



Belfast City Council

Flying of the Union Flag

An Equality Impact Assessment

May 2004

CONTENTS

	<u>Page</u>
1. Executive Summary	
1.1 Background	6
1.2 Data Collection	6
1.3 Consultation	6
1.4 Findings of the EQIA	7
1.5 Decision	7
1.6 Publication	7
1.7 Monitoring	8
2. Introduction	
2.1 Equality of Opportunity	9
2.2 Good Relations	10
2.3 Methodology of the EQIA	11
3. The Policy	
3.1 Union Flag	12
3.2 Designated Flag Days	12
3.3 Other Flags	13
3.3.1 Cross of St. Patrick	13
3.3.2 European flag	13
3.3.3 Merchant Navy flag	13
3.3.4 Flag of the USA	13
3.4 Flags (Northern Ireland) Order 2000	13
4. Those Affected by the Policy	
4.1 Users of the City Hall	15
4.1.1 Employees of the Council	15
4.1.2 Members of the Council	15
4.1.3 Suppliers and contractors	15
4.1.4 Visitors	16
4.2 Users of the Duncrue Complex	16
4.2.1 Employees	16
4.2.2 Visitors	16
4.3 Users of the Ulster Hall	16
4.3.1 Employees	16
4.3.2 Hirers	17
4.3.3 Visitors	17
4.4 Residents of Belfast City	17

4.5	Visitors to the City	17
5. Analysis of Available Data and Research		
5.1	Data on the Section 75 Categories	18
5.1.1	Religious belief	18
5.1.2	Political opinion	20
5.1.3	Racial group	20
5.1.4	Age	21
5.1.5	Marital status	21
5.1.6	Sexual orientation	21
5.1.7	Gender	21
5.1.8	People with/without disability	22
5.1.9	People with/without dependants	22
5.2	Complaints and Comments	23
5.3	Opinion of Senior Counsel	23
5.3.1	The Flags (Northern Ireland) Order 2000	23
5.3.2	Article 19 of the Fair Employment and Treatment (Northern Ireland) Order 1998	24
5.3.3	Article 28 of the Fair Employment and Treatment (Northern Ireland) Order 1998	25
5.3.4	Section 75 of the Northern Ireland Act 1998	25
5.3.5	Section 76 of the Northern Ireland Act 1998	25
5.4	Opinions Expressed by Party Groups	26
5.4.1	Sinn Féin	26
5.4.2	Ulster Unionist Party	28
5.4.3	Alliance Party	29
5.4.4	Democratic Unionist Party	30
5.4.5	Progressive Unionist Party	31
5.4.6	Social Democratic and Labour Party	32
5.5	Opinions Expressed by the Equality Commission	40
5.6	Policies of Other Councils	41
6. Assessment of Impacts		
6.1	The Impact of the Current Policy	43
6.2	Those Subject to Adverse Differential Impacts	44
6.3	Tangible Effects	45

7.	Consideration of Alternative Policies	
7.1	No change	47
7.2	Designated Flag Days	48
7.2.1	City Hall	48
7.2.2	Duncrue Complex	49
7.2.3	Ulster Hall	49
7.3	Two Flags	49
7.4	No Flag	50
7.4.1	City Hall	51
7.4.2	Duncrue Complex	51
7.4.3	Ulster Hall	52
7.5	Neutral or Civic Flag	52
7.6	Summary and Conclusions	53
8.	Consultation	
8.1	Timing of the consultation	54
8.2	Consultees	54
8.3	Consultation process	54
8.4	Consultation responses	56
8.5	Summary of comments made	56
8.6	Comments made in consultation	57
8.6.1	Individual comments	57
8.6.2	Equality Commission – comments	57
8.6.3	Ethnic minority groups – comments	59
8.6.4	Employee consultation survey – comments	59
8.6.5	Employee focus groups – comments	63
8.6.6	Visitors to the City Hall – comments	64
8.6.7	Visitors to the Duncrue Complex – comments	65
8.6.8	Hirers of the Ulster Hall – comments	65
8.6.9	Public Consultation Survey 2004	66
9.	Decision	68
10.	Publication	68
11.	Monitoring	68

Appendices		
A	Census 2001 – denominations included in categories of religious belief	69
B	Report of the Director of Legal Services to the Policy and Resources Committee on 25 May 2002	72
C	Policies of Councils in Northern Ireland	80
D	Policies of Councils in Scotland	82
E	Policies of County Councils in the Republic of Ireland	85
F	Policies of Councils in England and Wales	87
G	Consultation - Employee Survey - Statistical Tables	88
	<i>Table 1: Preferences for various options according to work location</i>	88
	<i>Table 2: Preferences for various options according to work location and religious background</i>	88
	<i>Table 3: Preferences for various options according to work location and political opinion</i>	89
	Selection of comments made by respondents in Employee Survey	90
	Why the current policy should not be changed	90
	Why the current policy should be changed	91
	Comments made at Staff Focus Groups	92
	Whether the Union Flag causes offence	92
	Need for change	93
H	Consultation - Public Consultation Survey - Statistical Tables	94
	<i>Table 4: Total numbers and percentages of those preferring various options</i>	94
	<i>Table 5: Cross-tabulation of options preferred by community background</i>	95
	<i>Table 6: Cross-tabulation of options preferred by political opinion</i>	96
	<i>Table 7: Cross-tabulation of options preferred by District Electoral Area</i>	97

1. EXECUTIVE SUMMARY

1.1 Background

The Council decided to carry out an Equality Impact Assessment (EQIA) on the current policy on the flying of the Union Flag on Council properties in October 2002, following a complaint made under the Council's Equality Scheme. The policy in October 2002 was that the Union Flag was flown:

- outside the City Hall on a permanent basis
- outside the Duncrue Complex and the Ulster Hall on specified days per year (15 Flag Days plus 4 additional days).

The EQIA has now been completed in accordance with the Equality Scheme and the guidance published by the Equality Commission. The Council considered a draft report of the EQIA findings in April 2003 when it agreed that widespread formal consultation should be carried out in the autumn of 2003. A final report, which included the results of the consultation and further advice from Senior Counsel, was considered on 24 March 2004. This report summarises the process, the findings and the conclusions of the EQIA.

1.2 Data collection

As part of the EQIA process, the Council obtained a legal opinion from Senior Counsel and invited the party groups on the Council to comment on the policy. Data on the religious belief and political opinion of the residents of Belfast and the employees of the Council was analysed and the policies of other councils were considered.

1.3 Consultation

In the autumn of 2003, the views of employees, users of Council buildings and the general public were sought, along with those of the consultees listed in Appendix AA of the Council's Equality Scheme, including the Equality Commission. Consultees were asked which policy option they preferred in respect of the City Hall, Duncrue Complex and the Ulster Hall. A question about the flying of the Union flag at the City Hall was also included in the Council's Public Consultation Survey in 2004.

1.4 Findings of the EQIA

Three key issues emerged from the initial data analysis and research :

- the party groups have different views with regard to their preferred options
- in the opinion of Senior Counsel, a tribunal considering a complaint under Article 19 of the Fair Employment and Treatment Order might look with disfavour on the practice of flying the Union Flag on buildings other than the principal administrative building (City Hall); he concluded that there was a degree of risk that the flying of the Union Flag at the City Hall on days other than designated Flag Days, and at other premises even on designated Flag Days only, could be held to infringe the concept of a neutral working environment for those who work in those buildings
- there is no consistency in terms of the policies adopted by other Northern Ireland councils or local authorities in England, Scotland and Wales.

The consultation process showed that, in general, respondents who identified themselves as being from a Catholic and/or Nationalist background tended to favour the options of no flags or a neutral/civic flag. Consultees who identified themselves as being from a Protestant and/or Unionist background tended to favour the no change option.

When the consultation process had been completed, the Council sought a further legal opinion from Senior Counsel, who reviewed from a legal perspective the possible primary options open to the Council in relation to the flying of flags at the City Hall, the Duncrue Complex and the Ulster Hall.

1.5 Decision

On 26 March 2004 the Policy and Resources Committee considered detailed reports on the EQIA and the additional advice of Senior Counsel.

Arising out of this the Council agreed, at its meeting on 4 May 2004, not to make any change in its current policy.

1.6 Publication

This report will be available on the Council's website at www.belfastcity.gov.uk

It will be available on request in other formats including Braille, disk and audio cassette and in minority languages to meet the needs of those who are not fluent in English.

1.7 Monitoring

The Council is currently developing a system for monitoring the impact of its policies on equality of opportunity, with particular reference to those policies which have been subjected to EQIA. The impact of this policy will therefore be monitored and the results reported to the Council.

2. INTRODUCTION

2.1 Equality of Opportunity

Section 75 of the Northern Ireland Act 1998 places a duty on all public authorities to have due regard, in the carrying out of their functions, to the need to promote equality of opportunity :

- between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation
- between men and women generally
- between persons with a disability and persons without
- between persons with dependants and persons without.

Schedule 9 of the Act sets out the detailed procedure for the implementation of this duty including the publication of an Equality Scheme and the conduct of Equality Impact Assessments (EQIA) of selected policies. In response to the Act, Belfast City Council published an Equality Scheme which was approved by the Equality Commission in April 2001.

The Council also screened all its policies to determine which have a significant impact on equality of opportunity and drew up a programme of policies to be subjected to equality impact assessment. The purpose of an EQIA is to identify any actual or potential adverse differential impacts for any of the groups of people listed in Section 75 and make recommendations to eliminate the differential impacts (by amending the policy) or to reduce them significantly (by taking mitigating actions). The EQIA also seeks to identify alternative policies and procedures which would better promote equality of opportunity generally.

The policy on the flying of the Union flag was not included in the initial list of policies to be subjected to EQIA. However, in October 2001, the Chief Executive received a letter from Councillor Ó Broin expressing the view that the current display of flags, emblems and other symbols outside and inside the City Hall was exclusively Unionist and British in character and that this created a working environment that was discriminatory and unwelcome and was in contravention of the Council's Equality Scheme. The Director of Legal Services obtained the opinion of Senior Counsel on whether the current policy was in contravention of the Council's Equality Scheme and, having taken this into account, the Policy and Resources Committee decided to address the issues of the flying of the Union flag

separately from that of the display of memorabilia at the City Hall and agreed, in October 2002, that the current policy should be subjected to an EQIA.

2.2 Good Relations

Section 75 of the Northern Ireland Act 1998 also places a duty on all public authorities to have regard, in the carrying out of their functions, to the need to promote good relations between persons of different religious belief, political opinion and racial group.

In response the Council has designated “Promoting Good Relations” as one of its 4 corporate strategic objectives and has developed a Good Relations Strategy. The Strategy was formally adopted by the Council on 3 February 2003. The purpose of the Strategy is to promote a fairer, more equal society where people from all communities are treated with tolerance and where diversity is respected and celebrated.

In the absence of any official definition of “Good Relations”, the Council has interpreted the theme as widely as possible and taken it to mean all working relationships, both internal and external. The Council recognises that it is in everyone’s interest to promote good relations between its employees, between Members, between employees and Members, between employees and management, between the Council and all those who use its services and facilities and between the Council and those who provide supplies for it. The Council also aims to promote good relations in a broader sense, indirectly, between people from all the differing communities within the City, by using its influence as a civic leader with its partners and other leading agencies in Belfast.

The Strategy therefore has 4 separate themes, 3 relating to Council services and influence in the wider community and the 4th relating to the Council’s own workforce. The themes are :

- promoting cultural diversity
- promoting good community relations
- promoting equality through service delivery
- promoting equality through a representative workforce.

It is not the Council’s intention to assess the good relations impacts of its policies through formal assessments comparable to EQIA; this is not required under Schedule 9 of the Northern Ireland Act 1998. However, because the nature of

the policy being considered under this EQIA has substantial implications for good relations, these will be considered during the course of the assessment and taken into account when recommendations are formulated.

2.3 Methodology of the EQIA

When undertaking an EQIA, the Council closely follows the Guidance published by the Equality Commission in April 2001. This recommends that there should be 7 Steps in the EQIA process :

- Step 1 : Consideration of available data and research
- Step 2 : Assessment of potential and actual impacts
- Step 3 : Consideration of alternative policies and mitigating actions
- Step 4 : Formal consultation
- Step 5 : Decision making
- Step 6 : Publication of the results of the EQIA
- Step 7 : Monitoring.

This report has been written primarily to provide information to consultees during the formal consultation phase and includes the findings of the first 3 steps of the process.

Once the formal consultation has been completed, the Council will complete the EQIA by :

- considering the comments and suggestions made
- placing a full report before the Policy and Resources Committee for a decision on the actions to be taken
- publishing the results of the EQIA and details of the decision
- implementing the decision and monitoring its effects.

3. THE POLICY

3.1 Union Flag

The current arrangements for the flying of flags on Council properties were established through custom and practice over many years and the present policy was affirmed by the Policy and Resources (Personnel) Sub-Committee at its meeting on 4th December 1996.

The current policy is that the Union Flag is flown :

- outside the City Hall on a permanent basis
- outside the Duncrue Complex on specified days per year
- outside the Ulster Hall on specified days per year.

The specified days on which the Union Flag is flown at the Duncrue Complex and the Ulster Hall are the 15 designated Flag Days (see 2.2 below) plus New Year's Day, Easter Day, 12 July and Christmas Day.

The Union flag may be flown at half mast on occasions. These may include funerals of members of the Royal Family and office bearers, such as former Prime Ministers, when special instructions are issued by the Lord Chamberlain's Department. The Council may also decide to mark the death of local celebrities in response to public opinion, for example, the death of Joey Dunlop in the summer of 2000.

3.2 Designated Flag Days

On an annual basis the Lord Chamberlain's Department issues a list of Flag Days on which UK Government Buildings should fly the Union flag. For some time there have been 17 designated Flag Days but there has been a reduction to 15 in 2003. The current designated Flag Days are :

20 January	Birthday of The Countess of Wessex
6 February	Her Majesty's Accession
19 February	Birthday of The Duke of York
10 March	Birthday of The Earl of Wessex
10 March	Commonwealth Day (second Monday in March)
17 March	St. Patrick's Day

21 April	Birthday of Her Majesty The Queen
9 May	Europe Day
2 June	Coronation Day
10 June	Birthday of The Duke of Edinburgh
14 June	The Queen's Official Birthday
15 August	Birthday of The Princess Royal
9 November	Remembrance Day (second Sunday in November)
14 November	Birthday of The Prince of Wales
20 November	Anniversary of Her Majesty's Wedding

3.3 Other Flags

3.3.1 Flag of the Cross of St. Patrick

In January 1994 the Policy and Resources Committee resolved that the flag of the Cross of St. Patrick should be flown at the City Hall alongside the Union Flag on 17 March, St. Patrick's Day.

3.3.2 European Flag

In February 1998 the Policy and Resources Committee resolved that the European Flag should be flown at the City Hall on 9 May, Europe Day.

3.3.3 Red Ensign

In August 2001 the Policy and Resources Committee resolved that the Red Ensign should be flown at the City Hall on 3 September, National Merchant Navy Day.

3.3.4 Flag of the USA

On 30 November 1995 the flag of the United States of America was flown to mark the visit of President Clinton.

3.4 Flags (Northern Ireland) Order 2000

The Flags Order confers a power on the Secretary of State to regulate the flying of flags at government buildings, subject to the referral of a draft of the proposed regulations to the Assembly. The Secretary of State referred draft Flags Regulations to the Assembly in September 2000 and the Assembly set up an Ad

Hoc Committee to consider them. The basis of the proposal was that the Union flag should be flown on designated Flag Days at 7 listed government buildings. The Flags Order defines a government building as one which is wholly or mainly occupied by members of the Northern Ireland Civil Service and does not relate, therefore, to Council properties.

The Ad Hoc Committee decided that its report should be based on a series of propositions reflecting the differing views within the Committee, together with an indication of the level of support for those views. The party groupings on the Committee agreed to make written submissions which would form the basis of the report. The Committee also invited written submissions from organisations and individuals and heard evidence from the Equality Commission.

On 17 October 2000 the Assembly resolved that the Ad Hoc Committee's report should be submitted to the Secretary of State as a report of the Assembly. The Secretary of State has taken no further action.

4. THOSE AFFECTED BY THE POLICY

In order to ensure that we provide an opportunity to comment during the consultation phase of the EQIA to all those who might have an opinion on the equality implications of the current policy, we have attempted to define the range of people who use the buildings at which the Union flag is flown. It is relatively easy to define the users of the Duncrue Complex and the Ulster Hall. However, the City Hall is not just an administrative building from which Council services are delivered; it has a wider function as a civic building and is used for a variety of meetings and ceremonial purposes. Indeed, the Belfast War memorial is part of the City Hall civic building and the 1st July and Remembrance Day parades – which are the main ceremonies in the Province – start inside the building. There are no other cities or towns in Northern Ireland where the Memorial is within the civic building grounds. It can also be argued that the City Hall has a significance for all residents of Belfast City, whether they visit it or not and, indeed, for all visitors to the City.

4.1 Users of the City Hall

4.1.1 Employees of the Council

There are approximately 296 employees of the Council who work in the City Hall on a regular basis. However, we consider that any employee of the Council may be required to attend the City Hall for various reasons, such as training sessions, the presentation of awards and routine meetings. We therefore consider that all employees may be affected by the current policy.

4.1.2 Members of Council

All Members of Council attend the City Hall on a regular basis for formal and informal meetings. Almost all meetings of Council, its Committees and Sub-Committees are held in the City Hall.

4.1.3 Suppliers and contractors

There are currently 18 suppliers and contractors who undertake work in the City Hall or make deliveries to it on a regular basis. However, others may visit the City Hall from time to time.

4.1.4 Visitors

There are approximately 23,500 visitors to the City Hall per year. These include people accessing Council services, guests invited to civic functions, tourists on organised tours and casual visitors. The main Council services provided to the public at the City Hall are :

- Building Control services
- Registration of Births, Marriages and Deaths
- Cemeteries administration services
- City Hall tours.

4.2 Users of the Duncrue Complex

4.2.1 Employees

The main purpose of the Duncrue Complex is to provide the administrative headquarters of the Contract Services Department and to house workshops, storage and depots for the various activities which it undertakes. The majority of users are therefore employees of the Council and there are approximately 800 people who regard the Complex as their principal place of work. Other employees may be required to visit the Complex from time to time.

4.2.2 Visitors

Apart from employees from other Council offices, the main visitors to the Duncrue Complex are suppliers and contractors. There are no casual visitors and the public do not enter the building to access services.

4.3 Users of the Ulster Hall

4.3.1 Employees

The Ulster Hall is the principal workplace of approximately 11 Council employees and is jointly managed with the Belfast Waterfront Hall.

4.3.2 *Hirers*

The Ulster Hall is hired out to a variety of organisations for public entertainments, meetings and other types of gathering. In 2002/03, 33 organisations hired the Ulster Hall for various purposes.

4.3.3 *Visitors*

The Ulster Hall is widely used for public entertainments and meetings and so members of the public often visit the building. In 2002/03 approximately 200,000 tickets were allocated for events at the Hall.

4.4 *Residents of Belfast City*

The 2001 Census showed that there are a total of 277,391 people currently residing in Belfast City.

4.5 *Visitors to the City*

The DRD Roads Service has undertaken research which indicates that the daytime population of Belfast is about 900,000 comprising people who work in the City and people who visit for shopping or other reasons.

5. ANALYSIS OF AVAILABLE DATA AND RESEARCH

5.1 Data on the Section 75 Categories

We have attempted to categorise the people who may be affected by the policy in accordance with definitions in Section 75 :

- religious belief
- political opinion
- racial group
- age
- marital status
- sexual orientation
- gender
- persons with/without disability
- persons with/without dependants

However, very limited information is available. The 2001 Census provides information on the residents of the City and the Council records some information in relation to employees. However, the information on visitors, suppliers, contractors and hirers cannot be sub-divided in accordance with any of the Section 75 categories. The available data is set out below.

5.1.1 Religious belief

The 2001 Census provides information on religious belief as stated by respondents. Table 1 shows the comparative percentages for those resident in Belfast and for Northern Ireland as a whole.

Table 1 : Residents by religious belief

	Belfast	Northern Ireland
Catholic	42.13%	40.26%
Protestant ¹	35.28%	39.50%
Other Christian ²	5.07%	6.07%
Other ²	0.60%	0.30%
None/Not stated	16.93%	13.88%

Source : Northern Ireland Statistics website: www.nisra.gov.uk

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¹Presbyterian Church in Ireland, Church of Ireland and Methodist Church in Ireland.

²The denominations included in these categories are listed in Appendix A.

The Census also provides information on community background (that is, religion or religion brought up in) as shown in Table 2.

Table 2 : Residents by community background

	Belfast	Northern Ireland
Catholic	47.19%	43.76%
Protestant and other Christian (including Christian related)	48.59%	53.13%
Other religions and philosophies	0.78%	0.39%
None	3.44%	2.72%

Source : Northern Ireland Statistics website: www.nisra.gov.uk

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Table 3 shows the breakdown of Council employees by religious belief on 1st January 2002 as set out in the Council's 2002 Annual Fair Employment Monitoring Return to the Equality Commission (Article 55 review).

Table 3 : Employees of Belfast City Council by religious belief

	Number	Percentage
Catholic	833	35.8%
Protestant	1387	59.6%
Non-determined	107	4.6%
Total ³	2327	100%

Source : Belfast City Council

³ Including those who work less than 16 hours per week and casuals

Analysis of returns made under Article 55 reviews (formerly Section 31 reviews) shows that the composition of the Council workforce has changed significantly over the last 10 years, becoming more representative of the two main communities. Over the last 10 years there has been a steady increase in the percentage of Catholics employed as shown in Table 4. This suggests that applicants for posts are not being influenced by any potential "chill factor" associated with working in Council buildings.

Table 4 : Employees of Belfast City Council by religious belief 1992-2001

	Catholic	Protestant	Non-determined	Total
2001	853 35.4%	1432 59.4%	124 5.2%	2409
1998	824 33.5%	1496 60.7%	142 5.8%	2462
1995	753 32.9%	1423 62.1%	115 5.0%	2291
1992	718 29.3%	1630 66.6%	101 4.1%	2449

5.1.2 Political opinion

In the 2001 local government elections the total number of votes cast was 122,188 representing 64% of the total electorate. The number and percentage of first preference votes cast for each political party is shown in Table 5 together with the resulting composition of the Council.

Table 5 : Results of 2001 local government elections in Belfast

	Number of votes cast	Percentage of votes cast	Number of Councillors
Sinn Féin	34,727	28.4%	14
Ulster Unionist	22,318	18.3%	11
Democratic Unionist	22,128	18.1%	10
SDLP	21,308	17.4%	9
Alliance	8,330	6.8%	3
Progressive Unionist	7,130	5.8%	3
Independent Unionist	3,660	3.0%	1
Others	2,587	2.1%	0

Source : Belfast City Council

5.1.3 Racial group

The 2001 Census provides information on the ethnic group to which respondents indicated they belonged. Table 6 shows the comparative percentages for residents of Belfast and Northern Ireland as a whole.

Table 6 : Residents by ethnic groups

	Belfast	Northern Ireland
White	98.63%	99.15%
Irish Traveller	0.09%	0.10%
Mixed	0.26%	0.20%
Indian	0.16%	0.09%
Pakistani	0.06%	0.04%
Bangladeshi	0.02%	0.01%
Other Asian	0.03%	0.01%
Black Caribbean	0.02%	0.02%
Black African	0.05%	0.03%
Other Black	0.03%	0.02%
Chinese	0.48%	0.25%
Other ethnic group	0.17%	0.08%

Source : Northern Ireland Statistics website: www.nisra.gov.uk

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5.1.4 Age

The 2001 Census provides extensive information on the age of residents of Belfast and Northern Ireland. For convenience, Table 7 summarises the data for four specific age ranges.

Table 7 : Residents by age groups

	Belfast	Northern Ireland
Under 16	21.72%	23.62%
16-44	43.10%	41.58%
45-59	15.52%	17.19%
60 and over	19.65%	17.63%

Source : Northern Ireland Statistics website: www.nisra.gov.uk
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5.1.5 Marital status

The 2001 Census provides information on the marital status of residents aged 16 years and over as set out in Table 8.

Table 8 : Residents over 16 years by marital status

	Belfast	Northern Ireland
Single	41.28%	33.11%
Married	36.94%	48.45%
Re-married	2.18%	2.67%
Separated	5.46%	3.84%
Divorced	4.86%	4.12%
Widowed	9.28%	7.81%

Source : Northern Ireland Statistics website: www.nisra.gov.uk
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5.1.6 Sexual orientation

We have no data on the sexual orientation of Belfast residents.

5.1.7 Gender

The 2001 Census provides information on the gender of residents as set out in Table 9.

Table 9 : Residents by gender

	Belfast	Northern Ireland
Male	46.79%	48.74%
Female	53.21%	51.26%

Source : Northern Ireland Statistics website: www.nisra.gov.uk

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We also have data on the gender of Council employees on 1st January 2002 as set out in the Council's 2002 Annual Fair Employment Monitoring Return to the Equality Commission.

Table 10 : Employees of Belfast City Council by gender

	Number	Percentage
Male	1440	61.9%
Female	887	38.1%

Source : Belfast City Council

5.1.8 People with/without a disability

Statistics from the Department of Social Development show that in November 2001 there were 54,793 people in Belfast claiming disability benefits. The disability benefits included in the analysis were Disability Living Allowance, Attendance Allowance, Incapacity Benefit and Severe Disablement Allowance. The total represents just under 20% of the resident population. There may also be people in Belfast who would regard themselves as having a disability who either do not or are not eligible to claim these allowances.

5.1.9 People with/without dependants

The 2001 Census provides information on households with dependent children and households with one or more persons with a limiting long-term illness as set out in Table 11.

Table 11 : Households with dependants

	Belfast	Northern Ireland
Number of households	113,934	626,718
Households with dependent children	30.40%	36.47%
Households with one or more persons with a limiting long-term illness	44.89%	41.31%

Source : Northern Ireland Statistics website: www.nisra.gov.uk

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5.2 Complaints and Comments

The Council has operated a corporate complaints system since 1995 and no complaints regarding the flying of the Union flag have been recorded since that date. As part of the research for this EQIA we asked officers in the City Hall if they could recall any occasions on which comments had been made by visitors regarding the flying of the Union flag; despite the large number of visitors, the Tour Guides and Receptionists did not recall any comments being made but the Registrar referred to one occasion several years ago when a customer made adverse comments on the service provided for marriages, including an objection to the flying of the Union flag. On that occasion the action taken by the Registrar's office was sufficient to satisfy the customer.

5.3 Opinion of Senior Counsel

In May 2002 the Director of Legal Services reported to the Policy and Resources Committee on the contents of an opinion obtained from Senior Counsel (Mr Nicholas Hanna, Q.C.) in relation to the display of flags, memorabilia and emblems at the City Hall. The opinion includes comments on the applicability of :

- the Flags (Northern Ireland) Order 2000
- Articles 19 and 28 of the Fair Employment and Treatment (Northern Ireland) Order 1998
- Sections 75 and 76 of the Northern Ireland Act 1998.

The report of the Director of Legal Services is attached at Appendix B and the relevant parts of Senior Counsel's opinion are summarised below.

5.3.1 The Flags (Northern Ireland) Order 2000

Senior Counsel states that the Order only applies to the flying of the Union flag at government buildings. A government building is defined as a "building wholly or mainly occupied by members of the Northern Ireland Civil Service". Senior Counsel therefore concludes that the Order does not apply to the City Hall or any other Council building and that the decision on the flying of the Union flag is a matter which remains within the discretion of the Council itself.

5.3.2 Article 19 of the Fair Employment and Treatment (Northern Ireland) Order 1998

Article 19 of the Order requires employers in Northern Ireland to provide and take steps to maintain a “neutral working environment”. The most important decision of the Fair Employment Tribunal on this issue is *Brennan v Short Brothers plc* (1995) when the Tribunal said that :

“a neutral working environment is one where employees can work without contemplating their own or any person’s religious belief or political opinions. It is not about the size of flags or the precise manner in which religious beliefs or political opinions are demonstrated – it is about the effect which things have whether intended or not. ... It has to be emphasised ... that anything which identifies community allegiance needs justification in the workplace.”

Senior Counsel advises that it is unlikely that a tribunal would fault the Council if it chose to fly the Union flag at the City Hall on designated Flag Days. He states that such a practice would be consistent with the practice of many public bodies, including councils, throughout the United Kingdom and would accord with the practice laid down for government buildings.

However, Senior Counsel’s view is that the practice of flying the Union flag at the City Hall on every day of the year is unusual and that, in the event of proceedings under Article 19, a tribunal would be likely to seek an explanation. It is unlikely that the explanation of “custom and practice through many years” without more would be regarded as satisfactory. He also states that a tribunal might look with disfavour on the practice of flying the Union flag on buildings other than the principal administrative building (City Hall) .

Senior Counsel concludes that there is a degree of risk that the flying of the Union flag at the City Hall on days other than designated Flag Days, and at other premises even on designated Flag Days only, could be held to infringe the concept of a neutral working environment for those who work in those buildings.

5.3.3 Article 28 of the Fair Employment and Treatment (Northern Ireland) Order 1998

Article 28 makes it unlawful for any person concerned with the provision of goods, facilities or services to the public to discriminate against a person who seeks to obtain or use those goods, facilities or services. Senior Counsel states that there is nothing in Article 28 which could be regarded as corresponding with the concept of a neutral working environment and there is no question of facilities or services being provided on a discriminatory basis. He therefore considers it unlikely that the flying of the Union flag outside any Council building would give rise to any breach of Article 28.

5.3.4 Section 75 of the Northern Ireland Act 1998

In evaluating whether the current policy is in contravention of Section 75 and the Council's Equality Scheme, Senior Counsel refers to the only case to date in which Section 75 has been considered, *In Re Murphy's Application for Judicial Review* (2001). This case concerned a challenge to the making of the Flags Regulations by the Secretary of State and, in the course of his judgement, Kerr J recognised and acknowledged the constitutional status of the Union flag as the flag of the United Kingdom of which Northern Ireland is a part. He appeared to take the view that there would have been no breach of Section 75 because the flying of the Union flag was effectively limited by the legislation to the designated Flag Days. Senior Counsel suggests that it seems likely, if the legislation had required or authorised the flying of the Union flag excessively, or in circumstances where it may have provoked others, that the learned judge would have held that there may have been a breach of Section 75, because a decision to introduce legislation to that effect could only have been arrived at in disregard of the desirability of promoting good relations.

As a result of this advice, the Policy and Resources Committee decided that the current policy should be reviewed in the light of the obligations laid upon the Council by Section 75 to have due regard to the need to promote equality of opportunity and have regard to the desirability of promoting good relations.

5.3.5 Section 76 of the Northern Ireland Act 1998

Section 76 prohibits a public authority carrying out functions relating to Northern Ireland in a manner which discriminates against a person or class of persons on the grounds of religious belief or political opinion. Senior Counsel states that it is

difficult to see what functions of the Council would be affected by the flying of flags on the exterior of Council buildings. These buildings may be the physical setting in which some Council functions may be performed but it is difficult to see how that could give rise to any discrimination in the performance of the functions themselves. Senior Counsel therefore concludes that he considers the risk of current policies running foul of Section 76 to be remote.

5.4 Opinions Expressed by Party Groups

During the preparation of this EQIA report, the party groups represented on the Council were invited to submit written statements giving their views on the current policy. The submissions are reproduced in full below, in the order in which they were received. The party groups will have a further opportunity to comment during the formal consultation phase of the EQIA.

5.4.1 *Sinn Féin*

The Sinn Féin submission, received on 31 January 2003, is set out in full below :

“For Nationalists and Republicans the British union flag is a symbol of foreign domination. It represents generations of injustice, oppression, inequality, discrimination and violence.

Unionists have used the British flag, as a symbol of political dominance, and a tool of sectarian coat trailing.

The Good Friday Agreement and the circumstances and conditions which gave rise to its negotiation were about tackling this and other issues of conflict.

The principles and positions agreed between the parties and the two governments at Castle Buildings at Easter 1998 were about mapping out a framework which would ensure equality and respect from and for all citizens, as well as defending and protecting human rights and civil liberties.

Any approach to the issue of flags should be set firmly within the context of the Good Friday agreement. Paragraph 1 of the Good Friday Agreement’s Declaration of Support reads: “We ...believe that the agreement we have negotiated offers a truly historic opportunity for a new beginning.”

With regard to the issue of symbols and emblems the agreement also embraced the sense of a new beginning. "All participants acknowledge the sensitivity of the use of symbols and emblems for public purposes and the need in particular in creating the new institutions to ensure that such symbols and emblems are used in a manner which promotes mutual respect rather than division.

The agreement should be the context which informs any decisions taken on the issue of flags. It is a contract between opponents who hold to different political allegiances. Parity of esteem, equality, inclusivity and the promotion of mutual respect should underpin future decisions on the flying of flags at government and public buildings.

Following through on this, for instance, The Patten Report recommends that the new Police Service "should adopt a new badge and symbols which are entirely free from any association with either British or Irish states", and that "that the Union Flag should no longer be flown from police buildings". In other words the adoption of a policy aimed at making buildings ect user friendly to employees and members of the public.

Therefore, where British cultural symbols are involved in public life, equivalent Irish cultural and political symbols should be given equal prominence.

If agreement or consensus cannot be found on this, then a reasonable alternative, which fits the required criteria, is to suspend the flying of flags until such agreement or consensus can be found. In summary, the position on the flying of flags at civic buildings should be one of equality or neutrality. What is clearly required is a new beginning on this issue also.

Belfast City is a divided city. Our history is one of conflict and division. As the main civic center of our city it is vital that Belfast City Hall adequately reflects the diversity and complexity of all identities. Historically this has not been the case as the City Hall has been a cold house for nationalists. Thus, in rectifying this, the City Council needs to emphasize in its cultural and political symbols the shared nature of our city, its history and its identity. Sinn Féin acknowledges the work that is currently ongoing with respect to the content of the building. However, it is our view that the issue of flags must be dealt with as a matter of urgency. If Nationalists &

Republicans are to feel comfortable inside and outside the City Hall, then everyone's cultural identity must be recognised and legitimised."

5.4.2 *Ulster Unionist Party*

The Ulster Unionist Party submission, received on 13 March 2003, is set out in full below :

"The Ulster Unionist Party represented on Belfast City Council by its elected members would like to make the following points with regard to the equality impact assessment being carried out by Council on its current policy on the flying of flags. These comments in no way restrict us from making additional points or suggestions during the formal consultation period.

The constitutional position of Northern Ireland is stated as being "in its entirety" part of the United Kingdom. The flying of the Union flag from the City Hall is a clear expression of that constitutional position. The Belfast Agreement also states that Northern Ireland shall remain a part of the United Kingdom unless and until a majority of its people decide otherwise. This also entrenches the principle of consent. We believe the Union flag gives a formal recognition and visible sign as to the status of Northern Ireland as being part of the United Kingdom. The Union flag is a constitutional symbol that is recognised both nationally and internationally, as an integral part of the United Kingdom. The Union flag is therefore the constitutional symbol for Northern Ireland, and should be afforded no less standing than in any other part of the United Kingdom.

The Ulster Unionist Party believe the flying of the Union flag does not have an adverse effect in respect of equality. We believe that the sovereign government that holds jurisdiction in Northern Ireland (The British Government) does uphold the principles of equality of civil, political, social and cultural rights of all the people of Northern Ireland which includes the city of Belfast. They believe (as the Ulster Unionist Party does) that equality of opportunity and freedom from discrimination should be a matter of normal acceptance. We do not believe the flying of the Union flag suggests a particular religious belief or a political opinion. It does not suggest there is inequality in treatment of women, older people, people with disabilities, ethnic communities, people of different sexual orientation

or of the travelling community, or inequality of treatment between the two main traditions in Northern Ireland.

We do not believe the flying of the Union flag prohibits Belfast City Council from carrying out our statutory duty under Section 75(1) of the Northern Ireland Act to promote equality of opportunity and the promotion of good relations. It also follows that the flying of the Union flag has not prohibited other political parties, SF – SDLP, PUP, DUP and ALLIANCE from carrying out the functions of good relations and promotion of equality of opportunity.”

5.4.3 Alliance Party

The Alliance Party submission, received on 7 April 2003, is set out in full below :

“ Background and Principles

The general principle of respect in a divided society should guide the Council in deciding a policy on flying flags. Symbols should not be used to stress dominance or be used to exclude; rather symbols such as flags should be used to promote pluralism and aim to unite the community. The Good Friday Agreement entrenches the Principle of Consent. Hence constitutional position of Northern Ireland is that it remains a part of the United Kingdom unless and until its people decide otherwise. There is a wide spectrum of practice in flag flying on government buildings throughout United Kingdom. The citizens of Belfast are part of a community in Europe, part of the United Kingdom constitutionally and part of a rich and diverse community comprising Belfast.

Practice

As an acknowledgement of constitutional status the Union flag should be flown on designated days from the City Hall. The removal of the 12th July from the list of designated days is to be welcomed as a means of reducing feelings of exclusion.

In addition to the Union flag, the flag of the European Union should be flown on Europe Day (May 9) and St Patrick’s flag on March 17. Serious consideration should be given to the creation and flying of a new flag for the City of Belfast.

The regular flying of the Irish tricolour alongside the Union flag would have two negative effects. First it would imply that there was joint authority and second it would suggest that the Union flag represented one section of the community while the tricolour represented another, entrenching divisions and harming the prospect of greater pluralism. “

5.4.4 Democratic Unionist Party

The Democratic Unionist Party submission, received on 7 April 2003, is set out in full below :

“The flying of the Union Flag is not a triumphalist or sectarian action. Rather, it is a visible expression of the constitutional status of Northern Ireland as an integral part of the United Kingdom. Belfast City Council must accord due recognition to the status of the Union Flag, as is done throughout the Kingdom and as has been recognised by the courts of law.

Belfast City Hall

The Union Flag must continue to fly on Belfast City Hall all year round. This reflects the status of Belfast as the capital city of Northern Ireland and the status of Belfast City Hall as the seat of civic governance in the city and the best known public building in the country.

It is evident that the small number of public services provided in the City Hall are widely used by persons from all sections of the community. While the Union Flag is displayed as part of several historical displays in some areas of the building, areas used mainly for service provision do not contain such displays. In terms of usage of the City Hall grounds, it is clear that the grounds are universally accessible and are used by people from all communities on a regular basis without difficulty. Clearly, the flying of the Union Flag from the flagstaff on the front of the City Hall does not give rise to any negative impact in terms of equality of opportunity, either inside or outside the building.

Council Offices

The Union Flag should be flown at all Council offices on the same days and in the same manner as on government buildings generally. The flying of the Union Flag on the exterior of the building does not in any way

compromise the accessibility of the services provided therein, so long as a neutral environment is maintained in the interior, for the benefit of staff and customers alike. An excellent example to follow is that of Corporation Street SSO, where the Union Flag is flown on specified days without hampering people's ability to access their benefit entitlements.

Other Council Facilities

The Union Flag should continue to be flown on other Council facilities in accordance with custom and practice.

Conclusion

We would submit that to fly the Union Flag in the circumstances set out above would not compromise the Council's legal duty to promote equality of opportunity. We would point out however, that the City Council is also under an obligation to promote good relations between the two main communities. We believe that the flying of the Union Flag on public buildings is not something that causes offence to the vast majority of nationalists. However, any attempt to curtail the flying of the Union Flag on Council buildings will cause grave offence to the entire unionist community in Belfast and potentially irreparable damage to relations between the two communities.

We hope that these comments are helpful and trust that they will be taken on board in the formulation of future policy proposals. “

5.4.5 Progressive Unionist Party

The Progressive Unionist Party submission, received on 12 August 2003, is set out in full below :

“The Progressive Unionist Party's view of the flag's issue cannot be divorced from their vision for the future based upon the parameters of the GFA.

Northern Ireland is an integral part of the United Kingdom as per the will of the people. It is the view of the Progressive Unionist Party that while this needs to be respected there is no requirement that all day every day this glaring fact is appreciated. However the flag of a nation is a constitutional

symbol and is also internationally recognised, a flag identifies its people and territory.

With these facts in mind it is our opinion that while it is not a necessity for the Union flag to fly on a permanent basis outside Belfast City Hall the Union flag should fly outside Belfast City Hall, Duncrue Complex and the Ulster Hall on the 15 'flag days' as in the rest of the UK and those 4 days exclusive to Northern Ireland (New Year's Day, Easter Day, 12 July and Christmas Day)."

5.4.6 Social Democratic and Labour Party

The Social Democratic and Labour Party submission, received on 1 September 2003, is set out in full below :

“ Introduction

1. The SDLP recognises that the issue of the display of flags is a difficult and divisive one. The issue requires to be managed with sensitivity, is guided by principle and is in the best interests of all in a divided community. These are high objectives. SDLP proposals in relation to the display of flags were not intended in any way to denigrate those who value the Union or the British monarchy or to deny those who value Britishness or define themselves as Unionists. This policy document attempts to acknowledge these matters and concerns and those who have different senses of identity and to chart a course through difficult issues.

Principles Governing the Display of Flags

2. The SDLP believes that judgement on this issue should be informed by relevant legislative provisions, legal precedents decided by the Fair Employment Tribunal, the Good Friday Agreement and the Agreement between the British and Irish governments, further to the Good Friday Agreement. First, “The Belfast Agreement: an Agreement reached at the Multi-party Talks on Northern Ireland” (commonly referred to as the “Good Friday Agreement” and hereinafter referred to as ‘the Agreement’) provides clear and compelling principles which should inform and can lead to a solution to this issue, a solution which respects the identity of each citizen and each community. It is essential that in determining this issue, the Council adheres to the principles articulated in the Agreement.

Second, the SDLP would refer to the obligations placed on the British Government and particularly on the British Government by the “Agreement between the Government of the United Kingdom, of Great Britain and Northern Ireland and the Government of Ireland, (hereinafter referred to as the ‘Agreement between Governments’). Those obligations are by way of international treaty and binding in international law. Their relevance should be reflected in the policy of the Council.

Third, the SDLP refers to the relevant provisions of the Northern Ireland Act 1998, and in particular the Section 75 equality duty.

Fourth, the contents of the Fair Employment Treatment Order 1998 have a direct relevance.

Fifth, relevant decisions of the Fair Employment Tribunal are applicable, in particular the cases of Brennan v Short Bothers plc and Johnston v Belfast City Council.

Implementing the Good Friday Agreement

4. In the section of the Agreement that deals with “Constitutional Issues,” a number of principles are endorsed. This policy document would refer to the principles outlined at paragraphs 1(iii), 1(v) and 1(vi), where the parties to the Agreement:

“1(iii) acknowledge that while a substantial section of the people in Northern Ireland share the legitimate wish of a majority of the people of the island of Ireland for a united Ireland, the present wish of a majority of the people of Northern Ireland, freely exercised and legitimate, is to maintain the Union and, accordingly, that Northern Ireland’s status as part of the United Kingdom reflects and relies upon that wish; and that it would be wrong to make any change in the status of Northern Ireland save with the consent of a majority of its people;”

“1(v) affirm that whatever choice is freely exercised by a majority of the people of Northern Ireland, the power of the sovereign government with jurisdiction there shall be exercised with rigorous impartiality on behalf of all the people in the diversity of their identities and traditions and shall be founded on the principles

of full respect for, and equality of, civil, political, social and cultural rights, of freedom from discrimination for all citizens, and of parity of esteem and of just and equal treatment for the identity, ethos, and aspirations of both communities;”

“1(vi) recognise 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, and accordingly confirm that their right to hold both British and Irish citizenship is accepted by both Governments and would not be affected by any future change in the status of Northern Ireland.”

5. The SDLP would also refer to Article 1(iii), 1(v) and 1(vi) of the “Agreement between Governments” which states:

“1(iii) acknowledge that while a substantial section of the people in Northern Ireland share the legitimate wish of a majority of the people of the island of Ireland for a united Ireland, the present wish of a majority of the people of Northern Ireland, freely exercised and legitimate, is to maintain the Union and, accordingly, that Northern Ireland’s status as part of the United Kingdom reflects and relies upon that wish; and that it would be wrong to make any change in the status of Northern Ireland save with the consent of a majority of its people;”

“1(v) affirm that whatever choice is freely exercised by a majority of the people of Northern Ireland, the power of the sovereign government with jurisdiction there shall be exercised with rigorous impartiality on behalf of all the people in the diversity of their identities and traditions and shall be founded on the principles of full respect for, and equality of, civil, political, social and cultural rights, of freedom from discrimination for all citizens, and of parity of esteem and of just and equal treatment for the identity, ethos, and aspirations of both communities;”

“1(vi) recognise 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, and accordingly confirm that their right to hold both British and Irish citizenship is accepted by both

Governments and would not be affected by any future change in the status of Northern Ireland.”

The Equality Duty

6. The SDLP believes that the new statutory duty applicable since 1 January 2000 on public authorities further to Section 75 of the Northern Ireland Act 1998 which, inter alia, “requires public bodies to promote good relations between persons of different religious beliefs and political opinion in the workplace”, has clear implications in relation to the display of flags. This issue requires to be assessed in the context of the equality duty.

7. It is also to be noted that employers have duties further to the Fair Employment and Treatment (NI) Order 1998. The Order creates a requirement to provide fair participation in employment and determining reasonable and appropriate affirmative action. A submission by the Equality Commission to the Assembly Ad Hoc Committee on the draft regulations proposed under Article 3 of The Flags (NI) Order 2000, stated:-

“Such affirmative action includes the need to build good and harmonious working environments and to take action to minimise chill factors as identified in the Fair Employment Code of Practice.”

The Commission added that the code recognises *“the importance of the working environment for the promotion of equality of opportunity and fair participation”* concluding that *“the Commission has warned of the need to ensure that the working environment does not carry the potential for messages – explicit or implicit – being given to under-represented groups in work places that they are unwelcome.”*

8. It is submitted that in considering this issue the above principles should be upheld and reflected in the policy of the Council.

Implementing the Agreement

9. It is argued that paragraphs 1(iii) of ‘the Agreement’ and the “Agreement between Governments” respectively (hereinafter referred to as “the Agreements”) which detail the constitutional position of Northern Ireland and what is commonly referred to as “the principle of consent”, means that the Union flag should fly from Government or Council buildings

in Northern Ireland on designated days, as is the case in and to be generally consistent with practice in Scotland or England/Wales. The SDLP accepts the paragraph 1(iii) but submits that it is incorrect to interpret the Agreements in this way for a number of reasons.

10. First Northern Ireland cannot be compared on this issue with England and Wales or Scotland:

(A) Northern Ireland is a divided society, emerging from many years of conflict. The division has been around issues of national identity, political aspiration and community treatment. In this context, to interpret the constitutional position and the principle of consent so as to enable the display of only the Union flag on government/Council buildings on designated days suggests that one national identity, political aspiration and community requirement has a standing legally and practically, over those of others.

(B) The existence of the Agreements demonstrate that Northern Ireland is not comparable with England, Scotland or Wales:

- Uniquely among regions, Northern Ireland has the guaranteed right in law to opt out of the Union should a majority desire this;
- Uniquely among regions, the constitutional arrangements for Northern Ireland were laid down in an international treaty between two sovereign governments and were approved by the people of Ireland, North and South, in a referendum. In the debate and discussion around this issue, there has been insufficient regard paid to the international responsibilities of the British government. The SDLP believes that the government should review the draft regulation to ensure compliance with treaty commitments.

11. Second, beyond the broad political and legal arguments outlined above, it is submitted that the approach of some, who invoke constitutional principles referred to in the Agreements to justify the display of the Union flag on government/Council buildings is a misinterpretation of the Agreements.

12. Paragraph One of the section of the Agreement on “Constitutional Issues,” and Article 1 of the Agreement between Governments lays down a number of principles. It is submitted in determining this issue that those

principles should be considered in their totality and that each principle should be considered no less important than any other.

Paragraph 1(4) recognises the right:

“of all the people of Northern Ireland to identify themselves *and be accepted* as Irish or British, or, both as they may so choose” and “affirms that the power of the sovereign government shall be founded on the principles of ... *parity and esteem* and of the *just and equal treatment for the identity, ethos and aspirations of both communities*”.

It is submitted that, for example, the display of the Union flag is clearly identified with the Unionist community, with the Union with Britain and with those who would refer to themselves as British. To display the Union flag – or for that matter the Irish Tricolour alone – is contrary to the above principles and good practice. It should be noted that this argument is not outlined so as to suggest that in the treatment of issues of identity – flag, language etc – there should always be the same treatment at all times and in all ways. This may not be appropriate in political terms, feasible in financial terms or practical in real terms. This policy document elaborates on this perspective at paragraph (19).

13. Moreover, to display the Union flag on government/Council buildings *only* does not accord “just and equal treatment to the identity, ethos and aspirations” of the nationalist community. In addition, it is submitted that the display of the Union flag *only* on government/Council buildings does not respect the right “to be accepted as Irish.”

14. Moreover Paragraph 5 of the Section of the Agreement on “Rights, Safeguards and Equality of Opportunity” provides that:

“All participants acknowledge the sensitivity of the use of symbols and emblems for public purposes and the need in particular in creating the new institutions to ensure that such symbols and emblems are used in a manner which promotes mutual respect rather than division. Arrangements will be made to monitor this issue and consider what action might be required.”

The flying of a flag to which one community in Northern Ireland identifies, but another does not, is not sensitive. Nor does it promote mutual respect rather than division. The above principles need to be fully addressed and implemented in determining this matter.

Legal Precedents

15. This policy document would also refer to relevant findings of the Fair Employment Tribunal and in particular the cases of Brennan v Short Brothers plc and Johnston v Belfast City Council. It is relevant to quote what the Chair of the Equality Commission stated in evidence to the Ad Hoc Committee:-

“In the case of Brennan v Short Brothers plc the FET stated that anything which identifies community allegiance needs justification.”

The Chair of the Equality Commission added that:-

“The Johnston case is the only case to date where a finding of discrimination was based solely on the display of emblems identifying community allegiance.....The tribunal found that the display of the portrait (Her Majesty the Queen) is capable, in our Society, of causing offence to certain sections of the workforce. It is accepted that there are circumstances where a display of the portrait is appropriate, for example, at certain ceremonial occasions.”

Options on the Display of Flags

17. There are four options for addressing this issue, which it has been argued are consistent with the Agreements:

- (A) flying of no flags on government buildings;
- (B) flying both the Union Flag and the Irish Tricolour;
- (C) creating new consensual symbols with which both unionist and nationalists could identify;
- (D) acknowledge that the principles of the Agreements may enable consideration of the display of either the Union flag and Irish Tricolour together or, where appropriate, display of the Union flag or Irish Tricolour only on restricted days and on restricted buildings by agreement.

18. The SDLP is prepared to consider each of these options. It is recognised that the display of both flags would be viewed by unionists as not sensitive to their concerns and that, also in the current circumstances, it may be difficult to secure agreement on consensual symbols. However the SDLP would wish to explore further these options in order to satisfactorily resolve this issue.

19. The SDLP remains committed to develop this issue in a creative and constructive manner. Therefore, and elaborating on 17 (D) above, it has been argued that it is not necessarily valid that the same outcome is achieved on all aspects of the expression of different identities in Northern Ireland. Indeed, it is argued by some that parity of esteem could allow for different, as well as the same circumstances, to apply in relation to issues of identity. In this context, a situation could arise where there would be different, as well as same circumstances, applying to the display of the Union flag and to the Irish Tricolour. If different, as well as same circumstances, could apply to the display of flags, it would then be a matter of agreeing when and where they could be displayed, either together or separately, ensuring that there is no unreasonable differential between the occasions when, for example, the Union flag and Irish Tricolour would be displayed separately. It may help inform this issue, if this option was to be explored further.

However, an environment to consider all options can best be developed if there is a determination arising from the present consultation consistent with the principles, legal precedents and inter-party and inter-government agreements outlined above.

20. At present, however, the SDLP favours, as an interim step, in the current environment and to act consistent with the Agreement the option of flying no flags. This is not a resolution to this issue. It reflects realities without closing down opportunities, treats both communities in Northern Ireland equally and is consistent not only with the principle of just and equal treatment for the identity, ethos and aspirations of both communities, but also with the right of people in Northern Ireland to identify themselves and be accepted as Irish or British, or both. The SDLP believes that this is a preferred method to proceed. However, the SDLP repeats that this is not a resolution of this issue and will continue to seek to explore methods of advancing the other options and addressing concerns.

Conclusion

25. The SDLP also notes that there have been significant developments in terms of cultural awareness and mutual tolerance in recent years. There are many images and headlines that suggest otherwise, but, in general, this assertion holds. It should also be recognised that, as a society, we have not developed to the point of mutual acceptance or toleration of the flags, emblems and symbols that reflect and represent our different identities. The SDLP believes that our society will reach that level of awareness whereby respective flags, symbols and emblems will be honoured or that common flags, symbols and emblems will be agreed.

26. To do so requires an environment whereby the Agreements are and are seen to be upheld; that its principles are respected: that difficult judgements are made consistent with the intention of the Agreements; that each citizen and community knows that that which good government, the Agreements and a stable community requires will be implemented. “

5.5 Opinions Expressed by the Equality Commission

In 2002 Fermanagh District Council reviewed its policy on the flying of flags and asked the Equality Commission for their views. In a letter to the Chief Executive dated 12 March 2002, the Equality Commission stated:

“The Commission seeks to promote a spirit of inclusivity and mutual respect and urges the avoidance of contentious displays which act as a badge for community or political allegiance and promote division in the workplace..... Where an employer is seeking to provide or maintain fair participation, or to ensure that all of its services are widely utilised by all sections of the community, the Commission recommends particular sensitivity concerning displays which are wholly or mainly associated with one section of the community.”

The Equality Commission also gave evidence to the Assembly Ad Hoc Committee in which they stated that it would be for a fair employment tribunal, not the Equality Commission, to decide on issues of discrimination relating to the flying of flags. Nevertheless they stated that their preferred position was that there should be no display of flags at workplaces. They went on to state that :

“the display of the Union flag – other than in a ceremonial context – could, to varying degrees, involve an expression of sectoral community allegiance. As such, this should be regarded as unacceptable.”

As part of the pre-consultation on this EQIA we met with officers from the Equality Commission in June 2003 and noted their advice on various issues.

5.6 Policies of Other Councils

Research undertaken as part of this EQIA showed that in Northern Ireland :

- 7 Councils do not fly flags at any time
- 10 Councils fly the Union flag at their headquarters on a permanent basis
- 4 Councils fly the Union flag on designated days only
- 2 Councils fly the Union flag on designated days plus a small number of additional days
- 2 Councils fly their Council Coat of Arms on a permanent basis.

Details of each policy are set out in Appendix C.

We also obtained information on flag flying policies from :

- 25 of the 32 councils in Scotland (Appendix D)
- 24 of the 29 county councils in the Republic of Ireland (Appendix E)
- a small sample of councils in England and Wales (Appendix F)

In summary we found that 4 Scottish Councils fly the Union flag at all times (together with the Saltire), 3 more councils fly the Saltire at all times and a further 2 councils fly their Coat of Arms at all times. The remaining councils tend to fly the Union flag only on designated days (with one or two additional days in line with local customs).

We did not find any examples of county councils in the Republic of Ireland which fly the national flag at all times. Most councils fly the national flag in accordance with the Guidelines from the Office of the Taoiseach which specifies that it should be flown on Easter Sunday and Monday, St. Patrick's Day and the National Day of Commemoration (Sunday closest to 11 July). Some councils also fly the national and/or county flag on particular occasions, such as days when the Council is meeting or the Courts are in session.

In England and Wales we found that many councils follow the policy of flying the Union flag on designated Flag Days only. However, we identified 5 councils which fly the Union flag every day (Bradford, Cardiff, Coventry, Newcastle and Swansea). As we have not had the opportunity to survey every Council in England and Wales, there may be other policies in effect.

6. ASSESSMENT OF IMPACTS

6.1 The Impact of the Current Policy

In accordance with the EQIA process, having gathered information on the policy and those affected by it, the Council must then assess whether there is or is likely to be a differential impact on the relevant group or groups. The Council must also consider whether it is possible to better promote equality of opportunity and/or good relations by changing the policy or introducing mitigating actions.

It is very difficult to assess the degree of impact of the Council's current policy. It does not have a measurable effect and the actual impact depends on the perception of each individual. A recent survey showed that a large percentage of people do not have particularly strong views about flags. As part of the Life and Times Survey in 2001, people were asked whether they felt proud or hostile when they saw the Union Jack or the Irish Tricolour or whether they did not feel much either way. The results were as follows :

Table 12

Question : When you see the Union Jack, does it make you feel proud, hostile or do you not feel much either way?

	Total	Catholic	Protestant	No religion
Very proud	17%	0%	34%	7%
A bit proud	10%	0%	18%	6%
Does not feel much either way	58%	74%	43%	70%
A bit hostile	6%	14%	0%	7%
Very hostile	2%	3%	0%	2%
It depends	4%	5%	3%	5%
Other	2%	2%	1%	1%
Don't know	1%	1%	1%	3%
<i>Total</i>	<i>100%</i>	<i>100%</i>	<i>100%</i>	<i>100%</i>

Source : Life and Times Survey 2001

Table 13

Question : When you see the Irish Tricolour, does it make you feel proud, hostile or do you not feel much either way?

	Total	Catholic	Protestant	No religion
Very proud	4%	9%	0%	3%
A bit proud	5%	13%	1%	0%
Does not feel much either way	59%	69%	47%	75%
A bit hostile	10%	3%	18%	7%
Very hostile	13%	0%	25%	5%
It depends	5%	3%	6%	7%
Other	2%	3%	2%	1%
Don't know	2%	1%	1%	3%
<i>Total</i>	<i>100%</i>	<i>100%</i>	<i>100%</i>	<i>100%</i>

Source : Life and Times Survey 2001

The Life and Times Survey is conducted by Queen's University and involves 1800 face to face interviews across Northern Ireland with adults aged 18 and over.

However, taking account of the submissions made by party groups on the Council (see 4.4 above) and submissions made to the Assembly Ad Hoc Committee, it can be broadly assumed that the Nationalist community feels that they are subject to an adverse differential impact because of the flying of the Union flag, whilst the Unionist community feels that this is not the case.

6.2 Those Subject to Adverse Differential Impacts

As we do not have any data on the political opinion of users of the Council buildings where the Union flag is currently flown, we are assuming that many of the Catholic users have Nationalist opinions and many of the Protestant users have Unionist opinions. We know from the data available to us that there are substantial percentages of residents of the City and employees of the Council from both Catholic and Protestant communities. We therefore assume that, despite the findings of the Life and Times Survey, at least some of the users of the buildings will share the views put forward by the party groups and therefore experience some adverse differential impact.

To date, no attempts have been made to obtain evidence to help to assess the actual adverse impacts of the current policy or the potential impacts of alternative policies. During the formal consultation phase of the EQIA, respondents will be encouraged to describe the effect which the current policy has on them or which

alternative policies might have on them. At this stage we can only conclude that the current policy probably causes some degree of adverse differential impact on people because of their political opinion and/or religious belief.

6.3 Tangible Effects

It is difficult to define the tangible effects of the adverse differential impact of the current policy. There is no statutory definition of a “neutral working environment” but the concept is encapsulated in the Fair Employment Code of Practice (Clause 5.2.2) which states that employers should :

“promote a good and harmonious working environment and atmosphere in which no worker feels under threat or intimidated because of his or her religious belief or political opinion, for example, prohibit the display of flags, emblems, posters, graffiti or the circulation of materials or the deliberate articulation of slogans or songs which are likely to give offence or cause apprehension among groups of employees.”

This part of the Code is substantially followed by the Council in paragraph 1.7 of its own Equal Opportunities Policy and paragraph 5.2 of the Council’s Policy on Sectarian Intimidation/Harassment. In his opinion (see 4.3 above) Senior Counsel states that :

“The essence of a neutral working environment is that employees should not be subjected to a detriment by feeling intimidated or harassed or subject to any form of “chill factor” in the workplace. “

The same definitions would apply to visitors to Council buildings. It may be possible that an adverse differential impact would manifest itself as follows :

- some visitors might choose not to enter buildings flying the Union flag and therefore find themselves excluded from the events which take place there; however, we are not aware of any instances where people have felt that they are unable to enter a building flying the Union flag (see 4.2 above)
- some visitors might choose to enter buildings flying the Union flag but feel a “chill factor” which detracts from their ability to participate fully and benefit fully from the events taking place there

- some employees might experience a "chill factor" when working in buildings flying the Union flag.

We do not consider it likely that the current policy, or alternative policies, will have any significant impact on people because of their racial group, age, marital status, sexual orientation, gender, because they have or do not have a disability or because they have or do not have dependants. However, during the formal consultation phase we would be interested to hear from groups representing people with specific characteristics in this list who consider that they are affected in some way by the current or alternative policies.

7. CONSIDERATION OF ALTERNATIVE POLICIES

In September 2002 the Good Relations Steering Group identified 5 policy options:

1. No change
2. Designated Flag Days
3. Two flags
4. No flag
5. Neutral or civic flag.

A wide range of additional options exist but in order to keep this report as simple as possible only these 5 will be considered in detail. The implications of other options are likely to be similar to those set out below.

Generally it can be considered that a reduction in the number of days on which the Union flag is flown would reduce the adverse differential impact on those who are adversely affected by the current policy (assumed to be those from the Nationalist/Catholic community). Conversely any reduction in the number of days on which the Union flag is flown might give rise to an adverse differential impact on those who are beneficially affected by the current policy (generally assumed to be those from the Unionist/Protestant community).

In considering the potential impacts of the various alternative policies, we have referred to various statements made to the Assembly Ad Hoc Committee in relation to the proposed Flag Regulations. Whilst these statements are relevant and useful, it must be noted that they were made in the context of a proposal to fly the Union flag on a limited number of days at specific buildings which are principally administrative centres for the Northern Ireland Civil Service.

7.1 No change

If the Council decided not to change the current policy, the Union flag would continue to be flown :

- outside the City Hall on a permanent basis
- outside the Duncrue Complex on 19 specified days per year
- outside the Ulster Hall on 19 specified days per year.

It would, of course, be possible for the Council to decide to change elements of the policy in relation to specific buildings and leave other elements unchanged.

It should be noted that Senior Counsel's opinion was that the practice of flying the Union flag on the City Hall on every day of the year was unusual and he suggested that, in the event of proceedings under Article 19 of the Fair Employment and Treatment (NI) Order 1998, a tribunal would, in his view, be likely to seek an explanation from the Council for continuing it. He thought that it was unlikely that the explanation of "custom and practice through many years" without more would be regarded as satisfactory.

7.2 Designated Flag Days

The second option for consideration is that of flying the Union flag only on designated Flag Days as defined annually by the Lord Chamberlain's Department.

7.2.1 City Hall

This option would result in a substantial reduction in the number of days on which the Union flag was flown at the City Hall, from the current 365 days per year to 15.

This should substantially reduce any adverse differential impact caused by the current policy. However, it may give rise to a claim by those who benefited from any positive differential impact of the current policy that such a substantial reduction would result in an adverse differential impact.

The only case to date in which the High Court has commented on the issue of the flying of the Union flag in the context of Section 75 is when Mr Conor Murphy MLA challenged the making of the Flags Order and Flags Regulations by the Secretary of State. In the course of his judgement, Kerr J stated :

"The Union Flag is the flag of the United Kingdom of which Northern Ireland is a part. It is the judgement of the Secretary of State that it should be flown on government buildings only on those days in which it is flown in Great Britain. By thus confining the days in which a flag is to appear, the Secretary of State sought to strike the correct balance between, on the one hand, acknowledging Northern Ireland's constitutional position and on the other not giving offence to those who oppose it. That approach appears to me to exemplify a proper regard for 'partnership, equality and mutual respect' and fulfil the government undertaking that its jurisdiction in

Northern Ireland shall be exercised with rigorous impartiality on behalf of all the people in the diversity of their identities and traditions. I do not consider therefore that the Regulations have been shown to be in conflict with the Belfast Agreement.”

7.2.2 Duncrue Complex

This option would result in a small reduction in the number of days on which the Union flag was flown at the Duncrue Complex, from the current 19 days per year to 15.

7.2.3 Ulster Hall

This option would result in a small reduction in the number of days on which the Union flag was flown at the Ulster Hall, from the current 19 days per year to 15.

7.3 Two Flags

In their written submission (see 4.4.1 above) Sinn Féin stated that :

“... where British cultural symbols are involved in public life, equivalent Irish cultural and political symbols should be given equal prominence. If agreement or consensus cannot be found on this, then a reasonable alternative, which fits the required criteria, is to suspend the flying of flags until such agreement or consensus can be found. In summary, the position on the flying of flags at civic buildings should be one of equality or neutrality.”

A further possible policy option we have considered is to fly the Irish Tricolour whenever and wherever the Union flag is flown.

In the judgement quoted in 6.2.1 above, the High Court recognised that the Union flag is the flag of the United Kingdom of which Northern Ireland is a part and accordingly has particular constitutional significance that the Tricolour cannot have. This option would probably therefore be legally unacceptable as it would breach legal constitutional protocol.

In any event, it is difficult in practice to give equal prominence to two flags as flag protocol in the United Kingdom indicates that, where there are two flagpoles, the

senior flag is the first flag on the left of an observer facing the main entrance of the building.

Having consulted with the Equality Commission in June 2003 and having taken the advice of the Director of Legal Services, we reached the conclusion that the flying of the Tricolour whenever the Union flag is flown is not a viable option.

7.4 No Flag

The fourth option we considered is that of ceasing to fly the Union flag at any time. This option would obviously eliminate any adverse differential impact caused by the current policy. However, it might give rise to an adverse differential impact on those who wish to see the Union flag flown on Council buildings.

It should be noted that, when giving evidence to the Assembly Ad Hoc Committee, the representatives of the Equality Commission made some comments on this issue in response to a question regarding whether some people might feel offended if the Union flag were not flown. The comments included the following from Mr Paul Donaghy, a Commissioner on the Equality Commission :

“ ... but I feel it would be much more difficult to base a case on the absence of a flag than on its presence. ... if the flag were not flown, I suspect that the court or tribunal would be more likely to decide that the case was more difficult to justify.”

Mr Keith Brown, the Equality Commission's Director of Advice and Information, illustrated the point as follows :

“Let us put the issue in the context of employment practice. For example, let us say that there was a recruiting practice which was to the advantage of an organisation's existing staff. Imagine that, for equal opportunities reasons, the company decided that there was a possibility that the continuation of that practice might result in an allegation of discrimination that they could not defend. If they then changed that practice, affecting those people who had previously benefited, those individuals would have the right to make a complaint. However ... I do not think that a fair employment tribunal would find in their favour. The flying of flags might be an analogous situation. If an employer felt that he was doing it for the promotion of a more harmonious or neutral working environment, a tribunal

would weigh that very strongly and decide that the complainants did not have a reasonable case. “

7.4.1 City Hall

As the evidence set out in 3.1 shows, the City Hall is not simply an administrative centre for Council staff but has a much wider civic and ceremonial function. In their evidence to the Assembly Ad Hoc Committee, the Equality Commission stated :

“the display of the Union flag – other than in a ceremonial context – could, to varying degrees, involve an expression of sectoral community allegiance”

In response to questions the representatives of the Equality Commission also stated :

“We see a difference between an administrative headquarters and other Government service provision facilities. It should also be clear that that is happening for specific reasons – that there is a context within which those flags are flying. That context is ceremonial occasions and those ceremonial occasions are listed.”

and :

“The context within which the Union flag flies must be seen to be acceptable. There is a clear distinction to be made between the headquarters of government and the local offices of government. That is the background against which the Union flag would fly. The flag would be flown as a ceremonial recognition that a building is the headquarters of a Department. That is a distinction that a fair employment tribunal or the courts would be likely to make.”

7.4.2 Duncrue Complex

The points set out above in 6.1.1 in relation to the City Hall may also be relevant to the Duncrue Complex. However, the reduction in the number of days on which the Union flag was flown and the consequent reduction in any adverse differential impact would be less substantial.

It should also be noted that the Duncrue Complex is mainly a place of work for Council employees; it is not the administrative headquarters of the Council and does not have any civic or ceremonial function. In their evidence to the Assembly Ad Hoc Committee, the Equality Commission stated that their preferred position was that there should be no display of flags at workplaces. They went on to state that

“the display of the Union flag – other than in a ceremonial context – could, to varying degrees, involve an expression of sectoral community allegiance. As such, this should be regarded as unacceptable.”

7.4.3 *Ulster Hall*

The points set out above in 6.1.1 in relation to the City Hall may also be relevant to the Ulster Hall. However, the reduction in the number of days on which the Union flag was flown and the consequent reduction in any adverse differential impact would be less substantial.

It should also be noted that the Ulster Hall is neither the headquarters of the Council nor is it principally a place of work for Council employees. It is a public building used for a wide variety of events and is similar in function to the Belfast Waterfront Hall which does not currently fly any flag on any occasion.

7.5 Neutral or Civic Flag

It has been suggested that it would be possible to promote the concept of a neutral environment by flying an agreed neutral flag. Assuming that agreement could be reached on a suitable neutral flag, it could be assumed that any adverse differential impact caused by the current policy would be eliminated. However, the issues raised in 6.4 above regarding the potential adverse differential impact of ceasing to fly the Union flag would still apply.

An alternative to developing a new neutral flag would be to fly a civic flag, following the example of a number of district councils including Down and Omagh which do not fly the Union flag but fly their Coat of Arms every day.

7.6 Summary and Conclusions

By undertaking an EQIA within the provisions of its Equality Scheme the Council has committed itself to reviewing the current policy on the flying of the Union flag, taking account of the findings of the EQIA and the views expressed during the consultation phase. In order to ensure that consultation is informed and meaningful it is necessary to identify those options which are legally acceptable before inviting the public to comment. It is therefore proposed that views on four options are sought :

1. No change
2. Designated Flag Days
3. No flag
4. Neutral or civic flag.

There is a possibility that any of these options might cause adverse differential impacts on various people by reason of their religious belief and/or political opinions. On the basis of the views expressed by the party groups on the Council (see 4.4 above) and those expressed to the Assembly Ad Hoc Committee, the impacts might be expressed as follows :

Table 14 : Summary of adverse differential impacts

Policy option	Catholic/Nationalist Community	Protestant/Unionist Community
No change	Adverse impact	Beneficial impact
Designated Flag Days	Reduced adverse impact	Adverse impact
No flag	No impact	Adverse impact
Neutral or civic flag	No impact	Adverse impact

It should be noted that these impacts are unlikely to affect every member of the two communities in the same way as the impact is dependent upon the individual's perception.

8. CONSULTATION

The Council is committed to carrying out consultation in accordance with its own Equality Scheme and any guidance issued by the Equality Commission and recognises the need for consultation to be timely, open and inclusive.

8.1 Timing of the consultation

The draft EQIA report approved by the Council in April 2003 was updated and circulated for consultation in the autumn of 2003. The Council's Equality Scheme states that a period of at least 8 weeks will be allowed for consultation on all EQIAs. However, in view of the sensitivity of the policy under consideration, a 12-week period was allowed for the formal consultation phase of this EQIA, with a closing date of 29 December 2003.

8.2 Consultees

The Council agreed that various stakeholders should be consulted, including those organisations listed in its Equality Scheme, its employees and the general public. In accordance with the EQIA process the Council will report back to all consultees personally on the comments, amendments and decisions made in the light of the consultation.

8.3 Consultation Process

The consultation process for this EQIA included the following elements:

- prior to the formal consultation phase of the EQIA all party groups were invited to submit written views; submissions from Sinn Féin, the Ulster Unionist Party, the Alliance Party, the Democratic Unionist Party, the Progressive Unionist Party and the Social Democratic and Labour Party were included in full in the EQIA report
- in line with the Council's standard EQIA procedure, a public notice was published in the three main local newspapers – Belfast Telegraph, Irish News and Newsletter - announcing that consultation was being undertaken

on the policy on the flying of the Union flag and that comments would be welcomed

- the public notice also included details of a public meeting to be held at the City Hall on Wednesday 19 November when this EQIA would be discussed together with EQIAs on certain human resources policies and the policy on access
- the draft EQIA report and the executive summary, written in plain English, were made available on the Council's website and were provided in printed form to anyone who requested them; they would have been made available in alternative formats on request but no such requests were received
- the EQIA received a considerable amount of press coverage in newspapers, periodicals and radio programmes (for example, articles in the Irish News on 25 April and 7 October and South Belfast News on 11 October 2003)
- the executive summary was circulated to all the organisations on the Council's consultation list (as set out in Appendix AA of the Equality Scheme) including the Equality Commission, with a request for comments, offering information in other formats or meetings to discuss issues of concern
- a meeting was held with representatives of ethnic minority groups in Belfast on 3 November at a suitable time, location and accessible venue, to discuss various aspects of Council policies and a questionnaire was issued to them at the meeting with a specific request for comments on the policy on the flying of the Union flag
- a written questionnaire was circulated to all Council employees
- two focus group discussions for Council employees were held, one at the Cecil Ward Building and one at the Duncrue Complex
- a written questionnaire was sent to selected companies and individuals who were frequent visitors to the City Hall and Duncrue Complex because they supplied or carried out work on those premises

- a written questionnaire was sent to selected companies and individuals who had recently hired the Ulster Hall
- a specific question on the flying of the Union flag at the City Hall was included in the Council's wider Public Consultation Survey of 2004.

8.4 Consultation responses

The consultation process has been completed and the comments received have been analysed. It should be noted that all questionnaires were administered in such a way as to maintain complete anonymity to ensure that respondents felt confident to express their views.

8.5 Summary of comments made

Comments have been received as follows:

- 2 individual members of the public submitted written comments
- the Equality Commission noted the "systematic EQIA process" the Council had undertaken, commented as to what extent the EQIA had been carried out in a manner consistent with its guidance and commented in detail on the substantive policy issues raised in the EQIA
- 3 ethnic minority groups returned questionnaires with views on the policy
- 1050 Council employees (approximately 42%) returned questionnaires
- 14 Council employees attended two focus group discussions
- 12 companies/individuals who are frequent visitors to the City Hall returned questionnaires
- 2 companies/individuals who are frequent visitors to the Duncrue Complex returned questionnaires
- 3 companies/individuals who are recent hirers of the Ulster Hall returned a questionnaire

- 1530 people from all over the City were interviewed in the Council's biennial major Public Consultation Survey.

It should be noted that only 3 people attended the public meeting held in the City Hall on 19 November and no specific comments were made in relation to the Flag EQIA. With the exception of the Equality Commission, no responses were received from the consultees on the Council's Appendix AA list. There were 249 hits on the relevant pages of the Council's website during the consultation period.

8.6 Comments made in Consultation

8.6.1 Individual comments

One member of the public commented that the flying of the Union flag was discriminatory to Irish Nationalist/Catholics who work or visit Council buildings and so the Council should fly no flags. Another member of the public indicated that he had heard a discussion on "Talkback" and would be interested in designing a Belfast flag.

8.6.2 Equality Commission - comments

In its "response to the substantive policy issues" raised in the EQIA, the Equality Commission expressed the opinion that "displays of the Union flag must be viewed in the context with which the flag is flown or displayed. Factors affecting the context include the manner, location and frequency with which flags are displayed. For example, the Union flag may be used to symbolize the constitutional position of Northern Ireland or, at the other end of the spectrum, may be used as an indicator of sectional community allegiance".

It continued "where an employer is seeking to provide or maintain fair participation, or to ensure that all of its services and facilities are widely utilised by all sections of the community, the Commission recommends particular sensitivity concerning displays which are wholly or mainly associated with one section of the community".

The Commission went on to state that in its view, "there would be a difference between both the employment and customer base at the main headquarters of a

Council, and that in more localised areas, leisure centres etc. We would consider there to be particular problems from a community relations perspective if a Council was to decide to fly the Union flag at all facilities. Likewise a policy which allowed the flying of the flag at some facilities and not others based on the community composition of the local area, would offend the idea of inclusivity which is important in the promotion of good relations. Arising from this, and the need to ensure fair participation in employment, the Council would need to guard against any perception that flags were being used to 'mark out territory' ”.

The Equality Commission also provided specific responses in relation to alternative policies considered in the EQIA:

Option – no change to existing policy

“In respect of the flying of the Union flag, (based on the FET(NI)O, the Fair Employment Code of Practice, relevant caselaw, for example the Tribunal decision in the case of Johnson v Belfast City Council, Section 75 of the NI Act and the Flags (NI) Order and the judicial review of the regulations) and the advice provided by Senior Counsel, the Commission recommends that the Council consider alternative policies designed to better promote equality of opportunity and good relations”.

Option – designated flag days

The Commission agreed with the distinction made by Senior Counsel between the flying of the Union flag at the City Hall, a public building which contains the administrative headquarters of the Council, and the flying of the flag at the Ulster Hall and Duncrue complex. “The Commission would agree that this distinction seems valid and would also agree with Senior Counsel’s comments ‘...that it is unlikely that the Tribunal would fault the Council if it chose to fly the Union flag on the designated flag days only’ at the City Hall. The Commission would recommend that the Council reconsider this option with regard to the flying of the Union flag at the Ulster Hall and the Duncrue complex”.

Option – two flags

The Commission noted the Council’s decision “not to consider further the option of flying the Tricolour whenever the Union flag is flown”.

Options – no flag

“It is the Commission’s opinion that this policy option of not displaying the Union flag is likely to be within the range of acceptable practices in relation to the promotion of equality of opportunity”.

Options – neutral or civic flag

“The Commission recommends sensitivity with regard to the display of any flag or emblem that is associated predominantly with one community in Northern Ireland. The Commission would be willing to provide further advice if this option is being considered”.

The Commission recommended in summary that:

- “The Council reconsider its existing policy in terms of the extent of the displays of the Union flag in terms of the number of days and the locations on which it is flown;
- The Council reconsider the policy option of flying of the Union flag on designated days at the Ulster Hall and the Duncrue complex;
- The option that no flag be flown, or that a ‘neutral’ or ‘civic’ flag be flown are acceptable policies, provided of course that this flag is not associated predominantly with one community in Northern Ireland.”

8.6.3 Ethnic minority groups - comments

Two of the ethnic minority groups who returned questionnaires stated a preference for no flag to be flown. One group commented that the policy should be changed because it was not fair for the other communities that are not represented by the Union flag.

Another group stated a preference for flying the Union flag at the City Hall as at present with a neutral or civic flag to be flown at the Duncrue Complex and the Ulster Hall with the comment that the Council should take into consideration the role of the City Hall over that of other civic buildings or sites in terms of its representation and responsibilities.

8.6.4 Employee consultation survey - comments

All employees of the Council were given an opportunity to comment on the equality implications of the current policy. Obviously the policy is of most direct concern to those whose principal place of work is the City Hall, the Duncrue Complex or the Ulster Hall. However, any employee may be required to visit any Council building at any time; in particular, many employees attend meetings, training courses or functions at the City Hall on a fairly frequent basis. In addition,

if comments had been sought only from employees at the City Hall, the Duncrue Complex and the Ulster Hall on an individual basis, it would have been difficult to guarantee anonymity, owing to the very small number of employees based at the Ulster Hall.

The results of the survey and discussion meetings will be reported back to employees through Staff News.

The Council made strenuous efforts to ensure that all employees were given a full opportunity to participate in the consultation exercise in this EQIA.

An explanatory article was included in the staff magazine in advance so that employees were aware that an EQIA of the current policy was going to be carried out. Departments were made aware of the importance of distributing questionnaires to all employees and the confidential nature of the survey was stressed. Employees were advised that copies of the full and summary versions of the EQIA were available on the website; a link was set up from the Noticeboard on Belnet, the Council's Intranet site, to the website; and copies of the summary report were printed off for those staff who requested an individual copy or who did not have website access.

At the end of October 2003, a copy of the Employee Questionnaire was distributed along with payslips to all employees with an explanatory letter from the consultant.

Employees were invited to comment by replying to a confidential written questionnaire. The questionnaire was fairly brief and simply requested views on the current policy and whether it ought to be changed. Respondents were asked to indicate their principal place of work and – if they wished to do so – which community they considered that they belonged to. They were not required to give their name and were asked to return the questionnaire (in a pre-paid envelope) to the independent consultant who was assisting with the conduct of the EQIA. The consultant then prepared a composite report for the Council and anonymity was therefore guaranteed.

Employees were also asked within the questionnaire whether they would like to volunteer to attend a discussion meeting; if they answered positively they were asked for their name and contact details, although these were held separately from the questionnaire responses. Participants were selected at random from

those who had volunteered to attend and included men and women of various ages with a range of religious beliefs/community backgrounds and political opinions.

Two focus group meetings were held at which employees could express their views in more detail; one was primarily for staff based at the Duncrue Complex and one for staff based elsewhere. The consultant facilitated these meetings and, again, prepared a composite report, which did not identify individuals.

1050 employees returned completed questionnaires, which represents about 42% of the total Council workforce and represents a good cross section. The respondents were asked to identify where they were based in terms of City Hall, Cecil Ward Building, Duncrue Complex or Other. They were also invited to indicate their religious background and political opinion but only if they wished to do so. The categories offered were Catholic, Protestant and Other (including none) and Nationalist, Unionist and Other (including none).

The respondents can be identified as belonging to the following categories, although it should be noted that not everyone answered every question. 46% of respondents¹ identified themselves as being Protestant and 25% as Catholic; 7% as other and 22% stated no religious background. 25% stated that they were of a Unionist political opinion and 15% as Nationalist; 19% as other and 41% stated no political opinion.

When respondents were asked whether they thought that the current policy should be changed in any way, 35% said yes and 42% said no; 23% gave no answer.

When asked whether they thought that the Council should have a different policy on the flying of the Union flag at the City Hall from the policy applied at other buildings. 26% said yes, 48% said no and 26% gave no answer.

When asked which of the following policy options respondents preferred in respect of the City Hall, Duncrue Complex and Ulster Hall – i.e. no change, designated days, no flag, neutral or civic flag, or none of these – around half the respondents stated a preference for no change (56% for no change at City Hall, 49% no change at Duncrue and 50% no change at the Ulster Hall).

¹ All percentages quoted in text rounded up to nearest whole number; a full list of statistical tables on the Employee Consultation Survey is attached as Appendix G

It should be noted that selecting the 'no change' option meant expressing a preference for the current policy, which is that the Union flag is flown permanently at the City Hall and on 19 days (designated flag days + 4) at the Duncrue Complex and Ulster Hall.

Although the figures varied slightly according to workplace location, approximately 11%-12% of respondents preferred designated flag days, 11%-17% preferred no flag, and 16%-17% opted for a neutral or civic flag.

When these preferences are broken down by religious background and political opinion, rather than workplace location, the position is clearer.

Of those who state that they are from a Protestant background, 81% opt for no change in the current policy at the City Hall and 70% for no change at Duncrue and the Ulster Hall. Of those who state that they are from a Catholic background, only 16% favour no change with respect to the current policy at the City Hall and 14% no change at Duncrue and the Ulster Hall.

Of those who state that they are from a Catholic background, 67% opt for either no flag or a neutral or civic flag at the City Hall, 74% at Duncrue and 73% at the Ulster Hall. Only 10% of Protestant employee respondents opted for no flags or a neutral or civic flag at Duncrue or the Ulster Hall and only 5% for these options at the City Hall.

84% of those who state that they are of a unionist political opinion want to see no change in the current policy at the City Hall, 71% no change at Duncrue and 70% no change at the Ulster Hall. However, less than 12% of those from a nationalist political opinion want the present policy to continue at the City Hall, 10% at the Ulster Hall and 8% at Duncrue.

79% of those who state that they are of a nationalist political opinion would prefer either no flag or a neutral or civic flag at Duncrue, 77% at the Ulster Hall and 74% at the City Hall.

Only 8% of unionist employee respondents opt for no flag or a neutral or civic flag at Duncrue, 7% at the Ulster Hall and less than 4 % for no flag or a neutral or civic flag at the City Hall.

Those respondents who expressed a preference for Option 5 – ‘Other’ - were asked to outline what policy they would like the Council to adopt. The 85 respondents who selected this option indicated the following preferences:

- 47 (55%) said that they would like the Council to fly the Union flag on a permanent basis at all premises – some made it clear that this referred to all Council owned properties and not just the three where the Union flag is currently flown
- 20 (23%) said that they would like the Council to fly the Irish Tricolour whenever the Union flag is flown
- 7 (9%) suggested flying various combinations and varieties of flags including the EU flag.

Respondents were also given an opportunity to submit comments in answer to the question “Why do you think the current policy should be changed or not be changed?” It is not possible to include all the comments made in this report but a selection is set out in Appendix G.

The most frequent comment was that the policy should not be changed because the Union flag is the flag of the United Kingdom of which Northern Ireland is a part. Some of the comments indicated that the respondents felt very strongly about the issue. Other respondents seemed more willing to compromise but felt that the Union flag should continue to be flown. A large number of respondents made the point that the City Hall should have special status.

Comments from those who considered that the policy should be changed mainly related to the need to promote a neutral and harmonious environment and to ensure that no-one was offended by the policy. Some indicated that an acceptable compromise would be to fly the Union flag at the City Hall only and on specific days.

8.6.5 *Employee focus groups - comments*

Although the written questionnaires provided a limited opportunity for employees to comment on why they considered that the current policy should or should not be changed, more detailed comments were obtained at the group discussions.

Two focus group sessions were held, one primarily for staff based at the Duncrue Complex and one for staff based elsewhere. Participants were selected at random from those who had volunteered to attend and included men and women of various ages with a range of religious beliefs/community backgrounds and political opinions.

The comments made at the focus group sessions are set out in Appendix G. In summary, many of the participants made the point that flying the Union flag as a mark of respect was acceptable but when any flag was flown as a symbol of dominance the practice became unacceptable. Most felt that the Council flew the Union flag in a respectful way and not in order to make a political point and that most Council employees would understand this. Nevertheless several participants felt that there was a need for change in order that the Council could show that it was leading the way in promoting good relations. It was suggested that if any changes were made to the current policy, the reasons for them should be fully explained and that the Council should try to find ways to provide more information on the meaning of flags and emblems to both employees and the public.

8.6.6 *Visitors to the City Hall - comments*

23 companies/individuals who supply or carry out work in the City Hall on a regular basis were invited to comment on the policy by means of an anonymous questionnaire. 12 responses were received.

7 respondents said that they did not think that the current policy should be changed in any way. 6 of these respondents identified themselves as Protestant and either Unionist or of other political opinion whilst the other did not complete this part of the questionnaire. The reasons given included:

- it is the national flag of the country in which we reside
- the current policy is fine based on the fact that Britain puts a lot of money into the Province
- our employees work all over Ireland and we would be very annoyed if anyone refused to enter a building with either the Union Jack or the Tricolour displayed.

5 respondents said that they thought the policy should be changed. 3 of these respondents identified themselves as Catholic and 2 as being of other religious

belief; 3 identified themselves as Nationalist, one of other political opinion and one did not complete this part of the questionnaire. The reasons given included:

- it is not in the spirit of equality when both employees and visitors come from a variety of backgrounds – there most definitely should be a change in order to embrace all sections of the community and make them feel comfortable at the City Hall
- the current policy does not provide a neutral environment for visitors, staff and contractors – it portrays the Council as being representative of one community
- we have to go forward – we need a flag representing all of us.

8.6.7 Visitors to the Duncrue Complex - comments

11 suppliers who have reason to visit the Duncrue Complex on a regular basis were invited to comment on the policy by means of an anonymous questionnaire. Only two responses were received.

One respondent who identified himself as Protestant and Unionist said that the policy should not be changed. The other respondent, who did not complete the section of the questionnaire on religious belief/political opinion, said that the policy should be changed so that the Union flag was flown on the three buildings 19 days per year.

8.6.8 Hirers of the Ulster Hall - comments

12 companies/individuals who have hired the Ulster Hall within the last 12 months and who are known to hire the Hall regularly were invited to comment on the policy by means of an anonymous questionnaire. 3 responses were received, 2 from respondents who identified themselves as Protestant/Unionist and one who identified themselves as Catholic and of other political opinion. 2 respondents expressed a preference for a neutral or civic flag at the Ulster Hall, whilst the third did not think that the current policy should be changed.

8.6.9 Public Consultation Survey 2004

The Council undertakes its own major public consultation exercise in Belfast every two years. A specific question was included in the 2004 survey to ascertain the views of the general public on this issue; to avoid confusion, this question related only to the flying of the flag on the City Hall:

“The Council’s current policy is that the Union Flag is flown outside the City Hall on a permanent basis. Of the following options would you prefer that the Council:

- *Makes no change to current policy*
- *Flies the Union Flag on the 15 designated days each year*
- *Has no flag at all*
- *Flies a neutral or civic flag*
- *None of the above.”*

1530 people from all over the City were interviewed in January 2004 in the Council’s biennial major Public Consultation Survey. Overall, 33%² of respondents preferred no change to the current policy; 24% opted for no flag; 21% for a neutral or civic flag; 10% for the designated days and 13% for none of these options.

However, when the results from the survey are analysed according to the profiles of the respondents, they show a clear variation according to religious background, political opinion and place of residence (all of which are closely inter-linked in Belfast, given its segregated nature).

Religious background

Analysis of responses according to religious background shows that 61% of the Protestants who responded wanted to see no change in the current policy, whereas less than 5% of Catholics were in favour of this option. 78% of Catholics preferred either no flag or a neutral or civic flag, but only 16% of Protestants chose these options.

² All percentages in text rounded up to nearest whole number; all relevant statistical tables from the Public Consultation Survey are attached as Appendix H

Political opinion

Analysis of responses according to political opinion shows that 74% of respondents who described themselves as unionists preferred no change in the current policy, but only 5% of nationalists favoured no change. 81% of respondents who described themselves as nationalists preferred either no flag or a neutral or civic flag, but only 9% of unionists selected these options.

Electoral Area

Analysis of responses according to Electoral /geographical area shows a similar picture. Those respondents who would prefer no change to the existing policy range from 64% from the Court Electoral Area, 53% in Pottinger, 47% in Victoria, dropping to under 3% in Upper Falls and 2% in Lower Falls. 87% of respondents from Lower Falls and 80% from Upper Falls would prefer the Council to fly either no flag or a neutral or civic flag; this figure fell to 10% in Court.

9. DECISION

On 26 March 2004 the Policy and Resources Committee considered detailed reports on the EQIA and the additional advice of Senior Counsel.

Arising out of this the Council agreed, at its meeting on 4 May 2004, not to make any change in its current policy.

10. PUBLICATION

This report will be available on the Council's website at www.belfastcity.gov.uk
It will be available on request in other formats including Braille, disk and audio cassette and in minority languages to meet the needs of those who are not fluent in English.

11. MONITORING

The Council is currently developing a system for monitoring the impact of its policies on equality of opportunity, with particular reference to those policies which have been subjected to EQIA. The impact of this policy will therefore be monitored and the results reported to the Council.

Appendix A

Census 2001 – denominations included in categories of religious belief

Other Christian (including Christian related)

Baptist
Free Presbyterian
Brethren
Christian
Church of England
Congregational Church
Pentecostal
Elim Church
Protestant
Reformed Presbyterian
Jehovah's Witness
Church of Scotland
Independent Methodist
Salvation Army
Church of Jesus Christ of Latter Day Saints (Mormons)
Non-Subscribing Presbyterian
Evangelical
Church of the Nazarene
Non Denominational
Christian Fellowship
Church of God
Presbyterian
Religious Society of Friends (Quakers)
Moravian
Protestant (Mixed)
Evangelical Presbyterian Church
Whitewell Metropolitan Tabernacle
Methodist
Unitarian
Independent
Church of Christ
Free Methodist
Apostolic Church
Seventh Day Adventist
Assemblies of God
Church
Lutheran
City Mission
House Church
Interdenominational
Anglican

Metropolitan Church
Independent Evangelist
Orthodox Church
Christian Fellowship Church
Church in Wales
Scottish Presbyterian
Greek Orthodox
Charismatic
Reformed
Fellowship Church
Free Presbyterian Church of Ulster
Vineyard Churches
Mission Hall
Community Church
Christian Scientist
Cooneyite
King's Fellowship
New Church
Jesus Saves Mission
Christadelphian
Fellowship of Independent Evangelical Churches
Free Church of Scotland
Lifeline/Lifelink Church
Free Presbyterian Church of Scotland
Believe in God
Belfast Chinese Christian Church
Emmanuel Church
Full Gospel Assembly
Nonconformist
Emmanuel Mission
Dutch Reformed Church
The Methodist Church in Wales
Russian Orthodox Church
New Life Fellowship
Branagh Memorial Church
Lifeboat Mission
Scottish Episcopal Church
Episcopalian
The Revival Fellowship
Glenabbey Church
United Reformed Church
Non Sectarian
Faith Mission
Free Evangelical Church
Jordan Victory Church
Celtic Christian
Ecumenical

Gateway Church
Shalom Victory Church
Bible Pattern Church
Church of the Redeemer
Iron Hall
United Church of Canada
Other Christian Denominations

Other religions and philosophies (and other answers)

Muslim (Islam)
Hindu
Buddhist
Jewish
Baha'i
Sikh
Pagan
Atheist
Spiritualist
Agnostic
Own Belief System
Hare Krishna
Wicca
Taoist
Humanist
Chinese Religions
Druidism
Rastafarian
Zoroastrian
Satanism

Appendix B

BELFAST CITY COUNCIL

REPORT OF THE DIRECTOR OF LEGAL SERVICES

SUBMITTED TO THE POLICY & RESOURCES COMMITTEE

25 MAY 2002

Display of Flags and Emblems at the City Hall

1. Purpose of Report

To inform the Committee of the contents of an Opinion obtained from Senior Counsel in relation to the issue of the display of flags, memorabilia and emblems at the City Hall.

2. Background

The Committee was informed by the previous Chief Executive at its meeting of 16th November 2001 that he had received a letter from Councillor O'Broin in which the Councillor had expressed the view that the current display of flags, emblems and other symbols outside and within the City Hall were exclusively Unionist and British in character, and that this created a working environment which was discriminatory and unwelcoming, which Councillor O'Broin complained was in contravention of the Council's Equality Scheme.

The Chief Executive had advised the Committee that once he had obtained further information regarding items displayed in the City Hall, he proposed to request the Director of Legal Services to obtain Senior Counsel's opinion in relation to the display of the Union Flag outside the building and material displayed within the building to determine whether the display of said material was contrary to law or in contravention of the Council's Equality Scheme.

3. Counsel's Opinion

An Opinion has now been obtained from Mr. Nicholas Hanna QC and a copy of the full text is appended to this report.

Senior Counsel begins, after his opening comments, by stating that the provisions of the Flags (Northern Ireland) Order 2000 only apply 'to the flying of flags at government buildings'. A government building is defined by Article 3 (2) as meaning a 'building wholly or mainly occupied by members of the Northern Ireland Civil Service'. Senior Counsel therefore concludes that the Flags Order does not apply to the City Hall or to any other Council building as they are not buildings wholly or mainly occupied by members of the Civil Service. He continues that the decision on the flying of flags is therefore a matter which remains within the discretion of the Council itself. Nevertheless this discretion, like any discretion, must be exercised in a lawful fashion and its exercise may be subject to the supervision of the High Court by way of Judicial Review.

Senior Counsel then goes on to explore the provisions of Articles 19 and 28 of the Fair Employment and Treatment (NI) Order 1998 and Section 76 of the (Northern Ireland) Act 1998.

Senior Counsel starts off by examining the case law in relation to Article 19 of the 1998 Order which he states effectively requires employers in Northern Ireland to provide and take steps to maintain a 'neutral working environment' for its employees. Senior Counsel explains that the essence of a neutral working environment is that employees should not be subjected to a detriment by feeling intimidated or harassed or subjected to any form of 'chill factor' in the workplace. The most important decision of the Fair Employment Tribunal on the issue is the case of *Brennan v Short Brothers plc* (1995). In the course of that judgement the Tribunal made the following comments:

'A neutral working environment is one where employees can work without contemplating their own or any person's religious belief or political opinions. It is not about the size of flags or the precise manner in which religious beliefs or political opinions are demonstrated – it is about the effect which things have whether intended or not..... It has to be emphasised as often as is

necessary that anything which identifies community allegiance needs justification in the workplace'.

Senior Counsel then goes on to examine whether the display of artefacts and memorabilia displayed in the public and civic areas of the City Hall would fail the Brennan test and states that 'while some of the items on display might well be regarded as more acceptable to members of the unionist community than to members of the nationalist community, I would be surprised if a tribunal did not conclude that it would be obvious to anyone that they were being displayed, in a quasi-museum type setting, not as *'manifestations of loyalist supremacy,'* but as memorials and items of local and historic interest which are part of the cultural history and heritage of Belfast'.

Senior Counsel continues... 'As stated in Brennan, a tribunal would be concerned with 'the *effect* which things have, whether intended or not'. In my view it is very unlikely that the display of these items in the setting of the public and civic areas of the City Hall would be regarded as having the effect of infringing the concept of a neutral working environment, bearing in mind that the main working areas of the City Hall (i.e. the offices) are actively preserved as neutral working environments'. Senior Counsel concludes... 'I consider it improbable that the display of these items would be held to constitute a non-neutral working environment, or to give rise to any breach of Article 19'.

Senior Counsel then goes on to consider whether the flying of the Union flag on the exterior of the City Hall would be likely to have an intimidatory or chilling effect on persons who work within the City Hall and states as follows:-

'Given the provisions of the Flags Order and the Flags Regulations, which apply to government buildings, and the fact that the City Hall is a public building which contains the administrative headquarters of the Council, it is unlikely that a Tribunal would fault the Council if it chose to fly the Union flag on the City Hall on designated flag days. Such a practice would be consistent with the practice of many public bodies, including councils, throughout the United Kingdom. It would accord with the practice laid down for government buildings and could be regarded as *'striking the right balance between, on the one hand, acknowledging Northern Ireland's constitutional position and, on the other, not giving offence to those who*

oppose it'[per Kerr J in *Re Murphy's Application for judicial review*[2001]. The Council's motives for going beyond this limited amount of flag flying have not been spelt out. No explanation beyond '*custom and practice*' has been articulated for the practice of flying the Union flag on the City Hall on every day of the year. Such a practice is clearly unusual and, in the event of proceedings under Article 19, a tribunal would in my view be likely to seek an explanation from the Council for continuing it. It is unlikely that the explanation of '*custom and practice through many years*', without more would be regarded as satisfactory'.

Senior Counsel concludes this paragraph by observing that there is at present no decision of the Fair Employment Tribunal in relation to flying the flags on the exterior of workplaces. He states... 'All one can say is that there is a degree of risk that the flying of the Union flag at the City Hall on days other than designated flag days, and at other premises even on designated flag days only, might be held to infringe the concept of a neutral working environment for those who work in those buildings'.

Senior Counsel then turns to examine the provisions of Article 28 of the Fair Employment and Treatment (Northern Ireland) Order 1998 which makes it unlawful for any person concerned with the provision of goods, facilities or services to the public or a section of the public to discriminate against a person who seeks to obtain or use those goods, facilities or services. He states that... 'in order to discriminate under that provision a person must either refuse, or deliberately omit to provide another with certain goods, facilities or services There is nothing in Article 28 which could be regarded as corresponding with the concept of a neutral working environment which falls to be considered under Article 19. Moreover it should be just as obvious to persons accessing these parts of the City Hall to use them, or to receive the benefit of facilities and services in them, that the artefacts and memorabilia are present for display in a quasi-museum setting. There could be no question of the facilities or services themselves being provided on a discriminatory basis. In the circumstances I consider it unlikely that the flying of the Union flag outside any Council building or the display of any of the items mentioned above within the public and civic areas of the City Hall, would be likely to give rise to any breach of Article 28'.

In relation to Section 76 of the Northern Ireland Act 1998 Senior Counsel points out that this provision prohibits a public authority carrying out

functions relating to Northern Ireland in a manner which discriminates against a person or class of persons on the ground of religious belief or political opinion. He states... 'In the context under consideration I very much doubt if this provision adds anything to the discrimination provisions of Articles 19 and 28 of the Fair Employment and Treatment Order' and concludes... 'in the circumstances I consider the risk of current policies and practices running foul of Section 76 to be remote'.

Senior Counsel then turns his attention to the question of whether or not the flying of the flag above the City Hall and the display of material within the City Hall would be contrary to the provisions of Section 75 of the Northern Ireland Act 1998 and the provisions of the Council's Equality Scheme.

He notes that the Equality Commission's Guide refers to the dictionary definition of the term 'policy' as meaning 'a course or principle of action adopted or proposed by a government, party, business or individual'. He states that this is clearly a wide term which covers unwritten as well as written policies. He concludes that... 'In my view the concept is wide enough to embrace the Council's policies and procedures in relation to the flying of the Union flag on civic buildings and the maintenance and display of artefacts and memorabilia in the public and civic areas of the City Hall'.

Senior Counsel indicates that the only case to date of which he is aware in which Section 75 has been considered is the decision of Kerr J in *Re Murphy's Application for judicial review*(2001)] NI 425. This case dealt with a challenge to the making of the Flags Order and Flags Regulations by the Secretary of State. In the course of his judgement Kerr J stated as follows:-

'In any event, I do not consider that, in making the Regulations, the Secretary of State acted in breach of Section 75. As Mr Mandelson stated, in introducing the Flags Order to the House of Commons, the flying of the Union flag is not designed to favour one tradition over another, it merely reflects Northern Ireland's constitutional position as part of the United Kingdom'.

Senior Counsel then quotes another section of Kerr J's judgement which states as follows:-

'The Union Flag is the flag of the United Kingdom of which Northern Ireland is a part. It is the judgment of the Secretary of State that it should be flown on government buildings only on those days in which it is flown in Great Britain. By thus confining the days in which a flag is to appear, the Secretary of State sought to strike the correct balance between, on the one hand, acknowledging Northern Ireland's constitutional position and on the other not giving offence to those who oppose it. That approach appears to me to exemplify a proper regard for 'partnership, equality and mutual respect' and fulfil the government undertaking that its jurisdiction in Northern Ireland shall be exercised with rigorous impartiality on behalf of all the people in the diversity of their identities and traditions. I do not consider therefore that the Regulations have been shown to be in conflict with the Belfast Agreement.'

Senior Counsel comments on this quotation as follows:-

'Accordingly, while the learned judge recognised, and acknowledged, the constitutional status of the Union flag as the flag of the United Kingdom, of which Northern Ireland is a part, he appears to have taken the view that there would have been no breach of Section 75... *because the flying of the Union flag was effectively limited by the legislation to the designated flag days.* It seems likely, if the legislation had required or authorised the flying of the Union flag excessively, or in circumstances where it may have provoked others, that he would have held that there may have been a breach of Section 75, because a decision to introduce legislation to that effect could only have been arrived at in disregard of the desirability of promoting good relations'.

Senior Counsel therefore advises the Council that in the course of making its arrangements for assessing its compliance with its Section 75 duties, and in particular in preparing its action plan setting out how it intends to address the good relations duty under Section 75(2), the Council will need to consider its policies in relation to the flying of the Union flag, and in so doing, to have regard to the desirability of promoting equality of opportunity and good relations. If the Council failed to give consideration to the question of whether flying the Union flag at the City Hall every day in the year might be excessive or provocative, it would, in Senior Counsel's opinion, be at risk of being found to have failed to comply with the provisions of its Equality Scheme.

Senior Counsel goes on to state... 'For the same reasons I consider that in preparing its action plan setting out how it intends to address the good relations duty under Section 75(2), the Council will need to reconsider its policies in relation to the display of memorabilia and artefacts in the public and civic areas of the City Hall and in so doing, to have regard to the desirability of promoting good relations. While the Council is obliged, by the statutory provision, to *'have regard'* to this consideration, it is not obliged to take any particular form of action. What it must do is to take the consideration into account in deciding whether to continue its existing policy, or to change it..... In order to comply with its Equality Scheme the Council must make effective arrangements to ensure that these policies and practices are reviewed in light of the statutory obligation cast upon it *'to have regard to the desirability of promoting good relations'*. Moreover, whatever decision the Council ultimately makes must be rational in the sense in which that term is understood in a judicial review context'.

Senior Counsel concludes by advising ... 'So long as it is making effective progress within the timescale laid down within the Equality Scheme, it is difficult to see how a complaint that the Council is failing to comply with the Equality Scheme could succeed at the present time. If, having reviewed a particular policy, a person considered that the Council had failed to have regard to the desirability of promoting good relations, or had failed to have due regard to the need to promote equality of opportunity, that person could then complain on substantive grounds that the Council had failed to comply with its scheme, bearing in mind its expressly stated policy of fulfilling its Section 75 obligations in all parts of its organisation'.

4. Recommendation

As Members will be aware, the Council is currently in the course of preparing a Good Relations Strategy which is being considered by a Steering Group comprising Members drawn from each of the political parties on the Council and a number of senior officers. Once the draft policy has been discussed, it will be referred to the Policy & Resources Committee for consideration. The policy itself will deal with issues of cultural diversity and good relations including such matters as the display of flags and emblems and also artefacts and other memorabilia. As a new

policy, the Council will be required to subject that policy to an Equality Impact Assessment.

The Good Relations Steering Group at its meeting on 10th May was advised by the Chief Executive that Senior Counsel's opinion would be submitted to the Policy and Resources Committee on 24th May and the Group agreed that the most preferable course of action would be that consideration of the issues of the flying of flags and the display of memorabilia should be referred to the Steering Group to enable them to be considered in the context of the development of the good relations strategy.

In light of the Opinion received from Senior Counsel and the views of the Good Relations Steering Group, I would recommend that the issue of the display of flags, memorabilia and emblems at the City Hall and other Council buildings be referred to the Steering Group so that the matter can be included within the issues of cultural diversity to be reviewed and further considered. The adoption of this proposal would mean that the Council will not at this point of time be open to the accusation that it is not acting in accordance with its Equality Scheme.'

Appendix C**Policies of Councils in Northern Ireland**

	Council	Location	Flags & Dates
1	Antrim Borough Council	On Council HQ & other civic buildings	Union Flag flown on Council HQ every day
2	Ards Borough Council	On Council HQ, Town Hall & Queen's Hall	Union Flag and Ulster Flag flown on Council HQ every day
3	Armagh City & District Council	On Council HQ	Union Flag flown on designated days
4	Ballymena Borough Council	On Council HQ & Town Hall	Union Flag flown every day
5	Ballymoney Borough Council	Borough Offices, Riada House, Joey Dunlop Leisure Centre, Town Hall	Union Flag flown on all premises listed on designated days plus New Year's Day, Easter Sunday, 12 July & Christmas Day
6	Banbridge District Council	On Council HQ	Union Flag flown on Council HQ every day
7	Carrickfergus Borough Council	On Town Hall, Leisure Centre, Bentra Golf Club, Sullatober Depot	Union Flag and Ulster Flag flown on all premises listed every day
8	Castlereagh Borough Council	On Council HQ	Union Flag, Ulster Flag and Council Coat of Arms flown every day
9	Coleraine Borough Council	On Council HQ (Cloonavin) and 3 Town Halls	Union Flag : Cloonavin every day the building is in use and ceremonial days if not in use, Coleraine Town Hall every day, Portrush and Portstewart Town Halls in July & August and some ceremonial days
10	Cookstown District Council		No flags flown

	Council	Location	Flags & Dates
11	Craigavon Borough Council	On Civic Centre	Union Flag flown on designated days
12	Derry City Council		No flags flown
13	Down District Council	On Council HQ	Council Flag flown every day – Union Flag not flown on any occasion
14	Dungannon District Council	On Council HQ	Union Flag flown on designated days
15	Fermanagh District Council		No flags flown
16	Larne Borough Council	On Council HQ and Leisure Centre	Union Flag flown every day
17	Limavady Borough Council	On Council HQ	Union Flag flown on designated days
18	Lisburn City Council	On Council HQ	Union Flag flown on designated days plus 1 July and 12 July
19	Magherafelt District Council		No flags flown
20	Moyle District Council		No flags flown
21	Newry and Mourne District Council		No flags flown
22	Newtownabbey Borough Council	On all Council administrative buildings and leisure centres	Union Flag flown on all premises listed every day
23	North Down Borough Council	On Town Hall	Union Flag flown every day
24	Omagh District Council	On Council HQ	Council Coat of Arms flown at all times – Union Flag not flown
25	Strabane District Council		No flags flown

Appendix D**Policies of Councils in Scotland**

	Council	Location	Flags & Dates
1	Aberdeen City Council		No information available
2	Aberdeenshire Council	Civic HQ Area Offices Town Halls	Union Flag, Saltire and Council Flag flown on Civic HQ every day; Saltire flown on other buildings every day
3	Angus Council	Civic HQ Town Halls	Saltire flown on all buildings every day; Union Flag flown on designated days
4	Argyll and Bute Council		Union Flag flown on designated days
5	Clackmanannshire Council		No information available
6	Comhairle nan Eilean Siar	Main Council Office Area Office	Union Flag and Saltire flown on designated days
7	Dumfries and Galloway Council		Currently reviewing the policy
8	Dundee City Council	City Chambers St. Mary's Tower Caird Hall Broughty Ferry Castle	Union Flag, Saltire and City Flag flown at City Chambers every day; Saltire flown at other properties every day
9	East Ayrshire Council		Union Flag and/or Saltire flown on designated days
10	East Dunbartonshire Council	Council HQ Boclaire House	Union Flag, Saltire and Council Flag flown on designated days
11	East Lothian Council		No information available
12	East Renfrewshire Council	Council HQ	Union Flag flown on designated days

	Council	Location	Flags & Dates
13	Edinburgh City Council	City Chambers	Saltire and City Flag flown every day; Union Flag and Saltire displayed on balustrade of the Chambers
14	Falkirk Council	Council HQ	Union Flag and Saltire flown on designated days
15	Fife Council	Council HQ County Buildings Area Headquarters City Chambers St Andrew's Town Hall	Union Flag and Saltire flown on designated days on most buildings; no flags flown at St Andrew's Town Hall
16	Glasgow City Council	City Chambers	Union Flag flown on designated days
17	Highland Council	Council HQ Town Halls	Saltire flown at most buildings every day
18	Inverclyde Council		No information available
19	Midlothian Council	Council HQ Town Halls	Union Flag, Saltire and Council Flag flown on designated days
20	Moray Council	Council HQ Council Offices Town Halls Schools War Memorials	Union Flag and Saltire flown at Council HQ every day; Saltire flown at Council Offices, Town Halls and Schools every day; Union Flag flown at War Memorials every day
21	North Ayrshire Council	Cenotaph	Union Flag and Saltire flown on designated days
22	North Lanarkshire Council	Council HQ Area Offices	Union Flag, Saltire and Council Flag flown on designated days
23	Orkney Islands Council		No information available
24	Perth and Kinross Council	Council HQ	Union Flag and Saltire flown on designated days

	Council	Location	Flags & Dates
25	Renfrewshire Council	Council HQ Area Offices	Union Flag, Saltire and European Flag flown every day
26	Scottish Borders Council	Council HQ Town Halls England/Scotland border	Saltire flown every day Union Flag flown at Kelso Town House and on the border every day
27	Shetland Island Council		No information available
28	South Ayrshire Council		No information available
29	South Lanarkshire Council	Council HQ Area Offices	Corporate Flag flown every day; Union flag and Saltire flown on designated days
30	Stirling Council	Council HQ	Union Flag and Saltire flown on designated days
31	West Dunbartonshire Council	All civic buildings	Coat of Arms flown every day; Union Flag and Saltire flown on designated days
32	West Lothian Council	All Council offices	Union Flag, Saltire and Council Flag flown on designated days

Appendix E**Policies of County Councils in the Republic of Ireland**

	Council	Location	Flags & Dates
1	Carlow County Council		No flags flown
2	Cavan County Council		No information available
3	Clare Council	All Council offices and facilities	National Flag and County Flag flown at all times
4	Cork County Council		No information available
5	Donegal County Council	Council offices	National Flag and County Flag flown on designated days
6	Dun Laoghaire-Raithdown County Council	County Hall	Council Flag flown at all times; National Flag flown on designated days
7	Fingal County Council		County Flag flown at all times; National Flag flown on designated days
8	Galway County Council		National Flag flown on some state occasions
9	Kerry County Council		National Flag, County Flag and EU Flag flown on designated days
10	Kildare County Council	Council HQ Council buildings	National Flag flown on designated days
11	Kilkenny County Council	County Hall	National Flag, County Flag and EU flag flown on designated days
12	Laois County Council	Council offices	National Flag flown on designated days
13	Leitrim County Council	Council HQ	National Flag and County Flag flown on designated days
14	Limerick County Council	Council HQ Area Offices	National Flag and County Flag flown on designated days

	Council	Location	Flags & Dates
15	Longford Council		No information available
16	Louth County Council		Flags flown only for visiting dignitaries
17	Mayo County Council	Council HQ	National Flag, County Flag and EU Flag flown on designated days
18	Meath County Council	County Hall	National Flag flown on designated days
19	Monaghan County Council		National Flag flown on designated days
20	Offaly County Council	Council HQ	National Flag, County Flag and EU Flag flown on designated days
21	North Tipperary County Council	County Hall	National Flag flown on designated days
22	Roscommon County Council		National Flag flown on designated days
23	Sligo County Council	County Hall	National Flag, County Flag and EU Flag flown on designated days
24	South Dublin County Council		No information available
25	South Tipperary County Council		National Flag flown on designated days
26	Waterford County Council	City Hall	National Flag flown on designated days
27	Westmeath County Council		No information available
28	Wexford Council	County Hall	National Flag and EU Flag flown on designated days
29	Wicklow County Council	County buildings	National Flag, County Flag and EU Flag flown on designated days

Appendix F**Policies of Councils in England and Wales**

	Council	Location	Flags & Dates
1	Birmingham City Council		Union Flag flown on designated days; City Flag flown every day
2	Bradford City Council		Union Flag flown every day
3	Cardiff County Council		Union Flag flown every day
4	Coventry City Council		Union Flag flown every day
5	Gateshead Borough Council		Union Flag flown on designated days
6	Leeds City Council		Union Flag flown on designated days
7	Manchester City Council		Union Flag flown on designated days
8	Newcastle-upon-Tyne City Council		Union Flag, EU Flag and Council Flag flown every day
9	Sheffield City Council		Union Flag flown on designated day; City Flag flown every day
10	Swansea City and County Council		Union Flag and Welsh Dragon flown every day

Appendix G

Employee Consultation Survey - Statistical Tables

The following tables show the number of respondents in each of the main categories who expressed a preference and the preferences they expressed. The figures for preferences are shown as percentages of those responding; those who did not express a preference are not included in the percentage calculations.

	Option 1 No change	Option 2 Flag Days	Option 3 No flag	Option 4 Neutral flag	Option 5 Other
City Hall	56.1%	12.1%	10.7%	16.7%	4.4%
Duncrue	49.4%	11.0%	17.1%	16.2%	6.3%
Ulster Hall	50.0%	10.8%	16.5%	16.3%	6.4%

Table 1: Preferences for various options according to work location

	Option 1 No change	Option 2 Flag Days	Option 3 No flag	Option 4 Neutral flag	Option 5 Other
Catholic					
City Hall	15.7%	9.5%	23.8%	43.5%	7.5%
Duncrue	14.1%	5.4%	37.2%	36.3%	7.0%
Ulster Hall	14.3%	5.3%	36.7%	35.8%	7.9%
Protestant					
City Hall	80.9%	11.1%	1.3%	3.6%	3.1%
Duncrue	69.6%	11.4%	5.5%	5.0%	8.5%
Ulster Hall	69.8%	10.8%	5.3%	5.1%	9.0%
Other					
City Hall	51.5%	8.7%	18.8%	19.6%	1.4%
Duncrue	43.2%	6.8%	28.0%	20.5%	1.5%
Ulster Hall	44.7%	6.8%	26.5%	20.5%	1.5%

Table 2: Preferences for various options according to work location and religious background

	Option 1 No change	Option 2 Flag Days	Option 3 No flag	Option 4 Neutral flag	Option 5 Other
Nationalist					
City Hall	11.8%	5.8%	30.1%	43.7%	8.6%
Duncrue	7.8%	4.9%	43.9%	34.8%	8.6%
Ulster Hall	9.5%	4.9%	42.7%	34.4%	8.5%
Unionist					
City Hall	83.7%	9.3%	1.2%	2.5%	3.3%
Duncrue	70.8%	11.2%	4.1%	3.8%	10.1%
Ulster Hall	70.0%	11.3%	3.7%	3.7%	11.3%
Other					
City Hall	52.1%	10.9%	11.9%	22.8%	2.3%
Duncrue	42.8%	8.6%	18.8%	25.0%	4.8%
Ulster Hall	43.5%	8.1%	18.9%	25.2%	4.3%

Table 3: Preferences for various options according to work location and political opinion

Appendix G

Selection of comments made by respondents in Employee Survey

Comments about why the current policy should not be changed

- because we are British
- British flag flying in a British country should cause no harm to anyone
- it is important to show that our British identity should not be eroded
- under democracy the majority rule flag of the country should not be hidden to please minorities
- flying the Union Jack at the City Hall is the right thing to do as we are a British country – not flying at other buildings is also fair so as not to offend
- I don't think it should be changed as it is traditional
- City Hall is an important civic focal building with heritage/historical connotations and the presence of the Garden of Remembrance means it should have special status
- it is the flag of the country where we live and we should be proud of it
- I consider the flying of one flag to be fairly inoffensive when compared to paramilitary flags which are numerous in Belfast
- it is the main civic building in Belfast and it wouldn't be unusual to have a flag flying over such a building in any other country
- it is an insult that the flag of our nation cannot be flown any time, anywhere – I cannot understand how the flag of the country you choose to live in can be offensive
- flags don't kill or harm anyone
- policy has been in place for as long as I remember – why should it be changed now?
- it is the official flag of the country – as long as it is not being flown to disrespect me (as a Catholic) it is OK
- I think the vote should come from the general public not Council employees
- the flag is not intended to offend or insult
- the flag is on the top of a building high up – no-one is standing in the street waving it in front of your face
- the public perceive that the Council is going Nationalist and changing the policy would enforce this perception and possibly make things difficult in some areas
- although change is good I feel (changing the policy) could whip up a lot of negative feelings within the loyalist community
- I work in the City Hall and do not even notice the flag flying – you really do have to have a keen eye to see and thus be offended by it

Comments about why the current policy should be changed

- feel intimidated by the Union flag and what it represents
- some people from other religions find it to be an offence
- we are a multi cultural society and this needs reflected
- flying of flags has got out of proportion in NI on both sides to such an extent that they no longer have any meaning – remove all flags
- because it is outdated it does not reflect today’s society and whether people like it or not it does offend some people
- Belfast City Council is a local authority therefore the flying of a national flag has no relevance to the work of or services provided
- if even a small percentage are offended by the Union flag, which they are, then I believe it should not be flown
- the flying of the Union flag is seen by many as a blatant act of sectarianism
- it should be changed to ensure an equal status for everyone whether they work in the City Hall or an outreach facility
- so that no individual groups feel pressured or uncomfortable
- these civic buildings belong to all the people of Belfast – should be free of all political or sectarian symbols
- too much importance is put on the type of flag from both sides of the community – BCC should come up with an alternative
- I think we should try to compromise – however it is our country’s flag and should still be flown
- the flying of the Union flag is not conducive to promoting a neutral environment
- the Union flag is flown on specified days for particular reasons i.e. Royal birthdays, national celebrations – to fly it every day takes away from that and gives the impression that it is flown to deliberately annoy one section of the community
- the flying of the British flag is an insult to the communities who have suffered for many years at the hands of the British government and her army
- as a perceived Nationalist I respect the Union Jack but I feel it is sufficient to only be flown at the City Hall
- while flying the flag on special days e.g. the Queen’s Birthday, is perfectly fine, its permanent display is saying something to a large number of citizens
- some compromise should be sought so that neither side feels that they have lost and the other gained
- the flag still feels like “Ulster says no”
- the policy should be made by Government and not the Council
- policy for the City Hall should be the same as for Government buildings
- City Hall should set an example of change throughout the country

Comments made at staff Focus Groups

Comments on whether the Union flag causes offence

- The Union flag is a representation of this country – it is made up of the crosses of the 4 Patron Saints
- Tricolour represents the Green and the Orange separated by the white of peace – to use it for a political agenda is an insult
- The design of the Union flag is such that people should respect it
- Catholics accept that the Union flag is the flag of the country – but it's being thrown in your face – perception is that the Union flag is flown not just as a matter of pride but as a symbol of dominance
- A lot of Protestants don't feel like that (don't want to dominate)
- Many Catholics died under the Union flag in the World Wars and so some Catholics are equally proud of the Union flag
- Both sides of the community have hijacked their flag for the wrong purposes
- It's only when the flag is abused that there is a problem
- As long as NI is part of the UK, the Union flag should be flown with respect – that's what the Council is doing
- 30 years ago workplaces would have been full of symbols but that isn't the case here (Duncrue) – traditionally we have had a mixed workforce and there have been no problems – no-one feels intimidated
- The majority of people in the Council have been here for years and they know that the flying of the Union flag is not meant to be offensive
- The Union flag flies at the Royal Victoria Hospital on the corner of the Falls 15 days a year and there are no problems

Need for change

- The flying of the Union flag at the City hall is normal, people take it for granted
- Happy to float along but this review has stirred up a hornet's nest
- The Union flags stands for how things have been in the past – we need to change
- The Government wants change – addressing question of flags is part of the give and take – have to accept flying of the Union flag and the Tricolour (on the streets)
- Feel there has to be a change and the Council should lead the way
- All Council buildings should be treated the same – define what a civic building is and have the same policy for all
- There has to be give and take on both sides – bringing it down from 365 to 15 days is not a compromise, it's doing away with it – 180 days would be more equal
- The situation isn't going to be resolved by keeping the Union flag up or taking it down
- Can't find a balance because we don't have 2 City Halls
- There is a risk of throwing the baby out with the bath water – can't get rid of everything – have to draw a line somewhere
- There could be ill feeling among staff if there is a change
- Need to be told the reason for the change
- Explain flags more – start in the schools and educate the children about what the flag stands for – many think it is the English flag
- Need a leaflet about the Union flag showing that it represents all traditions – should enrich all our traditions rather than divide us

Appendix H**Public Consultation Survey - Statistical Tables***Question:*

The Council's current policy is that the Union Flag is flown outside the City Hall on a permanent basis.

Of the following options would you prefer that the Council:

	TOTALS	
	Nos.	%
Makes no change to current policy	499	32.6
Flies the Union Flag on the 15 designated days	146	9.5
Has no flag at all	370	24.2
Flies a neutral or civic flag	314	20.5
None of the above	201	13.1
Totals	1,530	100.0

Table 4: Total numbers and percentages of those preferring various options - Public Consultation Survey

			Which of these statements best describes your community background?					
			Protestant	Catholic	Another religious group	No religious group	Refused	Total
The Council's current policy is that the Union Flag is flown outside the City Hall on a permanent basis. Of the following options would you prefer that the Council:	Makes no change to current policy	Count % within community background	398 61.1%	29 4.6%	11 37.9%	31 23.0%	30 33.3%	499 32.6%
	Flies the Union Flag on the 15 designated days each year	Count % within community background	89 13.7%	34 5.4%	1 3.4%	16 11.9%	6 6.7%	146 9.5%
	Has no flag at all	Count % within community background	48 7.4%	277 44.3%	3 10.3%	32 23.7%	10 11.1%	370 24.2%
	Flies a neutral or civic flag	Count % within community background	54 8.3%	208 33.3%	4 13.8%	34 25.2%	14 15.6%	314 20.5%
	None of the above	Count % within community background	62 9.5%	77 12.3%	10 34.5%	22 16.3%	30 33.3%	201 13.1%
	Total	Count % of Total	651 42.5%	625 40.8%	29 1.9%	135 8.8%	90 5.9%	1530 100.0%

**Table 5: Cross-tabulation of options preferred by community background
Public Consultation Survey**

			Which of the following do you consider to be your political opinion?				
			Nationalist	Unionist	Other	Refused	Total
The Council's current policy is that the Union Flag is flown outside the City Hall on a permanent basis. Of the following options would you prefer that the Council:	Makes no change to current policy	Count % within political opinion	22 4.9%	318 73.6%	92 28.2%	67 20.7%	499 32.6%
	Flies the Union Flag on the 15 designated days each year	Count % within political opinion	21 4.7%	63 14.6%	36 11.0%	26 8.0%	146 9.5%
	Has no flag at all	Count % within political opinion	207 46.1%	20 4.6%	63 19.3%	80 24.8%	370 24.2%
	Flies a neutral or civic flag	Count % within political opinion	157 35.0%	20 4.6%	80 24.5%	57 17.6%	314 20.5%
	None of the above	Count % within political opinion	42 9.4%	11 2.5%	55 16.9%	93 28.8%	201 13.1%
Total		Count % of Total	449 29.3%	432 28.2%	326 21.3%	323 21.1%	1530 100.0%

**Table 6: Cross-tabulation of options preferred by political opinion
Public Consultation Survey**

			District Electoral Area									
			Balmoral	Castle	Court	Laganbank	Lower Falls	Oldpark	Pottinger	Upper Falls	Victoria	TOTALS
<p>The Council's Current policy is that the Union Flag is flown Outside the City Hall on a permanent basis.</p> <p>Of the following options would you prefer that the Council:</p>	Makes no change to current policy	Count % within DEA	64 35.6%	58 32.2%	96 64.0%	43 28.7%	3 2.0%	37 20.6%	95 52.8%	4 2.7%	99 47.1%	499 32.6%
	Flies the Union Flag on the 15 designated days each year	Count % within DEA	28 15.6%	12 6.7%	25 16.7%	17 11.3%	1 0.7%	7 3.9%	15 8.3%	3 2.0%	38 18.1%	146 9.5%
	Has no flag at all	Count % within DEA	22 12.2%	54 30.0%	8 5.3%	50 33.3%	76 50.7%	72 40.0%	10 5.6%	63 42.0%	15 7.1%	370 24.2%
	Flies a neutral or civic flag	Count % within DEA	48 26.7%	35 19.4%	7 4.7%	16 10.7%	54 36.0%	37 20.6%	18 10.0%	57 38.0%	42 20.0%	314 20.5%
	None of the above	Count % within DEA	18 10.0%	21 11.7%	14 9.3%	24 16.0%	16 10.7%	27 15.0%	42 23.3%	23 15.3%	16 7.6%	201 13.1%
Total		Count % of Total	180 11.8%	180 11.8%	150 9.8%	150 9.8%	150 9.8%	180 11.8%	180 11.8%	150 9.8%	210 13.7%	1530 100%

Table 7: Cross-tabulation of options preferred by District Electoral area Public Consultation Survey