



Northern Ireland  
Assembly

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

# **OFFICIAL REPORT (Hansard)**

**Ethnic Minorities in Northern Ireland**

**18 April 2012**

# NORTHERN IRELAND ASSEMBLY

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

### **Ethnic Minorities in Northern Ireland**

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**Members present for all or part of the proceedings:**

Mr Mike Nesbitt (Chairperson)  
Mr Chris Lyttle (Deputy Chairperson)  
Mr Trevor Clarke  
Mr Colum Eastwood  
Mr Alex Maskey  
Mr Francie Molloy  
Mr George Robinson

**Witnesses:**

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

**The Chairperson:** With us are Patrick Yu and Helena Macormac; you are both very welcome. Patrick, I take it you are going to lead us off?

**Mr Patrick Yu (Northern Ireland Council for Ethnic Minorities):** Thank you, Chair and members of the Committee. I think we last attended a Committee meeting last year, when we had just come back from the UN Committee on the Elimination of Racial Discrimination. Today, we are highlighting a similar issue: the current deficiency of the race relations legislation. It also coincides with our recently published research report about the Filipino community in Northern Ireland.

In my briefing paper, we highlight four major issues. The first is a quite appalling figure: 41.5% of respondents directly experienced racial discrimination or racial harassment by their colleagues, by their boss, or by the customer or service user. The Department of Health, Social Services and Public Safety (DHSSPS) did similar research in 2006 on all the Filipino nurses working in the NHS at that time, and that figure was 48%. So, there has not been much change since 2006.

It also highlights the issue of vulnerability, to move to the second point. Because most of them are under the work permit regime, they will not complain, because if they complain, the employer will not continue the contract and will not renew their work permit. So this is the classic migrant worker under that type of vulnerability.

The research also highlighted another protection issue: the agency worker. In the research report, we found that nearly 28% of the respondents were here under an agency, either an agency in the Philippines or an agency in Northern Ireland or the UK, which means they have less protection compared with ordinary employees.

The last issue is poverty. Quite a lot of these people work in private nursing homes, where their pay package is just above the minimum wage. So, the average wage for them is between £6.50 and £7 an hour in Northern Ireland. As you can imagine, there is a lot of inflation, including the need to send money home, and given the variation of sterling over the past two or three years, their disposable income is much lower than they expected.

Interestingly, the whole issue of poverty coincides with our first research report on employment. In 2009, we published a piece of work about the impact of the downturn on the Polish community, which is now the largest ethnic group in Northern Ireland. Their experience can be transferred to all other eastern European countries, at that time under A8 and A2. The research report found that unemployment among that group is nearly three times higher than the local average. It was about 21% in the second quarter of 2009, when the average in Northern Ireland was around 6.5%.

Another salient figure from the Polish research report is that only 5% of people from that community are eligible for benefits. That is a huge problem, because it means that a lot of people are unemployed and have nowhere to go. This whole issue of poverty has been highlighted over the last year and a half, as a result of the economic downturn. The fiscal policy cuts and the cuts to a lot of services are impacting on ethnic minorities. Today I will focus only on the agency worker, because it is all falling into the race legislation, and, as I mentioned, we want to follow on from our last meeting with this Committee, which followed the meeting of the UN Committee on the Elimination of Racial Discrimination. As I highlighted in the paper, more or less at the moment, agency workers have far less protection than ordinary employees. That means that those agency workers, in most cases, are hired through an agency contract.

I draw a distinction between the Filipino group and the non-Filipino group. I will focus on the Filipino group first. Within the Filipino group in Northern Ireland, the majority of the agency contracts are from the Philippines. Under the current law, they have no protection whatsoever. So that highlights the racial legislation, which I have already highlighted with regard to articles 9 and 10 of the Race Relations (Northern Ireland) Order 1997. Basically, if you are working for an outside-UK agency, there is no protection whatsoever. The second issue is the UK agency, like local agency workers or time workers. To some extent, a small margin of Filipinos are employed through local agencies, especially in the nursing sector where you have so-called locums. They are working only certain shifts or certain work. I think that it is quite common in the healthcare sector to have locum agency workers.

As an agency worker, much also depends on your contract. Some contracts are good, some are bad. In a sense, you need to determine whether you have an employer. That is a minefield situation, and that is why I have highlighted two case precedents: one in Northern Ireland, one in GB. We all know the Northern Ireland one very well; it is a part of a wider controversy. The PSNI employed a former RUC officer through an agency. This guy was formerly an RUC senior officer and was qualified for the job. He applied seven times, but he never got an interview. Because of that, he sued the agency. The case went straight to the tribunal, and the tribunal chair was quite clear. Who is the employer? The guy was told that he had no employment relationship; he was seeking jobs. So that did not create a future employer situation. That is why there is no protection.

We draw a distinction with NICEM, which advertised a post a few weeks ago. We will contact interviewees shortly, start shortlisting and inform the successful candidates that they will have an interview and unsuccessful candidates will be told, "Sorry, you have not been selected for the interview." Those on the list of unsuccessful candidates, if they are not happy about my explanation as to why they have not been selected, have the right to sue NICEM. NICEM is the employer or prospective employer for that job. However, in an agency situation, they cannot sue. So this is one situation.

In the other case, in GB, there is another scenario. An agency worker was employed to work in a prison, doing some laundry work inside the prison. He had been working there for a few months before

he was dismissed. In the same way, he sued the Prison Service for unfair dismissal and discrimination on a number of counts. The issue went to a tribunal, and the chair asked, "Who is the employer?" There was no contractual agreement between them. Is HMPS the employer? No, the agency is the employer. The whole case was thrown out.

Because of that, the case of the agency workers highlight all those unprotected areas. To cut the story short, the Government in GB introduced the Agency Workers Regulations 2010 because of the directive put in place three years ago. We still have limited protection. At the moment, the employer or the agency find it easy to get around that. In most cases, they ask those intending to apply for jobs as agency workers to become self-employed. If you are self-employed, then you do not need to be protected, and there is no contractual relationship between the agency and the end user. So this is a different way to get around offering basic protection.

We are concerned about the whole equality legislation. Any discrimination is supposed to be unacceptable, whether you are an employer or the end user who employs those agency workers. That is why, in our submission, we ask the Committee to amend the current deficiency in the race relations legislation. As I said before, we are already nearly 13 years behind the UK amendment; the last one was in 2000. That is creating a lot of problems at the moment.

As I said in the paper, I do not see any prospect of a single equality Bill, which we would wholeheartedly support. However, if we do not get one, we need to amend our race law. Bear in mind also that amending the race relations law will benefit all other groups, such as agency workers and others. Under the race one, we had a very big one in House of Lords cases in the early 70s about service provision. The House of Lords decision made it clear that if the public sector provides the services and the private sector does not provide the same, the race legislation will not apply. Because of that, the entire criminal justice system is outside the current legislation, whether the case falls under race, religious and political opinion, sexual orientation, gender, disability or age. So, you can see that it has the same effect. However, if we amend the race relations law, all that ground will be covered by the same legislation.

I will stop there to answer any questions or provide clarification.

**The Chairperson:** Have you had a response from the Department to the report that you are producing?

**Mr Yu:** Do you mean the Office of the First Minister and deputy First Minister (OFMDFM) or the Department for Employment and Learning (DEL)? We will see OFMDFM tomorrow.

**The Chairperson:** Right, and anything from the Equality Commission?

**Mr Yu:** We met the Equality Commission. It supports us in pushing for the amendment.

**Mr Eastwood:** I support your calls. Your document is well put together. You pointed to the motion debated in the Assembly in May 2009 that called for this. As a Committee, we should be asking if that was given support. We should write to the Ministers and ask them what has happened, why it has not been delivered, and in support of NICEM's call for the gaps between the legislation here and across the water to be plugged. I wholeheartedly support you on that.

What percentage did you give for the number of Filipino workers employed through an agency in the Philippines?

**Mr Yu:** We found that roughly 28% are agency workers.

**Mr Eastwood:** Did you give a figure for those that were employed —

**Mr Yu:** Around 28%. The agency found work for around 85%.

**Mr Eastwood:** What difference does that make in terms of their —

**Mr Yu:** The difference is quite clear: those employed under the agency in the Philippines have no protection whatsoever, either under employment or equality laws.

**Mr Eastwood:** That is very worrying. If 85% of Filipino agency workers are not protected at all, I ask that we ask whoever the right Minister is to look at that issue to see if there can be any extension of workers' rights to those employed via an agency outside this jurisdiction. We should at least be asking those questions to see whether there is any way that they can be covered under legislation here.

**The Chairperson:** There does not appear to be any great sense of urgency.

**Mr Yu:** There should be a greater sense of urgency. I have been to this Committee three or four times to talk about the same thing — reviewing race legislation. Today is not the first time. In 2009, before the debate in the Assembly, I was before this Committee. I was before this Committee again a few months after the Assembly debate.

I tried to provide supplementary information about what has happened since 2009. At that time, the Minister could not do anything because change was needed in the whole criminal justice system. If you read the conclusion of Jeffrey Donaldson, then a junior Minister, in the debate, you will see he highlighted the fact that the policing and justice powers had not been transferred. That meant the Assembly could not pass any legislation in the area because doing so was outside its competence. Now, criminal justice powers have been transferred, so it has the power to make law. That is why we need to do it sooner rather than later.

**The Chairperson:** Do you sense any great urgency within government to engage with you?

**Mr Yu:** No. We are all being lumped into the fate of the Single Equality Bill, so there is no movement. That is why this Committee is so important. We need to look at why race issues are always at the bottom of the pecking order in Northern Ireland. That will not change until things at the top move, which is not fair.

**The Chairperson:** Looking at that pecking order, I see that you have an evidence base here. Is it as good as that of any group in the pecking order looking for legislation?

**Mr Yu:** We are the worst off. Most forms of discrimination, such as age or sexual orientation discrimination, are covered under the 2003 European directive. Race legislation in Northern Ireland was only passed in 1997. The first law on the issue in the UK was enacted in 1965, but it was never extended to Northern Ireland. After 1997, in the UK there was a major amendment to the legislation because of the Stephen Lawrence inquiry. I mentioned the whole criminal justice system being outside race legislation, which is what created the Stephen Lawrence scenario. That is why Jack Straw changed the law in 2000, after the inquiry report.

In 2003, as I mentioned, there was a European directive, so the law here changed. At the same time, things changed for the worse. The Governments — both here and in the UK — do not listen to us. That has created a two-tier system. The EU race directive has set the minimum standard. It also allows the current Government, if their position is better than that required by the directive, to continue as they are, even though progress is supposed to be ongoing. The UK Government do not listen to them; they use it the other way around. That is a bizarre situation.

The 2003 legislation does not protect nationality, although the original legislation did. So, we have created a two-tier system. Some people have much better protection. Under the amendment to the regulation, both nationality and colour are not covered. Under the race directive, there is much better provision for shifting the burden of proof when you can prove there is a prima facie case of discrimination. However, that new improvement does not apply to discrimination due to nationality or colour. So, the race legislation has created the most bizarre situation. Not only do ordinary people from ethnic minorities now not understand the law, employers do not understand it either because it is too complex. That is why in 2009 we asked for change. We were waiting for a Single Equality Bill in 2006 and 2007, but it did not happen.

I was on the government's legal advice panel on that legislation, which had recommended amendments and was waiting for the draft legislation to come out. That is why, when asked whether I support a Single Equality Bill on the past few occasions I have been before the Committee, I have said, "Yes." However, I cannot wait another 10 years to get the legislation changed. That is why a sense of urgency from this Committee is so important.

**The Chairperson:** If you were in Leinster House in Dublin today and you were reporting to a Committee of the Irish Government, how different would your message be?

**Mr Yu:** The Irish Government have already changed everything. They are slightly different because they enacted the law late, which is why they have all the good things. Of course, there is still something in the case law. They have not rewritten the law either, but, here, we are talking about the law that was enacted in 1965. It was amended in 1976 to follow the rest of the UK. From 1976 up to now, so many things have changed. In the previous meeting with you, I said that the UK has the Equality Act 2010. That changed everything completely. We should not compare with the others because the context and content are completely different.

**Mr A Maskey:** Do we have any further complications because of the different legislation South of the border?

**Mr Yu:** No, I do not think so. There is no new legislation from the EU or from others.

**Mr A Maskey:** In all of these things, there are loopholes and gaps in legislation that people exploit. The legislation in the North and the South is different, so somebody will exploit that, North or South. Is there any evidence of that? It is another gap. When you go down to Greenore or Carlingford and talk about the fishing industry, you see that these things are cross-border. The maritime laws are cross-jurisdictional.

**Mr Yu:** It is already resolved under the race directive. The Secretary-General said that the race directive and the agency workers' directive are under the common framework, so they will be the same. I am not very familiar with the law in the Republic; I know only in a general sense that the common elements are the same. I do not follow much of the case law. Maybe we can ask our colleagues in the South to help us to prepare a paper, and I can come back to the Committee with another paper about North/South issues.

**Mr A Maskey:** We probably all agree that we want to support your call. We could probably all give different examples of cases that have been brought to our attention. I think that everybody will be very sympathetic to your case and your urgency, as opposed to other Departments' lack of urgency. If we are all coming to a point at which we want to agree with you, I am trying to make sure that, six months down the line, we do not discover that there is another gap and that we should have paid attention to it. Any information that you could add would be very helpful.

**The Chairperson:** I know that you say that you are not necessarily an expert on what is happening in the Republic, but can you compare the protections for agency workers here and there?

**Mr Yu:** It is slightly better in the South, but, as I say, that is in a general sense under the legislation. You also need to look at the practice and the case law. That is why I said that I am not familiar with that area. I will ask our colleagues in the South to prepare something. For the benefit of the Committee and for us, it is important to get the evidence.

**The Chairperson:** There was mention of the fishing fleets. It is my impression that the local fishing fleets would like the UK Border Agency to have a very light touch in administering the law.

**Mr Yu:** That is correct. I think it is exactly the same issue, because all those fishermen are under agency contracts in the Philippines. I think that I said in the previous meeting that they were abused by the so-called end user or the local employer. When they complained, they were sent home immediately. When a person passes away, the body remains there; they do not want to send it back until the insurance company has paid. I do not think that is acceptable by any standards. That is the

problem. More than that, we need to look at the two jurisdictions and the abuse that is happening under the system here.

**Mr G Robinson:** Do you find any discrimination in housing?

**Mr Yu:** As you aware, most migrant workers are not eligible for housing unless they have become a full citizen or they get a settlement. Of course, once you get a settlement or citizenship, you also need to look at your housing conditions and whether you fulfil the points requirement when you apply for public housing, because there is a long waiting list. You do not get extra points and it is very difficult to get through the system.

**Mr G Robinson:** Are there any other discriminatory practices?

**Mr Yu:** We have not come across any such cases at this time. At the moment, however, only A8 and A2 nationals — A8 nationals mainly — are eligible to apply for housing benefit. We have not heard anything in that area. We have our own migrant centre and we do quite a lot of casework on those complaints. There are only issues about housing benefit in general, but those are more on the Department for Social Development side than the housing side.

**Mr Lyttle:** Quite a lot of the recommendations for action pertain to the UK Border Agency. I presume that you liaise with the Northern Irish MPs on those issues.

**Mr Yu:** We also work closely with UNISON. The Filipino community is quite well unionised compared with other ethnic communities. UNISON is the main union to which they affiliate. Not for the first time here, the previous Labour Government introduced a number of changes to immigration law. In particular, the last time I was here, I mentioned the issue of senior care assistants, which falls under immigration case law. UNISON has a central office in London and a sponsoring MP, which allows it to use its own mechanism to campaign and lobby at Westminster. We also get support from local MPs. For example, Mark Durkan has helped raise the issue of senior care assistants with the Home Office. We are doing the same sort of campaign. We have not organised a meeting yet, so we will try to do that alongside UNISON and bring all the Northern Ireland MPs together. There is a big group of Filipinos in London who tried to get all the MPs from both jurisdictions to work together specifically on the issue of the senior care assistants and the change in the future settlement and citizenship rights.

**The Chairperson:** Patrick and Helena, thank you very much again.