



Northern Ireland
Assembly

Committee for the Office of the First Minister
and deputy First Minister

OFFICIAL REPORT (Hansard)

Race Legislation/Racial Equality Strategy/Minority
Ethnic Development Fund: NICEM Briefing

9 January 2013

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Mike Nesbitt (Chairperson)
Mr Chris Lyttle (Deputy Chairperson)
Mr Colum Eastwood
Ms Megan Fearon
Mr Paul Givan
Mr Alex Maskey
Mr John McCallister
Ms Bronwyn McGahan
Mr Stephen Moutray
Mr George Robinson

Witnesses:

Ms Helena Macormac	Northern Ireland Council for Ethnic Minorities
Ms Karen McLaughlin	Northern Ireland Council for Ethnic Minorities
Mr Patrick Yu	Northern Ireland Council for Ethnic Minorities

The Chairperson: We welcome Patrick Yu, Karen McLaughlin and Helena Macormac. You are all very welcome. Patrick, we are ready for your opening presentation.

Mr Patrick Yu (Northern Ireland Council for Ethnic Minorities): Thank you, Chair, and members of the Committee for meeting us today. This meeting is the result of a request that was made originally by the Northern Ireland Council for Ethnic Minorities (NICEM) in October of last year. Subsequently, we agreed to participate in a stakeholder group event on 7 November instead of doing an evidence session such as today's. After that event, on 8 November, we sent another formal request because we felt strongly that the event had not addressed our issues, namely the racial equality strategy, the minority ethnic development fund and the review of race legislation. Discussions on some of those issues have been ongoing. In particular, we met the Committee after we went to the UN Committee on the Elimination of Racial Discrimination in September 2011. Some of the issues about the racial equality strategy and race legislation were discussed then. In between, there is the issue of the minority ethnic development fund, so that is why we put all the issues together.

The first issue is that of the racial equality strategy. The racial equality strategy for 2005-10 lapsed two years ago, and, therefore, the legal and policy framework has been operating without an underpinning strategy. In the absence of the strategy, it is nearly impossible to realise racial equality and rights in Northern Ireland.

The second issue is the minority ethnic development fund. The fund must be linked to the new revised racial equality strategy. In addition, a needs assessment, which is based on the audit of inequalities report and action plans from all Departments and their next-step agencies, must form the basis of the development fund and the new revised racial equality strategy to meet the needs of the black and minority ethnic community in Northern Ireland. Currently, less than 20% of the grantees on core costs are ethnic minority groups or communities. The rest are the local groups that provide services to ethnic minorities, particularly to the migrant community. NICEM has no objection about extending or not extending that, but there is an issue of proportionality with disadvantaged ethnic minority groups getting funding. As I said at the beginning, the main problem is that an ethnic minority group is not allowed to apply for any funding from any Department. That is why the Office of the First Minister and deputy First Minister (OFMDFM), under the first Executive, set up a very specific fund. At certain points, NICEM has agreed to extend the funds to the local groups for projects to support the new migrant communities. That is why we have no objections about that. However, the fact that the proportion is less than 20% is a serious alarm.

The third issue is the main issue for today. It is about reform because of the deficiency in the current race legislation. This has been an outstanding issue since, in 2009, the Assembly voted unanimously in support of a review of the Race Relations (Northern Ireland) Order 1997. Since 2009, the order has been amended twice due to impending infringement proceedings from the European Commission. Moreover, there has been significant legislative reform in England, Wales and Scotland in the area of equality law. However, Northern Ireland has missed all the opportunities to consolidate equality law in this jurisdiction and has not even remedied the current deficiencies of the 1997 order. As a result, regional differential treatment in the UK's equality law framework has been created, and ethnic minorities in Northern Ireland have far less legal protection than those in Great Britain. We fully understand the lengthy and complex nature of the legislative process, which was recently borne out in the dilemma faced by this Committee in endorsing the Race Relations (Northern Ireland) (Amendment) Order 2012 on 30 May 2012 under threat of EU infringement proceedings. However, the need for legislative reform has not gone away, and there is a need for urgent action.

In conclusion, without a comprehensive legal framework, policy and practice such as the racial equality strategy will be ineffective. Therefore, we need to have a joined-up approach to tackle racism, racial discrimination, racial harassment and racial exclusion through a new revised racial equality strategy.

It is necessary to have robust race equality law that is fully compliant with EU law, in particular the EU racial equality directive, the EU Charter of Fundamental Rights, and the Human Rights Act 1998, as well as with other international human rights obligations. The minority ethnic development fund must also be underpinned by those obligations. Therefore, we recommend that the revised racial equality strategy is utilised as an important vehicle in order to link together all elements of the legal and policy framework.

First, we call on the Committee to scrutinise the cost of the delay and to hold OFMDFM to account for its inaction over a long period of time, and to take appropriate action to ensure that the revised racial equality strategy is ready for consultation as soon as possible. Secondly, we ask the Committee to scrutinise the new minority ethnic development fund in full, including a formal consultation and an equality impact assessment. Thirdly, we call on the Committee to support a consolidated 1997 order to tackle the current deficiencies of the law through sponsoring a debate in the Chamber. Fourthly, we ask the Committee to scrutinise the actions of OFMDFM over a long period to provide basic legal protection for those who suffer from racial discrimination and racial harassment.

The Chairperson: Thank you very much, Patrick. There are several issues there. Do you have thoughts on why there has been a delay?

Mr Yu: I have been a part of the process over a long period of time. In September 2011, I recall that we explained to the Committee that a process had been started by the racial equality panel in February of that year to revise the racial equality strategy. That process did not finish or go anywhere. So, when we were here in September, we told the Committee that there had been no progress. Very recently, in November last year, OFMDFM recalled the racial equality panel and restarted the process. My understanding is that the first three chapters have been drafted and discussed within the panel. That is the progress so far.

The Chairperson: To some degree, you are in a quite unusual place in that you do not have a strategy at the moment, but there was a strategy up to 2010. What you do have is a funding stream. A lot of groups are still waiting for the strategy from which will flow delivery plans and funding. To what extent does the lack of an up-to-date strategy hinder your work?

Mr Yu: If you look at the outstanding issues, race legislation is a key one. If you look at the action plan under the first race strategy for 2005-10, one of the key elements was to rectify that deficiency. As we do not have a single equality Bill, everything has lapsed. As well as that, there is the whole issue of reform of the race legislation. That is a long outstanding issue.

Secondly, the whole race strategy from 2007 onwards was frozen because the Assembly did not vote on the framework document on a shared future. As a result, there has been a big accumulation. So, even though the Assembly voted unanimously to support the race strategy two months after that, because the race strategy was subsumed, there has been a big accumulation. So everything has been frozen. Basically, virtually nothing has been done since 2007.

Under their own race strategies, each Department must submit an action plan to link up with the six aims of the racial equality strategy. The Assembly had a very honest debate about the action plan, which is very ineffective, and a lot of those actions have never been implemented. In that context, we hope that the new racial equality strategy and the action plan will be much more effective. One of the issues that we have highlighted today is that, under the new arrangements, each Department is required to submit an audit of inequalities report and an action plan to remedy that inequality. In the area of race, you can use that to have some sort of indicator to form what I refer to as the needs assessment. The Committee will play a crucial role in future strategy and policy, and we can use that as the framework to look at how we scrutinise the future strategy.

The Chairperson: Patrick, you referred to the minority ethnic development fund. The use of the word "development" could suggest that, at some point, development will be complete and that the need for that funding will end. Do you have a date in mind for that?

Mr Yu: I do not have any dates in mind in respect of funding. My understanding is that the funding is a three-year process, so everything is subject to the Executive Budget.

The Chairperson: I suppose what I am trying to ask is: what are you trying to develop, and when will you know when that work is done? It may well lead to other needs, other funding and other programmes.

Mr Yu: I think that question is not one for us, because it is not NICEM that runs the minority ethnic development fund. It is OFMDFM that runs the funding. For us, the funding should link up with the race strategy. My sense is that the funding should continue if the groups prove that they have an impact. Everything is subject to evaluation. That is important. Unfortunately, there are certain delays because it does not carry out the evaluations on time, and that is why, over the past year and a half, it has been delayed and the groups suffer. They got funding only every six months over that one-and-a-half year period.

The Chairperson: Do you understand what I mean when I say that a development fund suggests that you are trying to establish things and that, at a certain point, you will have succeeded in establishing those things? You may then need other funding for them to continue to operate. I am interested in what you are trying to establish, how far you have got and how much further you have to go.

Mr Yu: The funds are linked with the new race strategy. As I mentioned, each Department or next-step agency already has the audit of inequality report and the action plan. That gives you an idea of what the key issues are. Currently, it is OFMDFM only that funds that part. The racial equality strategy should also attract additional funding from each Department. If they agree a core action, that should be done alongside the development fund.

As I mentioned, quite a lot of the local groups provide services to the migrant community. That could be outside OFMDFM's functions and areas. It could be in the functions of the Department for Social Development on the advice side or on the housing side, or on the employment side. The functions of different Departments are interlinked to different areas. That is our suggestion, because OFMDFM has very limited resources. We should think more at a strategic level. OFMDFM should put its money in, and, to be more robust, additional resources could be brought in from other Departments. That will be a long process. At the moment, my sense is that the minority ethnic development fund should be

implemented. However, at the same time, the racial equality strategy and action plan should link together with that. We have only two years left, so those two years should link into that level of achievement. After that, the other Departments should play a crucial role in funding for the future.

Mr Eastwood: Thank you, Patrick. I have two questions. You said that less than 20% of the grantees on core costs from the minority ethnic development fund are ethnic minority groups or communities. Where is the other 80% going?

Mr Yu: The local groups. I refer to the ethnic minority community. Specifically, they are the ethnic minority groups.

Mr Eastwood: You said that 20% of the grantees on core costs are ethnic minority groups or communities.

Mr Yu: The 80% goes to local groups.

Mr Eastwood: OK.

Mr Yu: That is why I raised the issue of proportionality.

Mr Eastwood: Fair enough.

On the matter of the outstanding issues in the Race Relations Order, it is very concerning that the only time that the Government respond to the question of updating the legislation is when big fines are coming from Europe. You said that there are big deficiencies and big gaps. What needs to happen with legislation, and what are the gaps? What are we missing in legislation, compared with what exists in GB?

Mr Yu: There are two parts to that. First, when the issue was debated in the Assembly in 2009, all the key areas that we need to change were highlighted. That has not changed. Also, over the past two years, because of the infringement proceedings, other issues have been highlighted, including, as we have discussed at the Committee previously, Filipino and non-Filipino agency workers. Now, not only ethnic minorities but local people are being affected. If they are agency workers, they are not protected. A huge area of the workforce is not being protected. If the position is remedied for racial minorities, it will apply to all.

Mr Eastwood: Is there much more beyond that? Rather than having to wait for the EU to come in again and tell us that we will have to pay a massive fine, what can we do now?

Mr Yu: As I proposed, we encourage this Committee to support a motion for a consolidated Bill. When you debate, all the areas that need to be amended should be included. As I said, it will be a long process. We will not see change within two or three months. It will take at least 12 months. My sense is that we should link this reform process into one of the key actions that must be taken by OFMDFM. The action plan should indicate when the consolidated Bill should be finished, whether that is 2014 or 2015. There should be a very clear indication of that.

Mr Eastwood: That is fair enough. It would be useful to see a list of the things that we are not doing and which the Executive need to do. That would help us in proposing anything in the future.

Mr Yu: There are a couple of areas that I can tell you about immediately. When we introduce the regulations on the race directive, colour and nationality will be specifically excluded, because we copy and paste everything from the UK Government. We do not have the Race Relations (Amendment) Act 2000 that exists in GB and which was in relation to the Stephen Lawrence murder inquiry recommendations. That means that all government agencies, particularly criminal justice agencies, are outside of anti-racism protection law. Normally, race law cuts across all crime.

The latest development is on agency workers. As you know, we also have very serious concerns about the fact that the GB legislation is more focused on the concept of employees and employment. As you know, that is a very UK-based definition. EU law talks about the concept of workers and the concept of a working environment and working establishment. That is why a lot of agency workers are outside protection. That is simply because, first, they do not have any employment contract and, secondly, because they do not have any contract at all with the agency. The agency just sends them

to any establishment. EU law sees that as part of the working establishment. That is why we need to have more discussion or legal opinion so that we will get those protections. At our meeting with you in May last year, we gave you the case law about that, which is why we need that sort of protection in relation to agencies.

Mr Lyttle: Thanks, Patrick. It is good to hear from you again. I echo what Colum said. He asked what I intended to ask, but your paper says that racial equality law in Northern Ireland is inferior to that in Great Britain. Indeed, you said that OFMDFM is failing to provide basic legal protections on racial discrimination. The Equality Commission would seem to agree with you that there are still unacceptable levels of discrimination on racial grounds in Northern Ireland. How big a problem do you think it is?

Mr Yu: If you look at discrimination on grounds of race, you are talking about the employment side and the service side. The employment side is difficult. Here, you do not get any support from the Equality Commission, which means that it is very difficult to bring a case to court. It is virtually impossible that you will win the case. That is why the tribunal figure for the number of cases won on racial grounds is very low compared with all other categories.

Support from the commission on the legal side is very important. Every other part of the voluntary and community sector has a free lawyer to provide advice and support about how to plan before going to tribunal. That is why it is a chicken-and-egg issue. Here, if the commission does not handle more race cases, it is absolutely clear that the success rate will be between 15% and 20% of the cases lodged so far.

The bigger issue is that the service side is much more difficult if people are going to the County Court. Basically, if you do not have money, you cannot sue privately. In most cases of discrimination, people just shut up or change their job. You cannot get any justice.

Mr Lyttle: If the Equality Commission and the Northern Ireland Council for Ethnic Minorities are telling us that there remains a significant challenge, the Assembly should take forward a motion to debate that issue and draw those issues out in detail.

Mr Yu: We would welcome such a move.

Mr Maskey: Thank you, Patrick, and your colleagues. You are very welcome again to the Committee. You have again drawn out clear deficiencies in policy and the legislative framework required to protect people's rights. Before we have another debate in the Assembly, we need to have better information, so I would like to see a proper discussion, with the Department coming to speak to us about a number of these matters.

The recent seafarer agency staff issue again brought the matter to our attention. If our drivers for legislation are possible infractions from Europe, we will never get good legislation because we will always be behind the curve and have to bring something forward that is less equality than it needs to be. I would like to have a proper discussion with the Department on these issues. By all means, we should have a debate in the Assembly, but let us have it on an informed and up-to-date basis.

The development fund issue has been raised on quite a number of occasions by yourselves, Patrick, and others from the sector. That needs a bit more exploration. A person from a minority ethnic background organisation said to me some time ago that if all the organisations that are getting grant aid for saying that they are working with ethnic communities were working with ethnic communities, there would not be any problems out there. I am not going to be as sceptical as that, but the criteria for funding in respect of anybody working with, for, or on behalf of ethnic communities have to show clear linkage and demonstrable outcomes for the benefit of that community and the protection of its needs, rights and entitlements. Therefore, I think we need to put focus and attention on that. I would not rule out any organisation. I have seen good examples of residents' organisations getting a little bit of money because they work with newcomer residents. I can see the value of that and other types of projects. Again, when a statistic, which may not mean an awful lot, is produced that says that 80% of the grantees are not from within the sector, that obviously flags up a concern that we need to address and understand better. Such a statistic may be valid, but let us get a rationale for funding criteria.

Let us have a presentation and a discussion with the Department about current thinking on the policy, the framework and the protections. Do we need a consolidated Bill? How do we take that forward?

As I said, I think the agency worker issue in respect of seafarers is a case in point. That tells us that we need to be ahead of the curve, not behind it.

The Chairperson: Do you want to come back on that, Patrick, or are you content to note it?

Mr Yu: No; that is fine.

Mr Moutray: This is really just a comment. On the back of what we heard today, probably the best thing to do is to get the Department along to answer some of these questions. Patrick, if you could expand on them and forward us some more issues, we could take time to look at them.

The Chairperson: OK. Are members content?

Members indicated assent.

The Chairperson: In summary, what we would prefer to do is ask the officials to come along to give us a briefing and talk about the strategy and the development fund, and about where funding has gone, who has it and what it is used for. Once we have that information, we as a Committee will take the time to reflect on it. We will then make a firm decision about whether to bring forward a debate to the Floor of the Assembly. Is that a fair summary?

Mr Yu: In the meantime, we have already started to revise our previous paper. I will circulate that among the Committee once it is finished.

The Chairperson: OK. From looking at our forward work programme, I imagine it will be mid-February before we take a briefing from officials, so we have a wee bit of time. If you could get the updated information to us by then, that would be very useful.

Mr Yu: OK. Thank you.

The Chairperson: I thank all three of you very much.