commitment to conduct equality screening at the time of preparation of a business case.

The performance of ECNI remains critical as the enforcement body for S75. Crucially, ECNI needs to reset the delivery of the equality duty by using its Section 75 enforcement powers. In the case of local councils, for example, it is reasonable to assume that more councils would be regularly completing audits of inequalities if failure to do so resulted in ECNI paragraph 11 investigations.

The audit of inequalities recommended by ECNI and 'intended to produce a more strategic picture of inequalities that a public authority may be in a position to influence' is useful way of focussing attention on systemic equality issues (ECNI 2012; Derry City and Strabane District Council 2024). All councils that have not already done so should prioritise undertaking an audit of inequalities. This is a process that public authorities already commit to doing in their equality schemes. So, not only are they useful and good practice, but they are also mandatory legal obligations, and where they are not being undertaken by public authorities, they should be.

ECNI should also develop a strategic enforcement strategy under S75. As the Equality Coalition has observed: 'ECNI investigations prompt the type of Section 75 compliance that ECNI advice provision alone has not been able to achieve' (EDEP 2022: 32). ECNI needs to combine its powers of paragraph 10 and 11 and formal investigations to reinforce the logic of S75. It is important that this enforcement strategy includes a focus on local councils.

This research confirms that it remains difficult to access many of the routine reporting outcomes of S75 at council level. In this regard, it is important that ECNI collates and makes accessible all monitoring relating to councils – this includes annual progress reports, screenings and EQIAs as well as completed audits of inequalities. These different elements of the S75 regime are sometimes impossible to obtain but they should be collated and presented in an open and accessible manner.

Alongside this S75 archiving work, the need for comprehensive equality monitoring data is particularly acute at local council level. A key element of moving equality back towards the margins has been the rollback on monitoring of existing S75 'protected characteristics'. It is important that existing 'fair employment' statutory monitoring in terms of community background and gender is protected. Councils already have robust 'fair employment' data that allows quite complex intersectional analysis of community background and sex/gender (as well as ethnicity and class by proxy).

Where there are opportunities for further intersectional analysis of this data, this too should be placed in the public domain on an annual basis. There are multiple statistical techniques to protect personal information while at the same time revealing core equality concerns raised through monitoring. It is important that all relevant data from existing statutory monitoring is put in the public domain. It is recommended that this sophisticated intersectional data is provided at the individual council level. This would signal inequalities in terms of each of the protected characteristics of community background and gender. But it could also identify inequality on a more complex intersectional basis across these different characteristics.

The Local Government Staff Commission has shown that it is already possible to record a wide range of *additional* equality data illustrating the status of different 'protected characteristics' across employment in local councils. In this regard, the LGSC should continue to commission its review of monitoring at local council level. Best practice would, however, see extended statutory monitoring across S75 categories as a responsibility of the ECNI. Statutory monitoring of protected characteristics other than community background and gender would contribute significantly to delivering on the promise of S75.

Alongside existing 'protected characteristics', a commitment to promote equality of opportunity across socio-economic status should also be integrated into the S75 equality duty. This can be delivered through equality scheme modifications and assessed via additional questions in the screening form. This change is something that CAJ and others have routinely requested public authorities to incorporate when they consult on their equality schemes.[61] This resonates with wider movement on the socio-economic duty in the Equality Act 2010.[62]

Relatedly, the Equality Act does not apply in Northern Ireland. As per existing CAJ and Equality Coalition analysis, this research recommends the Assembly progressing single equality legislation including the socio-economic duty.[63] In the interim, incorporation is recommended for individual public authorities via modification of the equality scheme.

[61] For example, the Equality Coalition suggests a 'lower income' addition to equality screening: [60] For example, the Labour Force Survey 'Religion Report' which presented crucial data in an accessible form was discontinued in 2019. This provided crucial data on fair employment – such as the unemployment differential – which had been central to the equality commitments of the GFA.

[62] Section 1 of the Equality Act 2010 introduced a 'Public sector duty regarding socio-economic inequalities' designed to 'reduce the inequalities of outcome which result from socio-economic disadvantage': [60] For example, the Labour Force Survey 'Religion Report' which presented crucial data in an accessible form was discontinued in 2019. This provided crucial data on fair employment – such as the unemployment differential – which had been central to the equality commitments of the GFA.). Although it seems likely to be implemented by the current UK government as it was included in the Labour 2024 manifesto. It has also been introduced in other parts of the UK. In April 2018 the Scottish Parliament enacted the 'Fairer Scotland Duty', as the socio-economic duty in Scotland. Wales followed in March 2021, and a number of local councils in the UK have adopted some of the key policies of the socio-economic duty and have decided to treat the socio-economic duty as if it were in force.

[63] See paragraph 15. [60] For example, the Labour Force Survey 'Religion Report' which presented crucial data in an accessible form was discontinued in 2019. This provided crucial data on fair employment – such as the unemployment differential – which had been central to the equality commitments of the GFA.

Finally, in terms of the call-in mechanism, the key question is whether it adds an additional 'minority rights protection' at local council level. The Equality Coalition's current recommendation is to *reform* the mechanism. Specifically, the subjective interpretation of the concept of 'disproportionate adverse impact' in legal opinions for call-ins should be replaced with a more tangible, rights-based approach that would determine the compatibility of decisions with the European Convention of Human Rights and with the Council's own Equality Schemes as they relate to the equality duty contained in S75(1) of the NI Act (1998).

The Department for Communities is currently reviewing the operation of the call-in mechanism.[64] It is important that this process initiates a broader conversation on the merits and demerits of the mechanism. This must involve the input of Third Sector organisations. Here the key question is the extent to which the call-in mechanism acts as a 'minority rights protection', specific to local councils and supplementary to S75. This highlights an unresolved paradox of equality and 'discriminatory detriment' at local council level across Northern Ireland: if S75 were working properly there would be no need for any additional call-in mechanism.

[64] See footnote 50.

## Bibliography


Ards and North Down Borough Council 2022. 'Proposed Revisions to the Council's Policy on the Flying of the Union Flag: Draft Equality Impact Assessment Final Decision Report' December 2022

Ards and North Down Borough Council 2025. 'Request to hold an Orange Victims Day event at Ward Park Cenotaph, Bangor, 7th September 2025: Draft Equality Impact Assessment Consultation Report' March 2025

Armagh City, Banbridge and Craigavon Borough Council 2023. 'Section 75Audit of Inequalities' (December 2023).

BBC News 2023a. 'Jon McCourt: Councillors to re-examine freedom of Derry decision' 11 August 2023

BBC News 2023b. 'Jon McCourt: Freedom of Derry proposal given go-ahead' 29 September 2023

Belfast City Council 2021. 'Audit of Inequalities 2021: Draft for Consultation'

CAJ 2013. Unequal Relations? Policy, the Section 75 duties and Equality Commission advice: has 'good relations' been allowed to undermine equality? Belfast: CAJ

CAJ 2024. 'Written Evidence to the Committee for the Executive Office, Inquiry into Gaps in Equality Legislation from the Equality Coalition Co-Conveners' EC-TEO-Inquiry-equality-law-Sept-24.pdf

Campaign for Social Justice in Northern Ireland (CSJ). (1964), Northern Ireland The Plain Truth, (First edition), (5 February 1964), Dungannon: CSJ

Campaign for Social Justice in Northern Ireland (CSJ). (1969), Northern Ireland The Plain Truth, (Second edition), (15 June 1969), Dungannon: CSJ

Cave, Suzie. 2013. Call-in Research and Information Service Briefing Note Paper 04/14 25 November 2013 Suzie Cave Call –in

Cave, Suzie. 2014a. Call-in operation in England and Wales Research and Information Service Briefing Paper 33/1400 12 February 2014 NIAR 038-14

Cave, Suzie. 2014b. Call –in: Protection of minorities in divided societies Northern Ireland Assembly Research and Information Service Briefing Paper 34/14 7th February 2014 Suzie Cave NIAR 039-14

Congressional Research Service 2023. 'Equal Protection: Strict Scrutiny of Racial Classifications' Updated June 30, 2023

Conradh na Gaeilge 2024. 'Judicial Review proceedings launched as Armagh, Banbridge and Craigavon Borough Council refuse to approve a bilingual street sign' 'cnag.ie

Davis, Kathy and Lutz, Helma. 2023. 'Intersectionality as Critical Method' The Routledge International Handbook of Intersectionality Studies 2023

Department for Communities/NISRA 2023. Northern Ireland Poverty and Income Inequality Report, 2021/22 Published 30 March 2023

Department for Communities/NISRA 2024. Northern Ireland Poverty and Income Inequality Report, 2022/23

Department for Communities/NISRA 2025. Northern Ireland Poverty and Income Inequality Report, 2023/24

Derry City and Strabane District Council 2024. 'Section 75 Audit of Inequalities for the period 2024-2027'

ECNI 2012. 'Advice to Public Authorities: Approaching an 'Audit of Inequalities'

ECNI 2015. 'Advice on Good Relations in local Councils'

ECNI 2024. Fair Employment Monitoring Report 33

ECNI 2024a.'Public Authority Section 75 Equality Duties Summary of Annual Progress Reports 2022-23' July 2024

Equality Coalition 2018. Equal to the Task? Investigative powers and effective enforcement of the 'Section 75' equality duty Belfast: CAJ

Equality Coalition 2021. 'Submission on draft equality schemes' https://www.equalitycoalition.net/wp-content/uploads/2021/08/Equality-Coalition-submission-on-draft-equality-schemes-2021.pdf

Equality Coalition 2022. Equality Duty Enforcement Project (EDEP) – A narrative report 2018 to 2021 Belfast: CAJ.

Equality Coalition 2022. Equality Duty Enforcement Project (EDEP) A narrative report 2018 to 2021. Published September 2022 Belfast: Equality Coalition

Expert Advisory Panel 2020. Recommendations for an Anti-Poverty Strategy: Report of the Expert Advisory Panel Belfast: Department for Communities

First-tier Tribunal General Regulatory Chamber Information Rights 2024.'First-tier Tribunal General Regulatory Chamber Information Rights2024IC-174101-Q3M4 Heard at: Royal Courts of Justice Belfast Heard on: 15 January 2024 Decision given on: 1 February 2024 Between CONRADH NA GAEILGE Appellant and INFORMATION COMMISSIONER BELFAST CITY COUNCIL Respondents'. Case Reference: EA/2023/0009

Gov.uk 2024. 'Public Sector Equality Duty: guidance for public authorities' www.gov.uk

Johnson, Nick and John Tatam. 2009. Good relations: a conceptual analysis Equality and Human Rights Commission Research report 42

Joseph Rowntree Foundation 2022. Poverty in Northern Ireland 2022 Belfast: JRF

Kenwood, Michael. 'Ards and North Down Council row flares up over plan to fly flag every day: Alliance re-enact 'call-in' mechanism used last year for another attempt to change local flag policy' Belfast Live 26/04/24.

LGSC (Local Government Equality & Diversity Group of the Local Government Staff Commission) 2024 Equality, Diversity and Inclusion in Local Councils Baseline & Impact Study September 2022. https://lgsc.org.uk/research/equality-diversity-and-inclusion-in-local-councils-baseline-and-impact-study

McVeigh, Robbie. 2020. Sectarianism: The Key Facts Belfast: CAJ

Newsletter 2024. 'DUP in last-gasp bid to block Irish language signs at Belfast's Olympia leisure centre' 30 Sep 2024.

NICCY 2024 'Child Poverty' www. niccy.org/child-poverty/

ONS 2021. Census 2021 'Policy on protecting confidentiality in tables of birth and death statistics' Office for National Statistics, ons.gov.uk

RTÉ News 2025a. 'Deprivation levels higher in Northern Ireland than rest of UK – study' 10/04/2025

RTÉ News 2025b. 'Long-delayed anti-poverty plan for NI agreed by executive' 15/05/2025

Scoffield, D.A. 2016. 'Brief to Advise Derry City and Strabane District Council in relation to a call-in of decisions relating to the appointment of Council members to various external positions of responsibility'

Thompson, David 2024a.'Council refuses to release details of Union flag call-in motion - citing 'individual data rights' of councillors' Belfast News Letter 16 July 2024

Thompson, David 2024b.'Council secrecy row: Pressure mounts on Ards and North Down Council amid judicial review bid' Belfast News Letter 24 July 2024

Tinson, Adam, Hannah Aldridge and Tom MacInnes. 2016. Economic inequality in Northern Ireland NICVA

# Appendix One

## 'Reading' Sectarian Inequality in Contemporary Northern Ireland

Since the foundation of NI state, the standard assessment of equality has been based on a specific 'reading' of its ethnic demography. First, the population was regarded as *bifurcated as Protestant and Catholic.* (If it was recognised at all, it was assumed that there was only a tiny 'Other' minority outside these two ethno-religious categories.) Second, this sectarian dichotomy was constructed as a *Protestant majority* and a *Catholic minority* – often the rule-of-thumb was 'two-thirds Protestant' and 'one-third Catholic'. In consequence, 'equality issues' were almost completely focused on the essentially contested debate around the putative disadvantage experienced by the Catholic minority. Indeed, until the 1990s the history of discourse on equality and inequality in the state could be summarised as a narrative of the experience of this Catholic minority within a state that constructed itself as 'a Protestant state for a Protestant people'.

This is not, of course, to suggest that there were – and are – not many other equality concerns in Northern Ireland. For example, profound class and gender inequalities have *always* existed alongside sectarian imbalances. Indeed, the *intersectionality* of these different issues is one of the defining features of the experience of inequality. This reality was eventually reflected in the more inclusive 'equality agenda' embedded in the Good Friday Agreement 1998 (GFA). Nevertheless, when inequality in Northern Ireland was addressed historically, it was almost inevitability focused on the experience of the Catholic minority. Moreover, the GFA itself continued to refer to Northern Ireland 's 'two main communities.'[65]

However, as a previous Equality Coalition publication The Key Facts (McVeigh 2020) suggested, a contemporary – and ongoing – demographic transition in the north of Ireland means that the traditional reading no longer holds even when we focus on the specific area of sectarian equality. Two key aspects of the population (and the labour market) have changed profoundly. First, across nearly all indices, the Catholic population now forms the *plurality* of the population. In other words, the Catholic population is now larger than the Protestant population. Second, across nearly all indices, there is a significant 'Other' population that cannot be shoe-horned into either 'Catholic' or 'Protestant' category, no matter how loosely these are defined. This new population is a complex combination of migrants and people of colour and mixed mestizaje identities than cannot be allocated to traditional Protestant/Catholic notions of religion or ethnicity or 'community background'.

In combination, these two demographic changes signal a profound reconstitution of the Northern Ireland population. In consequence, we must now read sectarian equality statistics *in an entirely new way*. A state that was characterised by a two-thirds Protestant majority/one third Catholic minority has transitioned into a state with a Catholic plurality and a sizeable 'Other' population. This requires a recalibration of how sectarian inequality is to be 'read'. It can no longer be done in the way that most ECNI data is presented on this subject – i.e., only looking at the Protestant/Catholic differential with 'ND' removed. This emphasises the centrality of Protestant/Catholic ratios to considerations of workplace equality. While this keeps the traditional focus simple, it ignores the increasingly complex nature of the contemporary

[65] In this regard, 'Protestant' and 'Roman' Catholic' are widely used as ethnic indicators for NI 'community background' (rather than being necessarily reflective of whether persons are practicing a religion). 'Religious belief' is a protected characteristic in NI equality law aimed at tackling sectarian discrimination alongside 'political opinion' which encompasses 'unionist' (with reference to the Union with the UK) and (Irish) nationalist. Citizenship and national identity are also indicators of community background. In the citizenship provisions of the GFA both states have recognised "the birthright of all the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both, as they may so choose".

Northern Ireland labour market and the dynamics of equality and inequality within it. In other words, we get a more complete picture when we present both the narrow Protestant/Catholic differential – because this specific differential still matters – as well as the wider Protestant/Catholic/Other differential which more fully reflects the ethnic diversity of the contemporary workplace.

By way of illustration, we can look at the most recent data from ECNI monitoring figures for the two largest private employers in Northern Ireland:[66]

| Company Name | Protestant | Roman Catholic | Non Denom. | Total | [%P] | [%RC] |
|---|---|---|---|---|---|---|
| **2021** | | | | | | |
| Tesco PLC. | 663 | 120 | 63 | 846 | [84.7%] | [15.3%] |
| Moy Park LTD | 642 | 620 | 78 | 1340 | [50.9%] | [49.1%] |
| **2022** | | | | | | |
| Tesco PLC | 342 | 242 | 35 | 619 | [58.6%] | [41.4%] |
| Moy Park LTD | 190 | 636 | 37 | 863 | [23.0%] | [77.0%] |

From this basic data we can offer two different but complementary 'readings' of a sectarian differential for both companies. The Protestant/Catholic one as presented as around 60% Catholic and 40% Protestant for Tesco and 30% Protestant and 70% Catholic for Moy Park. So, there is already a marked difference in their ethnic/community background make-up. We can also work out the more comprehensive Catholic/ Protestant/ND breakdown from the ECNI figures. These are around 40% Catholic/55% Protestant/5% 'Other' for Tesco and 45% Catholic/20% Protestant/36% 'Other' for Moy Park. Again, we find a marked difference in the overall ethnic/community background mix in the companies. Moreover, the ethnic profile of both companies is starkly different – Tesco looks like a traditional profile of the Northern Ireland labour market; Moy Park looks more like a telling anticipation of its future.

It bears emphasis that *both* differentials are significant in reading inequality. The simple Catholic/Protestant breakdown suggests a marked under-representation of Catholics in Tesco and Protestants in Moy Park. The Catholic/Protestant/ND breakdown suggests a marked under-representation of Catholics and 'Other' in Tesco and a marked under-representation of Protestants and over-representation of 'Others' in Moy Park. In other words, they reveal contrasting – but increasingly significant – equality differentials. Crucially, on the face of it, both employers have work to do before they can claim to be employing equally or 'fairly'.

Despite the increasing complexity of the Northern Ireland labour market, however, one metric is *easier* to read because of the demographic transition. Other things being equal, any given workplace *should have a Catholic plurality*. And if the 'Other'/ND category is disaggregated from the data as it is routinely in ECNI figures, we would expect a Catholic *majority*. This has the virtue of being a simple rule-of-thumb. For example, when applied to the ECNI monitoring statistics, there is *prima facie* evidence of continuing inequality in *any* workplace that has fewer Catholics than Protestants. (This approach forgoes any commitment to needs-based provision or allocation at this point, but that requires a slightly more subtle approach.)

It bears emphasis that this simple point now holds across almost *all* sectarian equality data. This should reframe the way in which we read and address sectarian differentials more generally. There remains a routine resistance to acknowledging the reality of a Catholic majority/plurality and Protestant minority. (For example, the 'Protestant' category is still routinely presented first despite its reduced status.) Of course, in a society defined by majoritarianism, it is not surprising to find a degree of sensitivity on this issue. But this new metric holds in the context of the structural realities of contemporary sectarianism. Post demographic transition, we should expect

[66] ECNI Companies Data Monitoring Returns 2021 and 2022

*a plurality of* Catholics rather than Protestants across almost any monitoring – in employment, education, housing, goods, facilities and services. Moreover, if the 'Other'/ND category is not included in the data, as it routinely excluded in ECNI monitoring, we would expect a Catholic *majority*.

It bears emphasis that it is not all one-way traffic. For example, the unemployment differential *used* to be the key indicator of Protestant/Catholic inequality: so much so that it was specifically integrated into the equality commitments embedded in the GFA. But the fact that Catholics constituted a *majority* of unemployed of Northern Ireland in 1972 or 1997 – when they formed a clear minority of the workforce – *was* evidence of profound inequality. Contrariwise, when Catholics now form a majority of the unemployed but also a majority of the population of working age, this could represent 'fair unemployment', if such a concept exists.

Alongside this aspect of the demographic transition, however, Catholics might also now expect a 'fair share' of more positive statistics. For example, it is possible to interrogate housing data from the same perspective. By the same rule of thumb, we would expect a plurality/majority of Housing Executive services – housing, client base, repairs and so on – *anything* that can be measured and monitored – to go to Catholics (and, by extension, roughly 10% to 'Others'). This same rule of thumb holds across all other dimensions of state provision – planning, education and so on. We need to 'read' the available statistics from this new perspective to interrogate the key data in terms of sectarian equality and inequality in contemporary Northern Ireland.

[64] See footnote 50.

## Triggering Concern

So, we must find a new way of 'reading' sectarian differentials. The identification of any sectarian differential, however, immediately provokes the question of what to do about it? Of course, one option is to do nothing at all; another is to defend or excuse the differential. But if we accept the broad principle that any workforce *should* reflect the composition of the broader community of working age, then we can expect some intervention by employers and/or government to address the differential.

If discrimination and inequality were not at play, we would expect every workforce to reflect the broad distribution of Catholics and Protestants (and 'Others') in the population of working age. (According to the 2021 census, for people of working age across Northern Ireland, this is: 47% Catholic, 42.5% Protestant and 10.5% 'Other'.) So, the baseline expectation would be for this differential to be found in every workforce – this would be the normal distribution. In other words, if sectarian identity had no bearing whatsoever on employment patterns, these should broadly reflect the numbers of people within the general population and, more particularly, among the population of working age.

This is currently *not* the case across a whole range of workplaces in Northern Ireland. But this begs the question of what an acceptable differential is? It is clear from the most recent ECNI figures that many workplaces remain very far from this ideal position. There has undoubtedly been a broad 'balancing' of inequality over recent decades. As we have seen, however, many employers – including some of Northern Ireland highest profile and most important firms – continue to have widespread disparities.

Of course, other things are not equal and factors that may have nothing to do with discrimination – such as travel-to-work areas or the location of specific public authorities or private firms – may help to explain aspects of inequality. Conversely, however, these factors may well be in turn structured by contemporary or structural discrimination. For example, perhaps the most infamous example of historical sectarian discrimination was the location of the new university at Coleraine rather than Derry in the 1960s. This was a conscious and ill-disguised attempt to locate in a 'Protestant' rather than a 'Catholic' location. But this decision continues to impact in the present – the UU Coleraine campus remains in a majority Protestant location and its travel to work area is correspondingly 'Protestant'. So, any simple attempt to 'excuse' imbalance in terms of factors like travel-to-work areas must be balanced against a history of resource and industrial location policy that was explicitly anti-Catholic.

We can observe that there are always likely to be small Catholic/Protestant imbalances across different workplaces. Moreover, where these exist, they may not always be proof of either discrimination or inequality. But it is also the case that egregious differences *should* be regarded as evidence of potential inequality that should be both highlighted and addressed. In this context, it is important to signal a level at which we might trigger concern.

Here the most obvious example of this principle in action is the PSNI. When it was being set up it was recognised that if there were to be a 'new beginning to policing' then there would need to be a substantial increase from the 8% Catholic membership of the RUC reported by the Independent Commission in 1999. The target for correcting this was set at (a fairly arbitrary) 30% – perhaps harking back to the old 'one third Catholic' reading of the Northern Ireland population.(Ironically, this proportion was closer to what sectarian equality would have looked like in 1921 rather than what it should look like in 2021.) This figure was regarded as the bare minimum to indicate a 'new beginning'. Despite its arbitrariness, it remains a useful baseline figure for both communities. We can suggest that any workplace or workforce falling below this figure provides a *prima facie* case of unacceptable inequality – and at least the possibility of discriminatory practice – that should immediately trigger concern.

## Addressing sectarian inequality in the context of identified sectarian differentials

In turn, triggering concern around existing differentials begs the question of what is to be done? As we have seen, the most radical model for addressing identified sectarian differentials in Northern Ireland was provided by the PSNI. The PSNI was set up in line with the recommendations of the Patten Commission and the Police (Northern Ireland) Act 2000. The aim was to create a 'new beginning to policing Northern Ireland', with far-reaching and permanent changes in policing structures. In particular, the underrepresentation of the Catholic/Nationalist/Republican community was to be addressed as part of the PSNI becoming more reflective of the composition of the whole community.

This intervention involved equality mechanisms that were unprecedented in Northern Ireland. The process to form a pool of qualified candidates for the PSNI was conducted so that no-one received favourable treatment. But once a pool of was formed, trainees were appointed based on 50 per cent Catholic and 50 per cent 'non-Roman Catholic'. This '50:50' arrangement required special domestic UK legislation, and a temporary exception written into European Union equality legislation, to exempt it from the scope of non-discrimination law. (Ordinarily in Northern Ireland this prohibits any differential treatment on religious grounds in employment.) This approach was politically justified given the sensitivity of policing in Northern Ireland. This '50:50' arrangement required special domestic legislation, and a temporary exception written into European Union equality legislation, to exempt it from the scope of non-discrimination law. It was also challenged – unsuccessfully – in the Northern Ireland courts on the ground of discrimination.[67]

The Police (NI) Act 2000 stated: 'In making appointments, the chief constable shall appoint from a pool of qualified applicants an even number of whom one half shall be persons who are treated as Roman Catholic and one half shall be persons who are not so treated.' In other words, in this reading 50% Catholic was the target proportion for the PSNI as whole. It was, however, never explicit as to whether this was a target or rather a mechanism to increase the proportion of the police that was Catholic to some yet to be determined level.

Despite this ambiguity, this process *worked* – at least initially. Recruitment started for PSNI trainees in 2001, and they completed their initial training in 2002. Following a further series of recruitment rounds, the composition of the Police Service reached a Catholic representation of almost 30% by February 2011. This was a substantial increase from 8% for the RUC. Despite widespread opposition, the UK Government consequently discontinued the '50:50' measures. As the BBC reported: 'Secretary of State Owen Paterson said that with almost 30% of officers now from a Catholic background, the practice could no longer be justified.'[68]

In this context, the PSNI is also an example of what happens when equality intervention is relaxed. When we revisit the sector that set the '30% minimum', the PSNI would now – like other workplaces – expect a 50%+ Catholic breakdown. In fact, it is currently stuck around 30%. Recent figures suggest that Catholic *recruitment* has fallen to one in five.[69] That reality should sound specific alarm bells since it reflects an increasingly Protestant police force policing an increasingly Catholic population.

[67] BBC News 'Police recruitment policy upheld' 23 July 2002
[68] BBC News 'Police 50-50 recruiting system is to end' 28 March 2011
[69] Irish News 2025. 'Just one in five PSNI new recruits are Catholic: Figures obtained by The Irish News show that just 21.6% are from a Catholic background with 6.8% openly nationalist' 30 May 2025.

In this context, the demand for a reinstatement of positive discrimination – at least in policing – has recently gathered momentum.[70] (Catholic participation in police support staff remained around 20%, even further below the Catholic share of Northern Ireland's monitored workforce.)

Whatever the specifics of the intervention in action, we can suggest that the PSNI story provides a model for wider concerns and interventions in terms of contemporary sectarian inequality. Wider remedial action might follow the formal PSNI process if the political will was there to support it. More generally it helps us to establish what is 'acceptable' in terms of sectarian equality targets. For a start, in the absence of any more formal metric, we can assume that for the state the 30% figure represents 'an acceptable level of inequality'. Conversely, anything less than 30% should remain *unacceptable* – even on the terms of the UK government.

In consequence, this establishes a range of sorts in terms of equality targets and 'acceptability'. Here the target – or at least the process – was specified as a '50% Catholic'. In this less ambitious context, 30% became a default target. Despite this ambiguity, it might be argued that the PSNI 50/50 provides the 'gold standard' in *equality of outcome*. It certainly was the most legally radical of all interventions intended to equalise a workforce in Northern Ireland. Since the special measures were ended with the proportion hovering around 30% it seems reasonable to assume that the British government regarded this threshold as an acceptable level of inequality.

One lesson from PSNI recruitment is that recognising disparities or introducing temporary equality measures may not suffice. However, 'triggering concern' might prompt a range of measures that fall short of this kind of formal positive discrimination intervention. Simply acknowledging the gap is a starting point. Alternative approaches - like the Civil Service equality intervention under Direct Rule - show that workforce imbalances can be addressed without new legislation or equality law exemptions. Though it never adopted 50/50 recruitment, the Northern Ireland Civil Service (NICS) shifted from a predominantly Protestant workforce in 1972 to one that *does* broadly reflect the broader community, achieving a fairer outcome through less radical but more sustained efforts.

This leads to a useful benchmark for assessing sectarian equality today. Ideally, if sectarian identity played no role in employment distribution, workforces would mirror the broader population. Based on 2021 census data, this implies an expected breakdown of 52.5% Catholic and 47.5% Protestant (excluding 'Others'), or 47% Catholic, 42.5% Protestant, and 10.5% 'Other' when they are included. This suggests a norm of 52.5% Catholic and 47.5% Protestant (if 'Others' are disaggregated from the data) and a norm of 47% Catholic, 42.5% Protestant and 10.5% 'Other' for the whole workforce. This is what 'fair employment' now looks like. From an equality of outcome perspective, we would expect any significant deviation from this normal distribution of the population of working age to be accepted as a problem. If nothing else, this should at least signal equality concerns. Moreover, the 30% Protestant or Catholic threshold remains a useful warning signal of a bigger and more serious level of inequality. We might paraphrase Owen Patterson and suggest that this is the point at which more radical positive discrimination measures remain justified.

The tension between these two indicators of sectarian inequality will be mediated by the degree to which equality is prioritised and the wider politics of equality and inequality. It bears emphasis, however, that a sensitivity to these issues *protects everybody* from discrimination: Catholics, Protestants and 'Others'. Northern Ireland is now a place in which there are different and contradictory inequalities across different workplaces and sectors, particularly in the context of the demographic transition. In this context realizing the 'fair employment' equality commitments embedded in the GFA remain a human rights protection for *everyone*.

[70] Irish Times 'The Irish Times view on PSNI recruitment: revisiting quotas' 5 Jan 2020; BBC News 'Catholic recruitment an issue as PSNI turns 20' 2 Nov 2021; BBC News 'PSNI recruitment: Catholic primate urges return to 50:50 recruitment' 15 Dec 2019.

# Appendix Two

## Race, Educational Segregation and Equality

The 1954 US Supreme Court decision in *Brown v. Board of Education of Topeka* is probably the most important legal case in US history. It is certainly the most important in terms of racial segregation in education. The case originated in 1951 when the public school system in Topeka, Kansas, refused to enrol Oliver Brown's daughter at the school closest to their home because the family was African American. It required that she instead take a bus to a segregated black school farther away.

The judgement of the Supreme Court on the unacceptability of this policy was clear:

> *"a)a call-in made in accordance with section 41(1)(b) of the 2014 Act where a practising barrister or solicitor has opined under section 41(2) of that Act that there is a risk that the decision is outside the powers of the council, or is incompatible with EU law or Convention Rights (within the meaning of the Human Rights Act 1998(5)), or is not in compliance with the council's equality scheme in so far as it relates to equality of opportunity (within the meaning of section 75(1) of the Northern Ireland Act 1998(6))*

This judgement was far-reaching. It was a catalyst for the Civil Rights Movement and the radical equality measures of the 1960s. Furthermore, it signalled the beginning of the end of 'Jim Crow' racial segregation:

> *We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment —Brown, 397 U.S. at 495.*

It is now seventy years since the historic Brown vs the Board of Education decision. This principle behind the judgement still bears emphasis. It declared to and for the world that 'in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal'. This *should* have put an end to the notion that racially segregating children in education was ever justified *anywhere*. Moreover, it should have made it easy to screen against any repetition of this kind of discrimination.

As if this were not enough, however, further relevant human rights context on this has been provided by the European Court of Human Rights. This specifically addressed the experience of Roma children:

> *3. Ethnic origin 56. The Court has addressed in many cases the difficulties relating to the education of Roma children in a number of European States (D.H. and Others v. the Czech Republic [GC], § 205). As a result of their turbulent history and constant uprooting the Roma have become a specific type of disadvantaged and vulnerable minority. They therefore require special protection and this protection extends to the sphere of education (ibid., § 182). 57. Given the Roma community's vulnerability, a difference of treatment in order to correct inequality made it necessary for States to pay particular attention to their needs, and for the competent authorities to facilitate the enrolment of Roma children, even if some of the requisite administrative documents were missing (Sampanis and Others v. Greece, § 86). Guide on Article 2 of Protocol No. 1 – Right to education European Court of Human Rights 15/23 Last update: 31.08.2022 58. However, the mere enrolment in schools of Roma children does not suffice for a finding of compliance with Article 14 of the Convention taken together with Article 2 of Protocol No. 1. In this connection, the Court has relied extensively on reports by the European Commission against Racism and Intolerance (ECRI) (Oršuš and Others v.*

*Croatia [GC]; D.H. and Others v. the Czech Republic [GC]). The enrolment must also take place in satisfactory conditions. The Court accepted that a State's decision to retain the special-school system was motivated by the desire to find a solution for children with special educational needs (ibid., § 198). Similarly, temporary placement of children in a separate class on the ground that they lack an adequate command of the language is not, as such, automatically in breach of Article 14 (Oršuš and Others v. Croatia [GC], § 157). However, the misplacement of Roma children in special schools has a long history across Europe (Horváth and Kiss v. Hungary, § 115). Consequently, schooling arrangements for Roma children must be attended by safeguards that ensure that the State takes into account their special needs (D.H. and Others v. the Czech Republic [GC], § 207; Sampanis and Others v. Greece, § 103). The decision must be transparent and based on clearly defined criteria, not only ethnic origin (ibid., § 89; Oršuš and Others v. Croatia [GC], § 182). Lastly, such measures cannot be regarded as reasonable and proportionate where they result in an education which compounds the difficulties of Roma children and compromises their subsequent personal development instead of tackling their real problems or helping them to integrate into the ordinary schools and develop the skills that would facilitate life among the majority population (D.H. and Others v. the Czech Republic, § 207). A lack of discriminatory intent is not sufficient. The States are under a positive obligation to take positive effective measures against segregation (Lavida and Others v. Greece, § 73)*

Yet, despite all this historic litigation, we still find Roma and Traveller children segregated in precisely this way in education in Northern Ireland. Thus, seventy years on from Brown vs Board of Education, nearly thirty years from the RR(NI) Order and ten years since the Traveller education strategy, we find that just such a policy continues in Northern Ireland. The evidence is provided by a public authority – the Education and Training Inspectorate. Its 'Report of an Inspection' at St Mary's Primary School, Belfast frames the context:[71]

*St Mary's Primary School is a maintained primary school situated close to the center of the city of Belfast. Almost all of the children travel to the school from other parts of the city and further afield with only a small number attending from the immediate area. The school takes pride in the children's diverse range of faiths and traditions. Just over one-half of the school population comprises newcomer children who are mostly from the Roma community with the remainder of the children coming from the Irish Traveller community. The school operates at full capacity and the enrolment has remained steady over the past four years. While the enrolment is approximately 130, over the course of each year, up to 175 children may access the school's provision at any time. The percentage of children entitled to free school meals has remained high over the past four years; the proportion requiring additional help with aspects of their learning has also remained around one-quarter to one-fifth. (emphasis added)*

[71] Education and Training Inspectorate 2018. 'St Mary's Primary School, Belfast, Maintained, co-educational: Report of an Inspection (Involving Action Short of Strike) in January 2018'asos-primary-inspection-st-marys-primary-school-belfast-103-6388.pdf

As Brown vs Board of Education and ECJ makes clear, *any* racial segregation in education is unjustified – separate but equal *is never a defence for racial segregation*. But to add to the injury, this example looks suspiciously like a further example of separate and *unequal*. Certainly, the ETI is unable to add any reassurance in terms of the *quality* of education that this segregation provides:

> *The ETI is unable to assure parents/carers, the wider school community and stakeholders of the quality of education being provided for the children. The school is a high priority for future inspection with no further notice.*

If proof were needed that S75 is not working as it should, here it is. Here is a new – *post-GFA* - policy that clearly contradicts the most basic and widely established principles of racial justice. As such it should outrage anyone that is committed to equality in Northern Ireland. Yet it is quietly introduced and tolerated unaffected by S75 or any of the equality infrastructure that was erected in the wake of the GFA. The continuing segregation of Roma and Traveller children in Belfast cannot but be a grim reminder of why S75 needs a fundamental reset.

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