

Memorials and Commemorations: A Policy Framework

Introduction

Mid and East Antrim Borough Council recognises the need to have in place robust decision-making procedures for dealing with contentious issues that can arise locally and can disrupt good relations within and across local communities.

Any decision on memorials and commemorations must accommodate all relevant statutes and guidance, including the following:

- Local Government (Miscellaneous Provisions) (NI) Order 1995
- Disability Discrimination Act 1995
- Race Relations (NI) Order 1997
- Sex Discrimination (NI) Order 1976
- Equality Act (Sexual Orientation) Regulations (NI) 2006
- Employment Equality (Age) Regulations (NI) 2006
- Fair Employment and Treatment (NI) Order 1998
- Section 75 & Schedule 9 NI Act 1998
- Belfast / Good Friday Agreement 1998
- Human Rights Act 1998
- NI (St Andrews Agreement) Act 2006
- ECNI Guidance on Promoting a Good and Harmonious Working Environment 2009
- OFMDFM 'Together: Building a United Community' 2013

More specifically, the Fair Employment and Treatment (NI) Order 1998 places a specific obligation on the Council, not only as an employer but also a provider of goods, facilities and services, to take all reasonable steps to prevent harassment. i.e. 'unwanted conduct which has the purpose or effect of violating dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment'.

Further to this legislation, in October 2009 the Equality Commission for Northern Ireland published its guide for employers and employees, *Promoting a Good and Harmonious Working Environment*.

The guide aims to provide employers and employees with practical advice to assist in promoting and sustaining a good and harmonious working environment. While the primary focus of the guide is on religious belief and political opinion in the workplace, there can be read-across to other contexts and other protected aspects of identity including race, gender, disability, sexual orientation and age.

Separately and in combination, this legislation and guidance has the potential to raise significant legal challenges in relation to decisions on memorials or commemorations. For example, if a request to erect a memorial or hold a commemorative event is refused, will that refusal constitute unlawful discrimination? Alternatively, if the memorial is put in place or the commemoration event goes ahead, could members of the public or Council employees reasonably claim to be harassed?

Decision-Making: Procedures

To ensure that decisions on memorials and commemorations are reached in good faith and are based on a transparent consideration of all relevant issues, the Council has established a set of questions that will be used to inform its decision-making (see below).

While applications for memorials or commemorations can be made by any Elected Member, individual or bona fide group attached to the Borough, initially the decision will be considered by the Equality Working Group. The Equality Working Group is a representative body made up of Elected Members drawn from each of the political parties in the Council Chamber, with Council Officers also in attendance. Applicants will be required to complete documentation which will provide all relevant information required for consideration by the Equality Working Group.

The Equality Working Group can be convened as and when required by full Council or officers to address issues that may have the potential to disrupt good and harmonious relations across the Borough. In turn, the Equality Working Group will report its deliberations and conclusions to Policy and resource Committee prior to final decision-making.

In this way, any decisions reached by the Council on memorials and commemorations will be open and transparent. Without this strong and decisive lead then decisions could serve not to bring communities closer together but may actually drive them further apart should they remind and reinforce differences rather than reflect in a positive manner on a shared past.

Decision-Making: Considerations

In reaching any decision, in line with its Corporate Purpose and Priorities and Good Relations Strategy, the Council has an obligation not only to promote good relations and increase mutual understanding but also to ensure that memorials and commemorations are marked without unlawful discrimination and harassment.

To meet both demands, the overarching principle that will inform decision-making around memorials and commemorative events will be based on respect and tolerance for different identities and histories. As a consequence, unlawful acts of

discrimination, triumphalism or other displays of intolerance will be regarded as inappropriate and unacceptable.

When handled appropriately, memorials and commemorations have the potential to help further our understanding of common pasts and futures. At the same time it would be naïve to ignore the possibility that unless decisions are made with care and sensitivity, they also have the potential to highlight and reinforce divisions. However, this outcome is not inevitable. In the words of the guidance notes provided by the Community Relations Council and Heritage Lottery Fund for funding bodies, *Remembering the Future* (November 2011), ‘... anniversaries need not be mutually exclusive; indeed, if commemorations are handled sensitively, they will provide an opportunity to underline how much of our history is shared.’

Section 75 of the Northern Ireland Act places two important obligations on public authorities. The first obligation under Section 75(1) requires public authorities to have due regard to the need to promote equality of opportunity on grounds of nine protected categories¹. The second obligation under Section 75(2) requires a public authority ‘in carrying out its functions relating to Northern Ireland have regard to the desirability of promoting good relations between persons of different religious beliefs, political opinion or racial group’.

Within the field of good relations, there remains some ambiguity as to whether the term ‘good relations’ should be applied only to community background, as defined under the Fair Employment and Treatment Order (i.e. religious belief and/or political opinion), or religious belief, political opinion and/or race/ethnic origin (as defined under the second or good relations duty within Section 75), or all nine grounds as included under the first or equality of opportunity Section 75 duty.

In the Equality Commission’s guidance on *Promoting a Good and Harmonious Working Environment* it is recognised that while the focus of the Guide falls principally on only two grounds of difference (i.e. religious belief and political opinion), it goes on to state that, ‘it is hoped that the overarching principles for helping to promote and sustain a good and harmonious working environment may also be considered in terms of all aspects of identity where similar duties apply’.

The present policy framework on decision-making also subscribes to this principle. That is, while community background based on religious belief and/or political opinion may often be the primary consideration when addressing contentious issues, other aspects of identity should not be ignored.

In reaching decisions, the Council also recognises that terms such as ‘neutral’ will not be helpful in establishing a test as to what may be regarded as good and harmonious. Instead, the Council will assume that a good and harmonious

¹ Religious belief, political opinion, racial group, age, marital status, sexual orientation, sex, with or without disability and with or without having dependants

environment is one where all those affected are treated with respect and tolerance, and where no-one is subjected to harassment or discrimination.

As appropriate, the Council will consult with relevant stakeholders when reaching any decision.

Given the large number of contested or politically sensitive issues in Northern Ireland, it is not felt appropriate to provide a list of potential memorials, anniversaries, commemorations, centenaries, jubilees etc. For example, local circumstances may dictate which memorials or commemorations are seen as contentious. In some communities a particular event may be uncontested while in others it may have the potential to be divisive. To address these local concerns, discretion will rest with the Council to recognise when a memorial or commemoration may be regarded as contested and thereafter to follow due process in reaching a reasonable, transparent and proportionate decision.

Further to the Council's statutory obligations under Section 75 of the Northern Ireland Act 1998, each decision will be screened to identify potential adverse impacts, and where appropriate, an EQIA will be carried out.

Decision-Making: Questions

In reaching a recommendation as to whether to support an application for either a memorial or commemoration, the Council will reflect on the following questions:

Memorials

1. What is the display or use of the space about and what is it intended to mark?
2. Does the display or use of the space have the potential to disrupt a good and harmonious environment or is it contentious in any way? (*If Yes, please continue*).
3. Has the management of this memorial been subject to scrutiny under section 75? If so, what was the outcome of screening / EQIA?
4. What is the Council's specific role in relation to the memorial?
5. Which other organisations have a role to play?
6. Which other policies, strategies etc. (internal and external) are relevant to this memorial?
7. What corporate liability may attach to this memorial?
8. Will the memorial be temporary or permanent?
9. Will the proposed memorial be likely to cause offence?
10. Will the memorial be on space owned by the public authority?
11. What is the space? (e.g. residential area, public space, thoroughfare, private building, public building)
12. If temporary, what arrangements have been made for the removal of displays?
13. In what ways will this space or display help promote good relations?
14. Have the organisers of the memorial taken any positive steps to help promote good relations?
15. What are the views of local residents/community groups/representatives etc. with regard to the memorial?
16. Who else should we engage with and how?
17. How will these voices play a part in the decision-making process?
18. Is the potential for unlawful discrimination and/or potential civil unrest so strong that it outweighs any potential benefit associated with the memorial?
19. Are there any specific clauses which should be inserted as a condition of any relevant contract relating to the memorial?
20. Would a member of the public or council employee reasonably claim to be harassed should a memorial be allowed/not allowed?
21. **In light of these considerations, should the Council support this application?**

Commemorations

1. What is the event and what is it intended to mark?
2. Does the event have the potential to disrupt a good and harmonious environment or is it contentious in any way? (If Yes, please continue).
3. Does the event arise for consideration under a policy which has already been subject to scrutiny under section 75? If so, what was the outcome of screening / EQIA?
4. Is the event a 'one off' or is it likely to recur on a regular basis (e.g. annually)?
5. What is the public authority's specific role in relation to the event (host, sponsor, organiser, provider of facilities etc.)?
6. What are the terms of any proposed contract in relation to this event?
7. Are there any contractual equality/good relations terms in the relevant contract?
8. Which other organisations have a role to play in the event?
9. Which other policies and strategies (internal and external) are relevant to this event?
10. What corporate liability may attach to the holding of the event?
11. Will staff of the public authority be employed/involved in the event?
12. If YES, will their involvement give rise to concerns in relation to equality of opportunity and/or good relations?
13. Where is the event to be held? (e.g. residential area, public space, thoroughfare, private building, public building)
14. Is the space/property in which the event will take place owned or managed by the public authority?
15. What temporary displays will be associated with the event?
16. Will the displays be likely to cause offence and to whom?
17. What arrangements have been made for their management?
18. What arrangements have been made for their removal?
19. Does the event have the potential to lead to a complaint of unlawful discrimination against the public authority and if so is it considered that there is a likelihood of success in any claim?
20. In what ways will the staging of this event help promote good relations?
21. Have the organisers taken any positive steps to help promote good relations?
22. What are the views of local residents/community groups/representatives etc. with regard to this event?
23. In order to promote good relations is there any group or body that the public authority should engage with and how?
24. How will the information gleaned from this engagement play a part in the decision-making process?
25. Is the potential for unlawful discrimination and/or potential civil unrest so strong that it outweighs any potential benefit associated with the event?
26. Are there any specific clauses which should be inserted as a condition of this particular contract?
27. Would a member of the public or council employee reasonably claim to be harassed should a commemoration be allowed/not allowed?
28. **In light of these considerations, should the Council support this application?**