



Belfast City Council

Proposed Policy on the Flying of the Union Flag in the Garden of Remembrance at the City Hall

Section 75 Screening Report

11th April 2013

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INTRODUCTION

1. Section 75 of the Northern Ireland Act 1998 requires all designated public authorities carrying out functions in Northern Ireland to have due regard to the need to promote equality of opportunity –

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

2. Without prejudice to these obligations, public authorities are also required to have regard to the desirability of promoting good relations between persons of different religious beliefs, political opinion or racial group.

3. Schedule 9 of the Act sets out the detailed procedure for the implementation of these duties including the publication of Equality Schemes and the conduct of screening exercises and Equality Impact Assessments (EQIA) of policies.

4. Screening and EQIAs are conducted in accordance with the guidance issued by the Equality Commission for Northern Ireland (ECNI); the relevant guidance currently in place includes –

- Guide to the statutory duties (April 2010);
- Practical guidance on equality impact assessment (February 2005);
- Promoting good relations – a guide for public authorities (October 2007).

5. This report sets out the findings of a screening exercise undertaken in respect of the proposal to fly the Union flag in the Garden of Remembrance at the City Hall on a year round basis. The report is based on the screening template set out in the guide to the statutory duties published in April 2010.

1. POLICY SCOPING

1. The first stage of the screening process involves scoping the policy to prepare the background and context and set out the aims and objectives.

1.1 Information about the policy

2. The Council recently reviewed the policy relating to the flying of the Union flag at the City Hall, the Ulster Hall and the Duncrue Complex. On 3rd December 2012 the Council agreed to cease flying the flag at the Ulster Hall and the Duncrue Complex and to fly the flag on the main flagpole at the City Hall on designated flag days only. Towards the conclusion of the debate, Councillor Reynolds (DUP) put forward a proposal to fly the Union flag in the Garden of Remembrance at the City Hall on a year round basis and the Council agreed to consider the proposal. At a subsequent meeting, on the advice of the Equality Commission, the Council agreed that the proposed new policy should be subjected to the Section 75 screening process as set out in the Council's Equality Scheme.

3. The Cenotaph and Garden of Remembrance are located within the City Hall grounds on the west side of the building. They are owned and maintained by the Council. The Garden of Remembrance is open to the public every day and the adjacent grounds are a popular open space for people to sit, especially during the summer months. Ceremonies take place at the Cenotaph on three occasions each year – the anniversary of the Battle of the Somme (1st July), Remembrance Sunday and the Monday immediately prior to Remembrance Sunday (cross laying day). The Union flag is flown from a temporary flagpole during the three annual ceremonies. The Belfast Remembrance Day ceremony is widely regarded as the Northern Ireland regional ceremony, and is attended by a large number of visitors from outside Belfast. The First Minister attends the Remembrance Day ceremony in Belfast on behalf of the Northern Ireland Executive. Remembrance Day is also a designated flag day and the Union flag therefore flies from the main flagpole at the City Hall on this occasion

4. It should be noted that the Council has recently addressed the issue of promoting a good and harmonious working environment at the City Hall, including the display of artefacts and memorabilia within the City Hall and grounds. This policy was subjected to EQIA in parallel with the policy on the flying of the Union flag and a decision on this policy was also made at the Council meeting on 3rd December 2012.

1.2 Policy aims and objectives

5. The DUP subsequently indicated that the aims of the proposal they made at the Council meeting were:

- recognition of the regional and national significance of the Garden of Remembrance/ Cenotaph at Belfast City Hall;
- an act of daily recognition of the past sacrifices made for the United Kingdom.

6. However, there has been no political agreement on the aims of the proposed policy.

7. Given the context in which the new policy was proposed, there is a significant possibility that some residents, staff and visitors will perceive that the flag is being flown for a different purpose. Some people may perceive it simply as a repositioning of the flag from the main flagpole and regard it as a statement of the constitutional position of Northern Ireland, rather than as having a specific purpose in relation to the Garden of Remembrance.

1.3 Beneficiaries of the policy

8. The Council maintains a list of all the organisations attending the three annual ceremonies but has no information on visitors to the Garden of Remembrance on other days of the year. The Royal British Legion has indicated that they believe that it is visited by both local and overseas visitors on a year round basis. The Council is aware that the majority of visitors to the three ceremonies are from a Protestant/ Unionist background and so it is likely that these groups are also well represented among visitors on other days of the year. It could be suggested that the proposal is intended to enhance the environment within the Garden of Remembrance for these visitors.

1.4 Implementation factors

(a) Financial

9. Whilst implementing the policy would not incur any major expense in the first instance, it should be noted that a flag flown in the Garden of Remembrance (depending on the actual location) would probably be highly visible from the City Hall grounds and from the pavement outside. The location would be easily accessible and there would be a high risk of vandalism to the flag and/or flagpole which may give rise to additional expense.

(b) Legislative

10. The erection of a permanent flagpole in the Garden of Remembrance may require planning and historic building consents.

1.5 Main stakeholders affected

11. As identified in the earlier EQIAs, the City Hall and its grounds are used by a wide range of people, including staff, elected members, residents and visitors. A flag located at the Cenotaph would be at least as visible as one located on the main flagpole and the proposed policy may have an effect on all these groups. Pre-consultation was conducted as part of the screening process and views were sought from the political party groups and the organisations who regularly attend the three annual ceremonies at the Cenotaph. Pre-consultation does not generally include wider consultation and so, at this stage, no views have been sought from staff or the public.

1.6 Other policies with a bearing on this policy

12. The policy was proposed as part of the debate on the flying of the Union flag on the main flagpole and many of the issues raised during the recent EQIA in relation to feelings about the Union flag will be relevant to this screening process. The recent EQIA on the promotion of a good and harmonious environment in the City Hall and grounds will also be relevant. The key relevant points from these EQIAs are listed below in section 1.8.

13. The Council has also undertaken a number of initiatives in recent years under the Good Relations Strategy to make the concept of commemoration more inclusive and the effect of the proposed policy on these will need to be taken into account. The initiatives include:

- the Annual Resolution of the Council at its 1st July meeting, to mark the Anniversary of the Battle of the Somme, has been extended to include a specific reference to the contribution of those who served with the 16th Irish Division and other forces, along with the existing reference to the 36th Ulster Division;
- the Council has supported, through grant aid, various projects aiming at increasing understanding of and respect for the part played by those from the Catholic and Nationalist community who served in the Great War and World War II;

- the Council extended an invitation to the Irish Government to send a representative to the commemoration ceremonies; in July 2012 an Irish Minister attended the Somme Ceremony and in November 2012 the Tánaiste attended the Remembrance Day Ceremony.

1.7 Available evidence

(a) Earlier EQIAs

14. The recent EQIA on the flying of the Union flag at the City Hall, the Ulster Hall and the Duncrue Complex identified a range of issues; the following may be relevant to the current screening exercise:

- flying the Union flag permanently at the City Hall could be held to infringe the concept of a good and harmonious working environment;
- the Equality Commission's view is that it is acceptable and appropriate for a local council to fly the Union Flag at its Civic Headquarters but this rationale would not extend to every Council location;
- the views of the staff and public are highly polarised with some people feeling offended to see the Union flag flying from Council buildings and others saying that they would be offended if the Union flag no longer flew;
- there were a number of comments from the public that removing the Union flag from the City Hall would not promote good community relations but would create deeper divisions.

15. The recent EQIA on promoting a good and harmonious environment within the City Hall and its grounds reached the following conclusions which may be relevant to the current screening exercise:

- at the present time, there is an accumulation of material that naturally reflects the predominantly white, male, Protestant and Unionist history of the City Hall, the business of the City, the governance of the City and its Council;
- there may be an opportunity to better promote a good and harmonious environment through the selective repositioning of displays, or the supplementing of displays with material from elsewhere;

- an opportunity exists to consider ways in which the existing displays can be re-organised in order to help better promote a good and harmonious environment for all those who use or visit the City Hall.

(b) Data

16. As indicated above, the people most likely to be affected by the proposed policy are staff, elected members, residents and visitors. In terms of data, the 2011 Census provides information about the residents of Belfast under many of the Section 75 equality categories. The Council also monitors staff in relation to community background and gender and has comprehensive information on recent elections. No data on visitors by Section 75 categories is available.

17. The available data is set out in Appendices 1 and 2. This shows that:

- in terms of religion or religion brought up in, the 2011 Census indicates that 48.6% of Belfast City residents are from a Catholic community background and 42.3% from a Protestant community background;
- with respect to staff, at 1st January 2012, 43.0% identified themselves as coming from a Catholic community background and 53.1% from a Protestant community background.

(c) Research

18. As part of the screening process information was sought on the policies of other councils in Northern Ireland and Great Britain in relation to the flying of the Union flag at or near war memorials.

19. It should be noted that not all cenotaphs/war memorials are owned by local councils. Many were created by public subscription through committees formed for their commissioning and dissolved after completion and so there is often no clear record of ownership. There appear to be three main locations for cenotaphs:

- in a public space in the centre of the town or city; some of these are adjacent to public buildings where there is an existing flagpole;
- in a Council owned park on the outskirts of the town or city;

- at the roadside or in a small square in a town or village; generally this type of cenotaph is not the responsibility of the local council.

20. The current situation with respect to Northern Ireland councils is set out in Appendix 3. This shows that there are six district council areas where the Union flag is flown on a permanent basis at or near war memorial sites:

- In Ards, the Council flies the Union flag 365 days per year at the war memorials in Comber and Ballygowan. These sites are not workplaces or locations where people avail of Council services.
- In Ballymena the Council flies the Union flag 365 days per year in the War Memorial Park which is a stand alone park.
- In Castlereagh, the Council flies the Union flag at the war memorial in Thiepval Drive every day of the year; the memorial is not adjacent to any council office or facility.
- In Coleraine there is a war memorial in front of the Town Hall; the Union flag is flown all year round on the Town Hall flagpole.
- In Lisburn the Council flies the Union flag on a permanent basis on a flagpole in Castle Gardens just behind the war memorial.
- In Newtownabbey, the Union flag is flown every day at the Ballyclare war memorial; this is not located within the grounds or adjacent to the Council offices.

21. It appears that the situation where the Union flag is flown on a permanent basis at the war memorial tends to occur only where the memorial is not part of or adjacent to Council offices or facilities (e.g Ards, Ballymena, Castlereagh and Newtownabbey). Ards District Council pointed out that the decision to fly the flag at the war memorials was taken partly because the locations were not workplaces and not ones where people availed of Council services. The research identified only one example where a flag is flown at a cenotaph adjacent to a civic building where the flag is also flown, at the national cenotaph in Whitehall.

22. With regard to national war memorials/cenotaphs, the English and UK national cenotaph in Whitehall, London displays the Union flag on a

permanent basis and is located close to civic buildings with separate flagpoles. The Welsh national cenotaph in Cardiff does not display any flags but is located in the same park as Cardiff City Hall which does fly the Union flag on a permanent basis. The Scottish national war memorial is part of the Edinburgh Castle complex where the Union flag is flown on a permanent basis.

23. Information on the practices of a small sample of city councils in England, Scotland and Wales was also sought. It appears that it is not common practice to fly the Union flag on a permanent basis at cenotaphs in major cities, although there were a number of councils who indicated that they did not have responsibility for the cenotaphs in their area. The cenotaph in Kingston upon Hull does fly the Union flag on a number of days throughout the year but is not located near any Council office or facility. There are also examples of cenotaphs located in front of Council offices where the Union flag is flown on the main flagpole on a year round basis or on designated days (e.g. Glasgow, Liverpool, Sheffield).

(d) Pre-consultation

24. In line with the advice of the Equality Commission (see Appendix 11), the organisations who regularly attend the annual ceremonies at the Belfast Cenotaph were invited to provide preliminary views, if they wished to do so. A list of those consulted is attached at Appendix 4. Only a quarter of the groups (70+) invited to comment, made a response. These are summarised below.

Royal British Legion HQ Area Office (Ireland)

25. The Royal British Legion HQ Area Office (Ireland) responded saying:

“As the nation’s custodian of Remembrance, the Legion is committed to helping everyone understand the importance of Remembrance, so those sacrifices are never forgotten.

Remembrance of all those who have fallen should unite, not divide. It is sacrosanct and should not be politicised in any way. We would therefore oppose the Garden of Remembrance becoming involved in the flag debate for that reason and, in the interests of keeping Remembrance free of controversy, cannot agree to any change to the current policy of flag-flying at the Cenotaph”.

26. This response is of particular relevance, since the Equality Commission had specifically advised that the view of the Royal British Legion be sought.

27. These comments by the RBL HQ Office were repeated by the RBL Women's Section, NI.

28. One local RBL Association supported the proposal to fly the flag, stating "this is not a political issue, like the one going on in the main building".

Honorary Consuls

29. No responses were received.

Armed Forces

30. A central spokesman for the Ministry of Defence (i.e. Army, Navy, Air Force, Reserve Units and all associated organisations) thanked us for the invitation but stated that they did not wish to be consulted.

31. A number of locally based Old Comrades or Ex-Service Associations did respond.

32. Of these five agreed that the flag should be flown all year, stating, for example, that this would be a "fitting and eternal remembrance for all of those men and women who paid the supreme sacrifice in the service of their country"; two stated that the issue was "a political issue in which the Armed Forces or Ex-Service organisations should not become involved"; and one stated that this was a "delicate issue" and they wished to agree with the view of the Royal British Legion.

Churches

33. Only two churches responded. One acknowledged that there were "huge sensitivities" round the proposal. The other noted that "strenuous efforts have been made to make ceremonies at the Cenotaph as inclusive as possible and it seems very important that these are encouraged and developed".

Other organisations

34. One organisation supported the proposal to fly the Union Flag all year round; one said flying the Union Flag was "acceptable on appropriate days"; one stated that given the multi-national background of those being remembered, it may be inappropriate; and one reported that it would be happy

with whatever decision the elected representatives make in this case. The PSNI stated that it was not within their role to comment upon such a consideration but pointed out that decisions taken within the political arena can have a consequence for policing.

Government

35. The Secretary of State for NI replied, stating that “It has been a long-standing policy of successive UK Governments that the responsibility for the design and maintenance of war memorials rests with the owner or with the organisation in which ownership is vested. There is therefore no general policy relating to the flags to be flown from memorials, of which Belfast City Council will need to be aware.”

36. She went on “to take this opportunity to reiterate the importance of decisions on flags being taken in a way which takes into account the different traditions and identities present in today’s Northern Ireland. This is particularly important in relation to memorials, given the shared history of the UK and Ireland during the great wars”.

37. Overall, seven respondents supported the proposed policy and five were opposed; the remaining respondents indicated that they did not wish to express an opinion or that they thought it was inappropriate for them to do so.

(e) Views of the political party groups

38. The political party groups were invited to submit written comments and their responses are reproduced in full in Appendices 5-9.

(f) Legal advice

39. The Town Solicitor/Assistant Chief Executive sought advice from Mr David Scoffield QC on a range of issues relating to the proposed policy in December 2012. Mr Scoffield’s report was submitted to the Council in January 2013 and is reproduced at Appendix 10 for ease of reference.

(g) Advice of the Equality Commission

40. Advice was sought from the Equality Commission at a meeting with officers on 6th December 2012 and they subsequently provided views in writing on 12th December. This letter was submitted to the Council in January 2013 and a copy is attached at Appendix 11 for reference.

2. SCREENING QUESTIONS

1. The second stage of the screening process involves using the evidence set out above to determine the potential impacts of the proposed policy on equality of opportunity and good relations and the likely level of impact.

2.1 Potential impacts

(i) What is the likely impact on equality of opportunity for those affected by this policy, for each of the Section 75 equality categories?

2. The recent EQIA on the flying of the Union flag concluded that there was no evidence to show that the presence of the flag on a permanent basis restricted access to the City Hall or its grounds in any way or prevented anyone from accessing the services and events provided there and that there was therefore no adverse impact on equality of opportunity. It is unlikely that a flag flying in the Garden of Remembrance would have any greater impact on access to the City Hall.

3. In his advice dated 7th December 2012, Mr David Scoffield QC addressed the likely application of the Fair Employment and Treatment Order to the proposed policy. He pointed out that the Order applies to the promotion of a good and harmonious working environment for staff and also contains anti-discrimination provisions in relation to the provision of goods and services to the public. He stated that:

“it seems to me that there is nothing to preclude a public or civic space, which also forms part of a workplace, or the grounds of a workplace, being subject to the anti-discrimination employment provisions in that Order. The focus of the FETO provisions, as interpreted by the Courts, is on a working environment, which seems to me apt to include the surroundings of the employee’s workplace, whether or not these are also places to which the public have access or which have some civic purpose. “

4. On the issue of whether the proposed policy might give rise to a successful claim under the Order, he advised that:

“I consider that a tribunal¹ or county court² is unlikely to conclude that the Council is in breach of any such obligations merely by reason of the

¹ In the case of a Council employee.

² In the case of a member of the public receiving goods or services at City Hall.

display of the Union flag at City Hall. I also consider this to be the case in relation to its display at a location in the grounds of City Hall.”

5. There are examples of Northern Ireland councils which have decided to fly the Union flag at a war memorial on a permanent basis; however, in each case the location is not adjacent to the Council offices so the practice cannot have any impact on access to services or the promotion of a good and harmonious working environment.

6. It is difficult to determine whether the flying of the Union flag on a permanent basis would affect visitors to the Garden of Remembrance. Some of the respondents to the pre-consultation considered that the flag would enhance the visitor experience. There is no monitoring of visitors to war memorials carried out by councils in areas where flags are displayed at cenotaphs. There is no evidence at this stage as to whether the flag by itself might prevent visitors from entering the Garden of Remembrance at the City Hall, but, even if it did, it is unlikely that the impact would be major.

7. It is concluded that the proposed policy would be likely to have very little impact on equality of opportunity with regard to access to the Garden of Remembrance, access to services at the City Hall or its grounds or the promotion of a good and harmonious working environment.

(ii) Are there opportunities to better promote equality of opportunity for people within the Section 75 equality categories?

8. No opportunities have been identified.

(iii) To what extent is the policy likely to impact on good relations between people of different religious belief, political opinion or racial group?

9. Given the concerns about the flying of the Union flag expressed by the two main communities during the recent EQIA, the key issue in determining whether an EQIA is necessary is the likely impact in terms of good relations.

10. The responses to the pre-consultation indicated that some organisations support the proposed policy on the grounds that it would be a fitting tribute to those who died in various conflicts. Other organisations indicated that this should not be regarded as a political issue and should be kept separate from the debate on the policy of flying the Union flag at the City Hall.

11. It is possible that some members of the public would also perceive the flying of a Union flag at the Cenotaph simply as a means of honouring those who died for the United Kingdom and would accept that the flag is not intended to have an impact on good relations within the city. If the proposed policy could be separated from the wider debate on the flying of the Union flag, it might be possible to conclude that the impact would be minor and that Belfast was simply following the example of the national cenotaph in Whitehall.

12. However, given the context in which the policy was proposed, it is likely that there will be a significant percentage of the population who will perceive a flag flying at the Cenotaph on a permanent basis differently and will associate it with a statement by the Council of the constitutional position of Northern Ireland. Given the strength of the views expressed during the recent EQIA, it is likely that many people from a Catholic/Nationalist community background would regard this as offensive. Conversely, given the strong feelings expressed during the EQIA in support of the flying of the Union flag on a permanent basis and the civic unrest which resulted from the Council's decision to fly the flag on designated days only, it is likely that many people from a Protestant/Unionist community background would regard the proposed policy as welcome mitigation of the earlier decision.

13. This polarisation of views is likely to have a further negative impact on the promotion of good relations in the city and undermine some of the Council's recent initiatives to make the concept of commemoration more inclusive. It is therefore concluded that the proposed policy would be likely to have an adverse impact on good relations between people of different religious belief / political opinion.

14. This is not to say that a decision by the Council to adopt the proposed policy would be in breach of the Section 75 good relations duty. In his advice dated 7th December 2012, Mr David Scoffield QC stated that:

“My advice in relation to whether this proposal would be legally permissible is that there would be nothing *prima facie* unlawful about the Council determining to fly the Union flag 365 days *per* year within the grounds of City Hall. I was at pains to point out in my previous advices that the question of where and when the Union flag (or other flags) are flown at Council premises is essentially a political question, rather than a legal one.”

Level of impact

15. Having determined that the proposed policy may have an adverse impact on good relations, it is necessary to determine whether the level of the likely adverse impact is major or minor. The Equality Commission guidance on screening indicates that a proposed policy may have a ***major*** impact on good relations if:

- a) it is significant in terms of its strategic importance;
- b) the potential impacts are unknown
- c) good relations impacts are likely to be adverse or are likely to be experienced disproportionately by groups of people including those who are marginalised or disadvantaged;
- d) further assessment offers a valuable way to examine the evidence and develop recommendations in respect of a policy about which there are concerns amongst affected individuals
- e) the policy is likely to be challenged by way of judicial review;
- f) the policy is significant in terms of expenditure.

16. A proposed policy may have a ***minor*** impact if:

- a) it is not unlawfully discriminatory and any residual potential impacts on people are judged to be negligible;
- b) it is potentially unlawfully discriminatory, but this possibility can readily and easily be eliminated by making appropriate changes to the policy or by adopting appropriate mitigating measures;
- c) any asymmetrical impacts caused by the policy are intentional because they are specifically designed to promote equality of opportunity for particular groups of disadvantaged people;
- d) by amending the policy there are better opportunities to better promote good relations.

17. In this case it is suggested that the good relations impacts are likely to be adverse but not unlawfully discriminatory. However, there are no obvious changes to the policy or mitigating measures that would eliminate the adverse impacts. The proposed policy may also be regarded as significant in terms of strategic importance. Applying the above criteria it would appear that the potential adverse impacts should be considered as major and the Council should therefore consider whether a full EQIA needs to be carried out before a decision is made.

(iv) Are there opportunities to better promote good relations between people of different religious belief, political opinion or racial group?

18. It is clear from the previous EQIAs that the Union flag and memorabilia in general are divisive issues which generate strong feelings within both main communities. It is not therefore possible to identify any alternative policies with respect to the flying of the Union flag at the Belfast Cenotaph which would better promote good relations.

2.2 Multiple identity

19. It is clear that the main issues relate to good relations between people from the two main communities. Therefore, in this instance, there are no specific issues arising from multiple identities within or across the equality categories.

3. SCREENING DECISION

1. The final stage of the screening process involves determining what further work is required in terms of an EQIA and/or mitigating measures.

3.1 Findings of the screening process

2. The analysis of available evidence suggests the following conclusions:

- the proposed policy would be likely to have very little impact on equality of opportunity with regard to access to the Garden of Remembrance, access to services at the City Hall or its grounds or the promotion of a good and harmonious working environment;
- however, it would be likely to have an adverse impact on good relations between people of different religious belief / political opinion; and
- the potential adverse impact should be considered as major.

3. It is therefore necessary to consider whether a full EQIA should be conducted in respect of the proposed policy, to allow for consultation with all interested parties, including the public and staff who were not consulted as part of this screening exercise.

4. In his advice dated 7th December 2012, Mr David Scoffield QC stated that:

“My advice would be that it is unnecessary to carry out a further, full EQIA process in relation to this new proposal. In short, having already considered the question of the policy of flag flying at the City Hall in a full EQIA, it would seem disproportionate to carry out a further such exercise. “

5. He advised that:

“the Council would remain legally free to reach a decision on the proposal without conducting a full EQIA.....This is because as long as a public authority has due regard to the matters set out in section 75 of the Northern Ireland Act 1998, it can lawfully determine to do so without the benefit of a full EQIA (provided this decision is rational)..... The failure to conduct a further full EQIA is unlikely, in my view, to result in any consequent decision being liable to be set aside on an application for judicial review.”

6. The Equality Commission advice in the letter dated 12th December 2012 was that:

“in making a decision as to whether or not there is a need to carry out an Equality Impact Assessment, the Council should ensure that it follows the commitments in its Equality Scheme and that the decision making process is evidenced with clear records.”

7. The Council’s Equality Scheme states that:

“In making any decision with respect to a policy adopted or proposed to be adopted, we take into account any assessment and consultation carried out in relation to the policy, as required by Schedule 9 9. (2) of the Northern Ireland Act 1998. (Paragraph 4.2)

The Council uses the tools of screening and equality impact assessment to assess the likely impact of a policy on the promotion of equality of opportunity and good relations. In carrying out these assessments we will relate them to the intended outcomes of the policy in question and will also follow Equality Commission guidance. (Paragraph 4.3)

If our screening concludes that the likely impact of a policy is ‘major’ in respect of one, or more, of the equality of opportunity and/or good relations categories, we will normally subject the policy to an equality impact assessment.” (Paragraph 4.11)

8. The use of the word “normally” suggests that there may be exceptional circumstances when the Council will not carry out an EQIA.

9. It should be noted that, at the officer meeting on 6th December 2012, the Equality Commission officers emphasised the importance of proportionate action and agreed that much of the relevant evidence had already been collected through the recent EQIA. They advised that additional information should be sought from organisations such as the Royal British Legion as part of the screening process.

Recommendation

10. The key issue is whether the Council has sufficient information on the potential equality and good relations impacts of the proposed policy on which

to base a rational decision. If it does not, then a full EQIA may be beneficial. Whilst an EQIA may provide further evidence to corroborate what is already known, it seems unlikely that further consultation and discussion would raise any new issues over and above those identified during the recent EQIA and the pre-consultation. It is therefore recommended that the Council should proceed to make a decision on the proposed policy, taking into account the evidence presented in this screening report, but without carrying out a further EQIA.

3.2 Mitigating measures

11. If the decision is not to conduct an equality impact assessment, the Council is required to consider if the policy should be mitigated or an alternative policy be introduced.

12. As stated above, the Union flag and memorabilia in general are divisive issues which generate strong feelings within both main communities. It is not therefore possible to identify any alternative policies with respect to the flying of the Union flag at the Belfast Cenotaph that would better promote good relations.

13. However, if the Council does adopt the proposed policy it would be beneficial to communicate the decision and the reasons for it clearly to all affected stakeholders, to ensure that the aims and objectives are properly understood. The Council might also consider the appropriate timing for the introduction of the policy.

4. MONITORING

1. The conclusion of this screening process is that the proposed policy will have an adverse impact on the promotion of good relations. If the Council adopts the proposed policy it will be essential to monitor the position to determine whether the impact is as predicted. The Council will, as a matter of course, monitor complaints and feedback but it is likely that, in addition, some form of visitor survey would be required. This could be incorporated into a wider study of visitors to the City Hall and grounds, so that it can be included in the monitoring of the recent decision on the policy relating to the flying of the Union flag on the main flagpole.

2. The results of ongoing monitoring must be reviewed and published on an annual basis. If the monitoring and analysis of results over a two year period show that the policy results in greater adverse impact than predicted, or if opportunities arise which would allow for good relations to be better promoted, the Council must ensure that the policy is revised to achieve better outcomes.

5. APPROVAL AND AUTHORISATION

Screened by:	Position/Job Title	Date
Denise Wheatley	Consultant	11 th April 2013
Approved by:		

Note: A copy of this Screening Template will be made easily accessible on the Council's website as soon as possible following completion and made available on request.

DATA ON THE POPULATION OF BELFAST CITY

TOTAL RESIDENTS: 280,962

Religious belief (religion or religion brought up in)

	Belfast		Northern Ireland	
	No.	%	No.	%
Catholic	136,497	48.58	817,385	45.14
Protestant & other Christian (including Christian related)	118,856	42.30	875,717	48.36
Other religion	4,825	1.72	16,592	0.92
None	20,784	7.40	101,169	5.59

Political opinion

The results of the May 2011 Council elections were:

Party	% First preference votes cast	Seats	Change
Sinn Féin	29.4	16	+2
DUP	23.5	15	+2
SDLP	13.8	8	=
Alliance	12.7	6	+2
UUP	8.6	3	-6
PUP	2.8	2	=
Other	9.2	1	=

Ethnic group

	Belfast		Northern Ireland	
	No.	%	No.	%
White	270,743	96.36	1,778,449	98.21
Chinese	2,226	0.79	6,303	0.35
Irish Traveller	202	0.07	1,301	0.07
Indian	2,203	0.78	6,198	0.34
Pakistani	222	0.08	1,091	0.06

Bangladeshi	202	0.07	540	0.03
Other Asian	1,932	0.69	4,998	0.28
Black Caribbean	90	0.03	372	0.02
Black African	1,017	0.36	2,345	0.13
Black Other	148	0.05	899	0.05
Mixed	1,401	0.50	6,014	0.33
Other	576	0.21	2,353	0.13

Country of birth

	Belfast		Northern Ireland	
	No.	%	No.	%
Northern Ireland	245,839	87.50	1,608,853	88.84
Great Britain	11,267	4.01	82,724	4.56
Republic of Ireland	5,422	1.93	37,833	2.09
Other EU prior to 2004 expansion	2,001	0.71	9,703	0.54
Other EU after 2004 expansion	6,014	2.14	35,704	1.97
Other	10,419	3.71	36,046	1.99

Note: Eight countries joined the European Union in May 2004: the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia.

Age

	Belfast		Northern Ireland	
	No.	%	No.	%
Under 16	52,283	18.61	379,323	20.95
16-39	106,259	37.82	593,832	32.79
40-64	81,529	29.02	573,988	31.70
65-84	35,268	12.55	232,324	12.83
85+	5,623	2.00	31,396	1.73

Marital and civil partnership status

	Belfast		Northern Ireland	
	No.	%	No.	%
Single	106,568	46.60	517,393	36.14
Married	78,242	34.21	680,831	47.56
In a civil partnership	327	0.14	1,243	0.09
Separated	12,228	5.35	56,911	3.98
Divorced /civil partnership dissolved	14,153	6.19	78,074	5.45
Widowed/ surviving partner of civil partnership	17,161	7.50	97,088	6.78

Gender

	Belfast		Northern Ireland	
	No.	%	No.	%
Male	135,077	48.08	887,323	49.00
Female	145,885	51.92	923,540	51.00

Disability

	Belfast		Northern Ireland	
	No.	%	No.	%
Disability / long term health problem	96,497	34.35	569,078	31.43
No disability / long term health problem	184,465	65.65	1,241,785	68.57

Dependents

	Belfast		Northern Ireland	
	No.	%	No.	%
Households with dependent children	34,464	28.58	238,094	33.86
People providing unpaid care	33,865	12.05	213,980	11.82

Sexual Orientation

In its final regulatory impact assessment for the Civil Partnership Act 2004, the Department of Trade and Industry offered an estimate for the LGB population of the UK of between 5 and 7%. The Rainbow Project estimates that, on the basis of national and international research, 1 in 10 people in Northern Ireland would not identify as being heterosexual.

Research from 2002 into transsexualism³ suggests that between 0.5% and 2% of the population have strong feelings of being transgender; and between 0.1% and 0.5% actually take steps to transition from one gender to another.

No specific figures are available for Belfast.

³ L. Conway (2002), How Frequently Does Transsexualism Occur?

BELFAST CITY COUNCIL EMPLOYEES
(by community background and gender)

Standard Occupational Classification Major Groups	No. of Protestant Male employees			No. of Roman Catholic Male employees			No. of Male employees whose community cannot be determined		
	FT	PT	Total	FT	PT	Total	FT	PT	Total
1 Managers and senior officials	88	0	88	98	0	98	6	0	6
2 Professional occupations	60	0	60	55	0	55	7	0	7
3 Associate professional & technical occupations	83	29	112	60	13	73	6	2	8
4 Administrative and secretarial occupations	45	3	48	31	3	34	8	0	8
5 Skilled trades occupations	95	8	103	50	8	58	4	0	4
6 Personal service occupations	104	32	136	74	29	103	8	1	9
7 Sales and customer service occupations	1	3	4	1	4	5	0	0	0
8 Process, plant and machine operatives	161	6	167	83	6	89	7	0	7
9 Elementary occupations	234	14	248	159	9	168	15	4	19
TOTALS	871	95	966	611	72	683	61	7	68

Standard Occupational Classification Major Groups	No. of Protestant Female employees			No. of Roman Catholic Female employees			No. of Female employees whose community cannot be determined		
	FT	PT	Total	FT	PT	Total	FT	PT	Total
1 Managers and senior officials	99	0	99	103	0	103	10	0	10
2 Professional occupations	46	0	46	56	0	56	0	0	0
3 Associate professional & technical occupations	57	17	74	70	27	97	6	3	9
4 Administrative and secretarial occupations	144	10	154	129	13	142	5	2	7
5 Skilled trades occupations	2	0	2	0	0	0	1	0	1
6 Personal service occupations	35	51	86	31	53	84	6	2	8
7 Sales and customer service occupations	6	1	7	4	10	14	2	1	3
8 Process, plant and machine operatives	1	0	1	1	0	1	0	0	0
9 Elementary occupations	79	1	80	44	2	46	5	0	5
TOTALS	469	80	549	438	105	543	35	8	43

Source: Fair Employment Monitoring Return, January 2012

POLICIES OF NORTHERN IRELAND COUNCILS

1	Antrim	The Council does not own or have any responsibility for the four war memorials within the Borough. There are no fixtures associated with the war memorials that would permit the flying of flags.
2	Ards	The Council flies the Union flag 365 days per year at its war memorials in Comber and Ballygowan. In coming to this decision the Council considered that the flag would only fly in areas where the biggest population was in favour of flying it and that it was not being flown in any workplace or location where people availed of Council services. In addition, the Union flag is flown at a number of other war memorials throughout the Borough on Remembrance Sunday only.
3	Armagh	The Council does not fly the Union flag at any of the war memorials and has never done so.
4	Ballymena	The Council flies the Union flag 365 days per year in the War Memorial Park. This is a stand alone park.
5	Ballymoney	There are several war memorials in the Borough, none of them on Council property. The Council does not fly flags at any of them and has not done so for at least 15 years.
6	Banbridge	The Council owns three war memorials within the District and these are all located within town centres and not adjacent to Council offices. The others are owned by Trustees. Flags are only flown only on the weekends of the Somme Anniversary and Remembrance Sunday.
7	Carrickfergus	The Council only flies a Union flag at the Cenotaph on Remembrance Days / events.
8	Castlereagh	The Council has one war memorial on a separate site from the Council Offices. The Union flag flies at the war memorial on every day of the year.
9	Coleraine	There are Cenotaphs in three towns and two villages in the Borough. Union flags are flown adjacent to the Cenotaphs in two instances, in Coleraine and Portrush. In Coleraine the Cenotaph is at the front of the Town Hall which flies the flag all year round. In Portrush the Cenotaph is in front of the Town Hall which flies the flag during July and August.
10	Cookstown	The Council has a no flags policy which applies to all Council property including war memorials.
11	Craigavon	Under the Council's policy on the flying of the Union flag on civic occasions, the flag is flown adjacent to war memorials on Remembrance Sunday.

12	Derry	The Council does not fly any flags at any of its buildings or facilities.
13	Down	The Council does not fly the Union flag at any war memorials. The Royal British Legion flies the flag on Remembrance Sunday only at war memorials, at least one of which is on Council property.
14	Dungannon	The flying of the Union flag at designated Cenotaphs is the responsibility of the Royal British Legion and is only done on Remembrance Sunday.
15	Fermanagh	The Council has a no flags policy.
16	Larne	The Council has two memorial sites. At one site (Larne Town) the flag is flown twice per year at the Battle of the Somme service and on Remembrance Sunday. No flags are flown at the other site.
17	Limavady	war memorials in the Borough are not located on Council property and the Council has no responsibility for them.
18	Lisburn	The Council flies the Union flag on a permanent basis on a flagpole in Castle Gardens just behind the war memorial. This decision was taken after undertaking an EQIA.
19	Magherafelt	The Council does not fly the Union flag at any war memorials.
20	Moyle	The Council has an historical unwritten policy of not flying flags on Council owned property. There are two war memorials in the District and these are under the control of the relevant Royal British Legion branches.
21	Newry & Mourne	No cenotaphs within the area are located on Council property, although the one in Newry is located near a Council facility.
22	Newtownabbey	There are four war memorials within the Borough. The Union flag is flown every day at the Ballyclare memorial but is flown on Remembrance Day only at the other memorials. None of the memorials is located within the grounds or adjacent to the Council headquarters.
23	North Down	There are three war memorials within the Borough, two of which are on Council property. The Union flag is flown only on the occasion of the Somme Anniversary and Remembrance Sunday, except at Groomsport where the flag flies for one week leading up to Remembrance Sunday.
24	Omagh	No flags or emblems are displayed on any Council property.
25	Strabane	The Council does not own any of the war memorials within the District.

**PRE-CONSULTATION:
ORGANISATIONS INVITED TO COMMENT**

Royal British Legion
Royal British Legion, NI
Royal British Legion NI, Belfast Branch
Royal British Legion NI, County Belfast District
Royal British Legion NI, Oldpark/Cavehill Branch
Royal British Legion NI, Seaview Branch
Royal British Legion Rol
Royal British Legion, Women's Section NI
Honorary Consuls
Consular Association of NI
The Lord Lieutenant and Deputies
Armed Forces
Aircrew Association, NI Branch
Association of Jewish Ex-servicemen and Women
Association of Wrens, Belfast Branch
Cyprus and Borneo Old Comrades' Association, Belfast Branch
Irish Guards' Association, Ulster Branch
London Irish Rifles' Association
NI Disabled Ex-Servicemen's Association
<i>Not Forgotten</i> Association (NI Branch)
Regimental Association of the Ulster Defence Regiment C.G.C.
Reserve Forces and Cadets
Royal Air Force Association, Northern Ireland Area
Royal Artillery Association, Belfast Branch
Royal Dragoon Guards Regimental Association, NI Branch
Royal Engineers' Association, Belfast Branch
5 th Royal Inniskilling Dragoon Guards, NI Association
Royal Irish Fusiliers Old Comrades' Association (Belfast Branch)
Royal Irish Rangers' Association
Royal Irish Rangers' Association, 1 st Belfast Branch
Royal Irish Rangers' Association, Abbotscroft Branch
Royal Irish Regiment
Royal Naval Association
Royal Naval Association, No. 12 Area (Ireland)
Royal Naval Reserve
Royal Ulster Rifles' Association
36 th (Ulster) Division Association
36 th (Ulster) Division Officers Old Comrades' Association
36 th (Ulster) Division Old Comrades' Association

36 th (Ulster) Division Old Comrades' Association of Canada
WRAC Association, Ulster Branch
Churches
Baptist Union of Ireland
Belfast Hebrew Congregation
Catholic Church
Church of Ireland
Elim Pentecostal Church
Methodist Church in Ireland
Presbyterian Church
Non-Subscribing Presbyterian Church
Reformed Presbyterian Church
Salvation Army
Other organisations
Apprentice Boys of Derry, Belfast Amalgamated Committee
Belfast Harbour Police
Belfast Humanist Group
British Red Cross Society, Belfast Branch
Corps of Commissionaires (NI Division)
County Grand Lodge of Belfast, Loyal Orange Institution of Ireland
Federation of Women's Institutes of NI
Merchant Navy
NI Fire and Rescue Service
NI Prison Service
NI Retired Police Officers' Association
NI Scout Council
Police Service of NI
R.A.O.B. Grand Lodge of NI
Rising Sons of India L.O.L. 1300
Royal Mail Staff NI
St. John Ambulance
Thiepval Memorial L.O.L. 1916
Ulster Special Constabulary Association, Belfast Branch

NI Government

Office of the First Minister and Deputy First Minister
Stormont Castle
Stormont Estate
Belfast
BT4 3TT

British Government

Secretary of State for Northern Ireland
Ms Theresa Villiers MP
Northern Ireland Office

Stormont House
Belfast
Northern Ireland
BT4 3SH

Irish Government
c/o Ms Barbara Jones
Joint Secretary
British-Irish Intergovernmental Secretariat
Windsor House
9-15 Bedford Street
Belfast BT2 7EL



Apartment 1
44 Cyprus Ave.
Belfast BT5 5Nt

11th March 2013-03-11

Mrs Hazel Francey
Good Relations Manager
Good Relations Unit
Belfast City Hall
Belfast BT1 5GS

Flying the Union flag 365 days at the Cenotaph

Dear Hazel

On behalf of the Alliance Party Group on Belfast City Council I want to express our considered opinion on the matter of flying the Union flag at the Cenotaph in the grounds of Belfast City Hall.

At the outset, I would like to underline, that the Alliance Party and the Party Group on the Council recognises without reservation that Northern Ireland is part of the United Kingdom by the will of the people, and that the Union Flag is the proud symbol of the legitimate sovereign state. It is for this reason that we have sought both to resist attempts to abolish the practice of the Council to fly the legitimate flag and to ensure that it is displayed with dignity and without intimidation in a city of divided loyalties.

The proposal to fly the flag at the Cenotaph was made at a full Council meeting on 3rd December immediately following the vote to fly the flag on designated days, as is the practice in Buckingham Palace. It is therefore deeply regrettable that the flag has in recent weeks been used as a mark of exclusive territory and as a weapon of intimidation, sectarianism and violence. A flag which Alliance wishes to fly as the dignified symbol of the sovereign state has been used to destroy rather than build good relations.

By connecting the issue of the Cenotaph in this politically motivated way, the proposers sadly embroiled the sad duty of remembrance of the dead with divisions over the flag across the city. Nonetheless, in spite of the fact that there was no prior discussion with other parties on the proposal, the Alliance group agreed to discuss the matter in accordance with the established procedure.

Over many years this Council has striven to make the Cenotaph and the ceremonies honouring those who died inclusive of all sections of our community. In very recent years the wording of

Cllr. Máire Hendron
POTTINGER ALLIANCE COUNCILLOR

Tel: 028 9065 0052 Mob : 07971 416587
Email: maire.hendron@allianceparty.org & belfast.east@allianceparty.org

the traditional motion honouring the Somme dead has been amended to include the 10th and 16th Irish Divisions and all others who fought alongside the members of the 36th Ulster Division at that battle. Belfast City Council played a significant part in the compilation of a Book of Honour entitled "Journey of Remembering" which was published in 2009. In it the names of 6,700 Belfast servicemen and women who perished in the Great War are listed. Those men and women were all citizens of Belfast and came from every walk of life, every creed and culture.

We feel strongly that the memory of the fallen should not be dishonoured by making the Cenotaph the subject of political opportunism. It is to be hoped that sooner rather than later there will be an agreement on a shared future for the people of Belfast and Northern Ireland. In the meantime we should share the space around the Cenotaph to inclusively honour and with dignity remember our War dead, freed from the risk that our sectarian divisions will destroy our remembrance of the dead and fallen.

For these reasons, the Alliance Party Group cannot support the proposal to fly the Union flag 365 days at the Cenotaph at this time.



Máire Hendron
Alliance Party Group
Belfast City Council

13.3.13

Hazel Francey

Good Relations Unit

Belfast City Council

Dear Hazel,

I am writing to you on behalf of Sinn Fein to put on record our opposition to the Unionist proposal to fly the Union flag at the Cenotaph 365 days of the year.

As you will be well aware the issue of flags, emblems and memorabilia is a contentious matter in this city and this city hall. We have a divided city and indeed a divided workforce when it comes to the matter of National identity and symbols. The recent weeks of unrest in relation to the flying of the Union flag only highlighted these deep divisions.

It is our firm view that flags have been all too often used to mark out territory, to exclude one section or another of our community. We are on record that it would be our preferred position that no flag of any description flew at the city hall.

Having said that there was a democratic decision on December 3 2012 to fly a single Union flag above the city hall on a number of designated days. We supported that compromise position.

The clear advice that this council received from the independent consultant, from senior council and indeed from the Equality Commission, was that 'the proper balance in terms of promoting a good and harmonious working environment' would best be advanced by the option of flying a single Union flag above the city hall on a number of designated days.

Any political decision to fly another Union flag at the Cenotaph would in our view fly in the face of the advice that we have already received. Having been advised that flying one flag above the city hall on designated days strikes the proper balance, it would be contradictory and clearly injurious to good relations within city and within our workforce to fly another flag within the grounds of the city hall.

It would also be our contention that flying the Union flag in open accessible location within the grounds of the city hall would invite potential attempts either to remove the flag or to add others to it. This could lead to the Cenotaph becoming a flash point for confrontation.

Given that the Cenotaph is a place of remembrance and commemoration for war dead, we do not believe that this would be in anyone's interest, not least the organisers and participants at remembrance events.

Given the clear and strongly held views in relation to this matter in both Unionist and Nationalist communities, we reiterate our belief that any decision to fly another Union flag within the grounds of the city hall would be a mistake. We are aware that at least one member of council staff had lodged a case with the Fair Employment Tribunal in relation to the previous policy of flying the Union flag 365 days of the year but has withdrawn the case due to the decision of December 3.

This council would risk a legal challenge from other members of staff if a decision was taken to fly another flag within the grounds of the city hall, in clear contradiction to the equality advice received previously.

In conclusion we would urge the council not to agree to fly additional contentious flags within the city hall. This city hall belongs to everyone and to every tradition within the city and should be promoted in a way that makes every tradition feel comfortable and welcome, not simply one tradition.

Is Mise,

Jim Mc Veigh

Sinn Fein Party Group Leader

SDLP Council Group Response to Equality Screening about Flying Union Flag at Cenotaph

1. The SDLP is opposed to the flying of the Union flag at the cenotaph because we believe that the cenotaph should be protected as shared space and focus for reconciliation.
2. The SDLP attends the annual Somme and Remembrance Sunday Commemorations to pay our respects the thousands of men and women on the island of Ireland and beyond, who fought and died together in the different world wars.
3. SDLP Cllrs Pat McCarthy and Pat Convery have worked with others to enhance the Somme and Remembrance Sunday Commemorations. The SDLP proposed that the Somme Commemoration should fully reflect the contribution of the courageous men from the 36th (Ulster) Division and 16th (Irish) Division who lost their lives in France in 1916.
4. Following an SDLP motion at the January 2012 Council meeting, the Irish Government were invited to attend the remembrance services, Alan Kelly TD Minister of State and Mr Eamon Gilmore TD, Minister for Foreign Affairs, attended the Somme and Remembrance Sunday services respectively at the Belfast cenotaph.
5. SDLP councillor Pat McCarthy said at the time: *“It is both historic and symbolic that an Irish Government Minister attended Battle of Somme commemoration this morning. For a long time in the history of the Republic, that period was forgotten and was something which was never talked about. It is welcome that this has now changed and there are many groups which have been formed to look at the history of people from the local area who took part in the First World War”*
6. The fact that two Irish Government Ministers attended Remembrance Sunday commemorations in Belfast and Enniskillen was both an historic and symbolic occasion. It was an important gesture of reconciliation between the two political traditions on the island.
7. The SDLP has our own aspirations and traditions, but we recognise that the view of ourselves and others and of our future changes with time.

This was never been more true than in 2011 with the visit of Queen Elizabeth II. The visit of a Head of State to Ireland is traditionally a formal, decorative and staid state occasion. This was not the case with the visit of Queen Elizabeth II.

Together with President Mary McAleese, it was a visit full of striking images

from Croke Park to the Garden of Remembrance, you listened to bold statements in Irish and words of reconciliation when Queen Elizabeth II acknowledged the "*sad and regrettable*" shared history and expressed her "*deep sympathy*" for those who had lost loved ones in the conflict.

As the Irish Times editorial stated on 18 May 2011:

“It is enormously to the Queen’s credit that she did what every instinct imbued by her upbringing tells her not to do: she took risks. She knowingly walked on to dangerous ground, consciously evoking memories of Ireland’s bloody uprisings against imperial rule, of the bitter sacrifice of Gallipoli and the Somme, of Bloody Sunday in 1920. She confronted these memories with a dignity, a humility and a simplicity that embodied her own memorable phrase about “being able to bow to the past, but not be bound by it”.

The Queen’s warm and dignified respectfulness achieved something remarkable. Before the visit, it would have seemed that the priority was to avoid emotion. If feelings were to be stirred up, they could only be those of bitterness and anger. Yet, at the moment she laid her wreath at the Garden of Remembrance, the Queen helped to release – to the surprise of most Irish people – a very different set of emotions: sorrow for the sufferings of the past, relief that they are over, hope for a decent future.”

We all should display the same dignity in respecting the cenotaph for everyone.

Cenotaph – Symbol of Reconciliation

8. The SDLP believes the cenotaph should be protected as a shared space and a place that should reconcile rather than divide our communities.

As the former Dean of St Anne’s Cathedral Rev Houston McKelvey has said:

“If there is to be a symbol of reconciliation in the city, let it be the Cenotaph. Catholic, Protestant and Dissenter served and died side by side to ensure democratic freedom. That vital memorial should not become a hostage to partisan political outlook or entrapped as a hostage to a dispute on flags and emblems.”

(CNI Comment – Flags, finance and faith December 5, 2012)

9. The comments from ex-service organisations in respect of Operation Banner, a proposal for an additional UDR memorial in City Hall, show that some organisations want to avoid the cenotaph being politicised.

“The official representative from the Royal British Legion reported that he was speaking on behalf of the RBL, the national Custodian of Remembrance and an organisation that makes significant use of the existing Garden of Remembrance at the City Hall. He pointed out that there was already a

National UK Memorial at the Arboretum in Staffordshire. He was aware of the political sensitivities surrounding any proposed memorial and stated that the Royal British Legion was keen to avoid anything that might contribute to negative tensions or negative publicity on the issue. Their main concern was the impact that any planned memorial may have on the Garden of Remembrance, which was a focal point for their two main annual commemoration ceremonies in July and November.”

(Strategic Policy and Resources Committee 2012)

Education

10. The SDLP believes that an enhanced education cross-community programme should be developed to highlight the impact of the World War I and II on Irish and British men and women.
11. The SDLP wishes to highlight the positive work of the International School for Peace Studies in Derry which organises the "Island of Ireland Week" to commemorate the sacrifices that were made by the men and women of that island during The Great War, 1914-1918.
12. During events in Messines - where the International School for Peace Studies is based - the Irish flag has flown alongside the United Kingdom flag and the banners of other nations, who fought in WWI. The Battle of Messines is central to the ethos of the ISPS, because nationalists of the 16th Irish Division and unionists of the 36th Ulster Division fought side by side.
13. There is a Schools Links Programme (pupils from St. Cecilia's, Lisneal College and Crana College from Derry/Londonderry and Buncrana) present a joint Remembrance Day assembly, described by one Headmaster as, "*one of the most moving and effective school assembly's I have ever been to in almost 40 years in the teaching profession*".
14. ISPS host a memorial service in June every year to commemorate the Battle of Messines which has become an annual event.

Hundreds turned out for the parade, which ends with the traditional wreath-laying service at the Cenotaph.

Local schoolchildren were among those who attended the event, at which the Union flag, the Irish tricolour and the German flag were paraded together.

**SDLP Council Group Belfast
March 2013**

The Progressive Unionist Party
Belfast City Hall
Belfast
BT1 5GS

17th March 2013

Ms Stella Gilmartin
Equality and Diversity Officer
Belfast City Council
Belfast
BT1 5GS

Dear Ms Gilmartin

The Progressive Unionist Party would like to comment on the proposal to flag the Union Flag in the Garden of Remembrance at Belfast City Hall throughout the year.

We recognise the great significance of the Garden of Remembrance creating a permanent memorial to all those who have given their lives for our country and for the freedom of future generations. We also recognise that those who made the ultimate sacrifice did not come from one section of the community nor were they of one political persuasion. Many, from diverse backgrounds, responded with a sense of duty and self sacrifice.

Accordingly we have serious reservations about a proposal which could risk politicising a Memorial and a Custom which honours the dead and which has the potential to unify those who are the beneficiaries of their sacrifice.

Therefore we would not seek to change current practice.

Yours sincerely,

**PERMANENT DISPLAY OF THE UNION FLAG IN GARDEN OF REMEMBRANCE, CITY HALL,
BELFAST**

CONSULTATION RESPONSE

DEMOCRATIC UNIONIST GROUP

and

ULSTER UNIONIST GROUP

APRIL 2013

Introduction

This proposal was made by the DUP at the December Council meeting after brief consultation with other Unionist parties. It had sought that the proposal be passed that night. At the request of the Alliance Party it agreed to delay the decision to January 2013. Following legal and equality commission advice a further delay was agreed to. Therefore, in pursuit of this policy flexibility has been shown with the result of delaying a decision already by a number of months.

The Consultation

Subsequent to that it set out two principles for this policy:

1. Recognition of the regional and national significance of the Garden of Remembrance/Cenotaph at Belfast City Hall

The Cenotaph in Belfast fulfils a role beyond that as the place of remembrance for the city itself. For example the Garden of Remembrance/Cenotaph itself has a dedication from the city:

“THE CITY OF BELFAST IN MEMORY OF HER HEROIC SONS”

Which is supplemented with King George V’s praise for

“THE MEN OF ULSTER HAVE PROVED HOW NOBLY THEY FIGHT AND DIE.”

Its evolution as the focal point for remembrance was reinforced by the establishment of Northern Ireland with Belfast as its capital city. This recognition of a broader role is manifest in the long standing presence of the Secretary of State of Northern Ireland and the most senior military personnel. With the re-establishment of devolution, the First Minister of Northern Ireland is now a regular attendee. The regional status and prominence of the

Cenotaph was further reinforced by the first attendance of an Irish government minister last year.

On the national stage in coverage of acts of national remembrance Belfast stands alongside Cardiff and Edinburgh and only second to the Cenotaph in London. Therefore, the Cenotaph fulfils a local, regional and national role. It is thus appropriate for those roles to be recognised through the flying of the Union flag each day.

2. An act of daily recognition of the past sacrifices made for the United Kingdom

Remembrance has come more to the fore in British society following a series of wars in particular Iraq and Afghanistan. This has led to increased focus upon the issues of remembrance. This has contributed to the development of Armed Forces Day with associated events and the growing prominence of fundraising for military charities. The direction of travel on remembrance, national identity and support for service personnel has been rightly towards more. This proposal should be seen in that spirit.

It should be noted that the Union Flag is flown at military facilities each day from sunrise to sunset. Therefore this is a practice ex-service personnel will be completely familiar with. It should also be noted that a member of the Armed Forces takes an oath of allegiance to the monarch as head of the state. It is common practice for the Union flag to be worn on a military uniform. Britishness and its symbolry infuses the Armed Forces and thus the Union Flag is an appropriate symbol of remembrance.

Remembrance

Some have tried to argue this policy would be a barrier to remembrance.

Identity in Northern Ireland does come with sensitivities. In recent decades there has been a re-evaluation of identities and that has included new perspectives on the relationships with the Armed Forces and Remembrance. It is in the Republic of Ireland that this process has been most pronounced. This has led to a greater willingness to participate in remembrance. However, this participation has not been at the price of altering remembrance.

As was pointed out above, daily flag flying is a part of service in the armed forces so it is a natural part of military service culture.

It should be remembered that the growth in participation in the remembrance ceremony in Belfast occurred while a Union flag was flown from the City Hall 365 days a year. At the service itself there is a second Union flag used as part of the service. Therefore, the presence of Union flags has not been a barrier to participation.

Good Relations

The removal of the Union Flag from the Ulster Hall and Duncrue Complex and 95% of the time from Belfast City Hall has caused significant and far-reaching damage to good relations within the city. This proposal could only improve that dire situation created by the processes and decisions taken by others.

BRIEF TO ADVISE

BELFAST CITY COUNCIL

Querist

**in relation to its approach to the
flying of flags at Council premises**

COUNSEL'S SUPPLEMENTARY ADVICES

INTRODUCTION

1. I was previously asked to advise the Council in relation to its approach to the flying of flags at Council buildings and did so in written advices dated 23 November 2011. I have now been asked to provide some brief, supplementary advices arising out of the Council's recent consideration of this issue⁴. These advices have been requested at short notice and on an urgent basis⁵ and are, accordingly, relatively succinct.

FACTS AND INSTRUCTIONS

2. The broad background to the flags issue, as it arises in the Council, is set out in my earlier advices. Following the completion of an EQIA into the Council's policy on the flying of flags⁶, the matter was considered by the Council's Diversity Group on 16 November 2012; at the SP&R Committee on 23 November 2012; and, latterly, by the full Council on Monday 3 December 2012. The Diversity Group deferred any decision to the Committee, which voted for a policy of flying no flag at all.
3. However, in the full Council, a different approach was adopted. The Committee's decision to remove the Union flag and not fly it at all at the Ulster Hall and the Duncrue Complex was ratified; but its decision in relation to the complete removal of the flag at City Hall was not. On the basis of an amendment proposed by Councillor Hendron, the Council voted to fly the Union flag at City Hall on designated flag days only.

⁴ These advices should be read along with that earlier opinion. For convenience I have continued to use the same nomenclature, abbreviations and definitions as were adopted in the earlier advices.

⁵ In advance of a working group meeting to be held on Monday 10 December 2012.

⁶ Into which my previous advices were incorporated.

4. Further to this, however, a supplementary amendment was moved by Councillor Reynolds to the effect that the Council's Joint Group of the Party Leaders' Forum and the Historic Centenaries Working Group be requested to consider a proposal that the Union flag be flown 365 days *per* year in the civic space in the Garden of Remembrance in the grounds of the City Hall, with a view to a report being submitted on this proposal for consideration by the SP&R Committee at its meeting of 14 December 2012. This amendment was also passed and the matter is now to be considered by the Diversity Group at a special meeting on Monday evening, 10 December 2012, before being considered again by the Committee.
5. I understand that, practically speaking, the proposal is that the flag would be flown at a flag pole at the cenotaph within the Garden of Remembrance (which is a public space to the west of City Hall itself, but within its grounds).
6. In the above circumstances, I am asked to advise on four specific questions, namely:
 - (1) Whether the option set out in the supplementary amendment is a legal option which can be pursued?
 - (2) Whether there is any requirement for further equality screening to be carried out in relation to the new proposal (or if it can simply be incorporated within one of the previous two EQIAs, namely that in relation to flags or that relating to memorabilia⁷)?
 - (3) Whether FETO applies to a 'civic space' (and whether there is any accepted definition of this phrase)?
 - (4) Whether there are any other legal issues which the Council needs to consider in coming to a decision in relation to the proposal?

IS THE PROPOSAL LEGALLY PERMISSIBLE?

7. My advice in relation to whether this proposal would be legally permissible is that there would be nothing *prima facie* unlawful about the Council determining to fly the Union flag 365 days *per* year within the grounds of City Hall. I was at pains to point out in my previous advices that the question of where and when the Union flag (or other flags) are flown at Council premises is essentially a political question, rather than a legal one⁸. That remains the case. There is no one position which is required by law.

⁷ Entitled *Belfast City Hall: Promoting a Good and Harmonious Working Environment*.

⁸ See, for instance, paragraphs 37 and 43(1) and (2) of my earlier advices.

8. Although there are therefore a range of options which are lawfully open to the Council in relation to the flying of flags, the Council is subject to anti-discrimination legislation, particularly in the employment field, which might be engaged by its use of flags if this was held to amount to discrimination against an individual or employee of a particular religious belief or political. For the reasons given previously, I consider the risk of successful legal challenge in a discrimination claim, on the basis of the Union flag being flown daily at City Hall, to be low⁹.

IS A FURTHER EQIA REQUIRED?

9. My advice would be that it is unnecessary to carry out a further, full EQIA process in relation to this new proposal. In short, having already considered the question of the policy of flag flying at the City Hall in a full EQIA, it would seem disproportionate to carry out a further such exercise.
10. That is not to say that there may not be some differences in equality impact terms between the proposal to fly the Union flag on the City Hall building itself and the proposal to fly the flag at the cenotaph¹⁰ – but in broad terms the equality impacts of flying the flag at the City Hall (outside the building but within the grounds) have been considered in some depth.
11. Accordingly, one view might be that the new proposal does not represent a new policy requiring equality screening but simply an additional option or mitigating measure which has arisen in the course of consideration of the earlier flags EQIA. I have recently been provided with an advice note from the Council's equality consultant (Ms Denise Wheatley) and a note of a meeting with the Equality Commission, each of which favour the view that screening should occur, principally because this proposal has not been specifically considered in the course of the earlier EQIA and by reason of the

⁹ Although (i) every case will be fact-dependent; and (ii) it is probably also correct to say that the risk of successful challenge if the Union flag is flown on designated flag days only is lower still, albeit perhaps marginally. See again paragraph 43(1) of my earlier advice.

¹⁰ Depending, amongst other things, on increased/reduced prominence at each location and the (perceived) purpose of the flying of the flag at each location. On this latter point, there is undoubtedly a slightly different context between the flying of the flag on the City Hall building, the seat of local government in the city, and flying it at the cenotaph which does not represent the exercise of democratic power but, rather, the remembrance of those who have died in various conflicts. I am aware that there may also be some debate as to whether the purpose of the cenotaph (and the Garden of Remembrance more generally) is to commemorate only those from Northern Ireland, or pre-partition Ulster, whose lives were lost in certain international wars fighting for the United Kingdom; or whether it has wider significance; or whether, in fact, its significance is changing and developing with time. There is also some debate to be had over whether the purpose of flying the Union flag at the cenotaph would be closely connected with the issue of commemoration or, in fact, more of a political expression of the city's place within Northern Ireland's constitutional place in the United Kingdom (that is to say, for the same purpose as the flag had previously been flown on the building itself but not the cenotaph). Obviously, none of these matters is a hard-edged legal issue.

some of the issues noted in footnote 7 above. In light of this advice, it would be prudent in my view to carry out a screening exercise.

12. However, even if it the proposal was considered as a new policy and 'screened in', the Council would remain legally free to reach a decision on the proposal without conducting a full EQIA. (I also understand that the Equality Commission has confirmed that this is an approach which the Council might legitimately adopt). This is because, as explained in my earlier advices¹¹, as long as a public authority has due regard to the matters set out in section 75 of the Northern Ireland Act 1998, it can lawfully determine to do so without the benefit of a full EQIA (provided this decision is rational¹²). That is not to say that the Council may not choose to conduct an EQIA but, for the reasons given above, this would seem to me to be an overly cautious approach in light of all of the work which has already been done in this area. The failure to conduct a further full EQIA is unlikely, in my view, to result in any consequent decision being liable to be set aside on an application for judicial review.
13. It might well be argued that a failure to conduct a full EQIA would be a breach of the Council's Equality Scheme. This is also addressed in Ms Wheatley's advice note and the note of the meeting with the Equality Commission. It seems the risk of an adverse finding on a complaint to the Commission in this regard is considered to be relatively low. However, if this were to be considered a breach of the Council's Equality Scheme, the primary remedy, and only remedy in all but exceptional cases, is by way of a complaint to the Commission under Schedule 9 of the 1998 Act¹³ rather than by way judicial review resulting in the impugned decision being quashed.

DOES FETO APPLY TO A CIVIC SPACE?

14. I do not believe there is any legal definition of a 'civic space' relevant to the present context; nor do I consider there to be any significant legal issue arising from the use of that phrase in the supplementary amendment advanced at the Council meeting of 3 December 2012. There are well known definitions of public places in different legal contexts, these generally being places to which the public (or sections of the public) habitually have access; but not a 'civic space'.
15. However, the key issue I am asked to address here is whether a civic space such as the Garden of Remembrance can also be subject to the requirements of FETO. I can find no express guidance on this issue in the terms of the Order but it seems to me that there is nothing to preclude a public or civic space, which also forms part of a workplace, or the grounds of a workplace,

¹¹ See, in particular, paragraphs 35-36.

¹² Which it would seem to me to be in this case, given the extensive EQIA in relation to flags policy which has already been conducted.

¹³ A position recently strongly reaffirmed in *Re the British Medical Association's Application* (unreported), 16 November 2012, NIQBD (Treacy J).

being subject to the anti-discrimination employment provisions in that Order. The focus of the FETO provisions, as interpreted by the Courts, is on a working environment, which seems to me apt to include the surroundings of the employee's workplace, whether or not these are also places to which the public have access or which have some civic purpose.

16. In short, a 'civic space' is not exempt from the requirement that a working environment be provided which is so lacking in neutrality as to breach anti-discrimination provisions. In this regard, I believe my view may differ from that expressed by the Equality Commission in their recent meeting with Council officers where the view was expressed that a civic space such as the Garden of Remembrance would not be treated as part of a workplace. I think a court or tribunal might take the contrary view – although obviously the nature of the location and the display of any flags or symbols are important contextual matters which would be carefully considered by a court or tribunal ruling on a discrimination complaint. In other words, the display of a flag at a cenotaph is in my view much less likely to be considered to represent discrimination in the workplace than, for instance, a flag hung in the canteen.
17. In addition, given that the Order also contains anti-discrimination provisions in relation to the provision of goods and services to the public (which will often, if not always, be provided in a public place), it seems to me, again, that the better interpretation is that what is done in a 'civic space' such as the Garden of Remembrance is potentially relevant to a (claimed) breach of the provisions of FETO.
18. As before, however, I consider that a tribunal¹⁴ or county court¹⁵ is unlikely to conclude that the Council is in breach of any such obligations merely by reason of the display of the Union flag at City Hall. I also consider this to be the case in relation to its display at a location in the grounds of City Hall¹⁶; and further understand that the Equality Commission has pointed out that few, if any, discrimination claims based on the lack of a neutral working environment have been based solely on the display of a flag¹⁷.

ARE THERE ANY OTHER LEGAL ISSUES?

19. No other legal issues immediately occur to me in relation to the Council's consideration of the proposal. As I have consistently emphasised, the

¹⁴ In the case of a Council employee.

¹⁵ In the case of a member of the public receiving goods or services at City Hall.

¹⁶ Again recognizing that every case would be considered by such a court or tribunal on its own facts. Plainly, for instance, if Union flags (or other flags) were draped everywhere in sight, that is a very different proposition to the display of one flag at an appropriate location.

¹⁷ This might be thought to support the view I expressed previously on the low risk of a successful discrimination claim on the basis merely of the display of the Union flag at City Hall. I have recently been provided with a copy of advices provided by Mr Eugene McKenna BL to Sinn Féin in which he takes a more pessimistic view on this issue. My view remains as previously expressed.

determination by the Council of its policy as to the display of flags is essentially a political question, albeit one fraught with sensitivities. Provided any decision taken is taken after proper debate, taking into account legally relevant considerations and leaving out of account legally irrelevant considerations¹⁸, the Council is free to determine where and when, if at all, to display the Union flag or other flags.

CONCLUSION

20. I trust these advices will be of some assistance. If I can be of any further assistance, the Town Solicitor should again not hesitate to contact me further.

David A Scoffield QC
Bar Library
Belfast

7 December 2012

¹⁸ It being a question of judgment for the Council (subject only to *Wednesbury* review) what is or is not relevant, since there is no statutorily mandatory considerations, *except* those arising from the Council's obligations under section 75 of the 1998 Act which were discussed at length in my previous advices.



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Ref: 2716
10 December 2012

Ms Hazel Francey
Good Relations Manager
Belfast City Council
City Hall
Belfast BT1 5GS

Dear Hazel

I refer to your email dated 5 December 2012, and our subsequent meeting, seeking the Equality Commission's views relating to the Further Amendment on Flying the Union Flag at Belfast City Hall, as carried on 3 December 2012. This Further Amendment provides that the Council's Joint Group of the Party Leaders' Forum and the Historic Centenaries Working Group be requested to consider a proposal that the Union Flag be flown 365 days a year in the Garden of Remembrance in the grounds of the City Hall with a view that a report be submitted for consideration by the Strategic Policy and Resources Committee at its meeting on 14 December.

I understand that the proposal in this Further Amendment did not form part of your Equality Impact Assessments on the 'Flying of the Union Flag' or 'Promoting a Good and Harmonious Environment'. It would appear that the proposal is likely to constitute a policy, as defined within the Council's Equality Scheme. As such, and in line with the commitments in the Council's Equality Scheme, the proposal should be screened. As you will be aware, the first stage of the screening process involves scoping the policy to ensure the policy aims and objectives are fully developed, and that they define the final policy. The aims and objectives of the Council Policy on 'Promoting a Good and Harmonious Environment' would appear to have a general relevance to this policy proposal.

In order to scope the proposed policy you should consider all available evidence to assess the likely impact on equality of opportunity and good relations. The Council already has relevant and available information from its two most recent Equality Impact Assessments, as mentioned above. It is stressed that the Council should also ensure that it has sufficient information relating to this specific policy proposal. It would, for example, be relevant to seek information from organisations such as the Royal British Legion on their view as to the appropriateness and implications of the flying of the Union Flag

Chief Commissioner: Michael Wardlow



INVESTOR IN PEOPLE

Chief Executive: Evelyn Collins CBE

in the Garden of Remembrance. In making a decision as to whether or not there is a need to carry out an Equality Impact Assessment, the Council should ensure that it follows the commitments in its Equality Scheme and that the decision making process is evidenced with clear records.

In complying with its obligations under section 75(2) of the Northern Ireland Act 1998, the Council needs to ensure that, in formulating its policy, account is taken of the desirability of promoting good relations. The duty is continuous and wide and requires the Council to consider the broader and longer-term picture and to consider adopting other strategies that may mitigate the immediate effects of a particular policy. These matters require careful and thorough consideration, as noted by Mr Justice Moses, stating that 'time is needed to consider the impact of any assessment' (R (on the application of Kaur and Shah) v London Borough of Ealing [2008] EWHC 2062).

The Commission considers that it is a legitimate policy aim to fly the Union Flag as a mark of commemoration in a manner which symbolises the dignity and respect for those it is remembering. The Commission advises in its guidance publication, 'Promoting a Good and Harmonious Working Environment', that when marks of remembrance are displayed with decorum (and, if appropriate, during the designated time) and with a sense of due proportion then they are unlikely to disrupt a good and harmonious working environment. While this guidance relates primarily to the working environment, you may find the principles to be of assistance in your consideration of the issues.

We are happy to discuss further once the policy is more fully scoped while recognising that it is for the Council to decide the policy which best fulfils its policy aims and promotes good relations in the Council.

If you wish to discuss any of the points made in the letter please do not hesitate to contact me.

Yours sincerely



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