



Submission on the merger of Irish Human Rights Commission (IHRC) and the Equality Authority: a Service Provider's Perspective

Nasc (which is the Irish word for link) is an independent organisation that works to link migrants to their rights.

In responding to the questions set out by the Working Group on the establishment of the Human Rights and Equality Commission (HREC), we wish to begin by stating our strong support for the comprehensive and inter-connected suite of recommendations made in the detailed and well-informed response of the Equality and Rights Alliance to the proposed merger.

The within document focuses on those particular recommendations which our experience as service providers leads us to believe would, if implemented properly, make a real difference. Our support of those recommendations is informed by our daily work providing legal advice and advocacy services to more than 1,000 immigrants annually, as well as our involvement with initiatives such as the Cork City Integration Strategy, our work as members of the European Network Against Racism, and by what we have learned as a result of establishing a unique racist reporting mechanism in cooperation with the community policing division of An Garda Síochána in Cork city. We have attempted to illustrate the potential value of a number of what we see as key recommendations with reference to our experiences as service providers and advocates for human rights and equality.

Finally, we present a case study describing a current matter of concern to us and to our service users, and which provides a live example of systematic discrimination in breach of Ireland's human rights commitments. We describe how the highlighted recommendations have the potential to prevent such situations from arising, and to deal with them effectively and efficiently if they do.

Fiona Finn, CEO,
Nasc, the Irish Immigrant Support Centre,
25.11.11.

CONTENTS:

Key Recommendations explained

1. The functions of the Equality Authority, in particular its functions in regard to promotion of equality and the provision of independent assistance to victims of discrimination, must be protected and enhanced within the newly established HREC.
 - 1.1 Promotion of equality
 - 1.2 Provision of independent assistance
2. The merger process should include necessary legislative amendments to enhance the promotion of equality and human rights and the prevention of discrimination. In particular, legislative changes should
 - 2.1 Include the introduction of a duty on public sector organisations to have due regard to equality and human rights in carrying out their functions, and
 - 2.2 Introduce a duty on public sector organisations to implement positive action measures to achieve full equality in practice in employment and service provision
 - 2.3 Expand the scope of the Equal Status Acts 2000 to 2001 to explicitly include the functions of the state. The legislation would thus cover the role of the state in exercising its powers in areas such as policing, immigration controls, social protection, education and housing.
 - 2.4 Empower trade unions and non-governmental organisations to take cases in their own name.

Integrated Case Study

3. Current and widespread infringements on the right to an adequate standard of housing without discrimination as to national origin - the difference the HREC could make.

1. **The functions of the Equality Authority, in particular its functions in regard to promotion of equality and the provision of independent assistance to victims of discrimination, must be protected and enhanced within the newly established HREC.**

1.1 Promotion of equality

A study conducted by the Cork City Integration Strategy monitoring committee last year highlighted that **awareness of equality infrastructure is much lower among immigrants and ethnic minority residents than amongst those members of the population who identify as “Irish.”**¹ For example, while around 70% of Irish people had heard of the Equality Authority, only around 30% of immigrant/ethnic-minority respondents had. Similarly, about 60% of Irish respondents and 45% of immigrant/ethnic-minority respondents were aware that there is a law that forbids racial discrimination against job applicants. This is particularly relevant in the context of the many studies indicating that **immigrants and ethnic minorities are more likely to experience discrimination.**²

This equality legislation should give the HREC the explicit task of promoting equal treatment and equality of opportunity as required by EU anti-discrimination Directives: the Race Directive, the Gender Equal Treatment Employment Directives, the Gender Directive (recast) and the Gender, Goods and Services Directive.

1.2 Provision of independent assistance

In practice, where people are aware of and do wish to take measures to redress discrimination that they have experienced, they encounter a system that is inaccessible and difficult to navigate. The EHRC should provide a service that is directly available to members of the public, which provides independent assistance in the form of information, advice and advocacy to residents of Ireland who believe that their human rights have been impacted upon, or they have experienced discrimination. It should become an accessible body, which interacts in a hands-on and direct way with members of the public who have human rights and equality concerns that relate to themselves personally. Where concerns relating to a particular category or group of people arise, the EHRC should provide information, advice and, where necessary, advocacy services to the representatives of that group.

2. **The merger process should include necessary legislative amendments to enhance the promotion of equality and human rights and the prevention of discrimination. In particular, legislative changes should**

¹ *CCIS Integration Survey, 2010: The Results of a Survey conducted as part of a Mid-Term Review of Connecting Communities: Cork City Integration Strategy 2008 – 2011: CCIS Monitoring Committee, Cork, 2011*

² *Appendix 1: Overview of Studies of Racism and Discrimination in Ireland*

2.1 Include the introduction of a duty on public sector organisations to have due regard to equality and human rights in carrying out their functions, and

2.2 Introduce a duty on public sector organisations to implement positive action measures to achieve full equality in practice in employment and service provision

Nasc regularly helps immigrants in making appeals to the Social Welfare Appeals Office (SWAO), on the basis of the misapplication of the habitual residence condition (HRC). Appeals related to the HRC rose from 1,383 in 2009 to 4,146 in 2010 – an increase of 200%. Around half of the appeals are successful, which means that **the HRC was misapplied more than 2,000 times last year**. SWAO processing times lengthened to an average of 28 weeks in 2010. Average waiting times disguise the reality for some applicants; a few months ago Nasc received notification of a successful appeal that it had submitted 16 months previously.

We do not believe that the SWAO process is an adequate response to widespread institutional discrimination. The introduction of a positive duty of care for public bodies with regard to equality and human rights would require public sector organisations like the Department of Social Protection to not only take steps to avoid discriminating against employees and service users, but to actively promote equality for, and respect and protect the human rights of, service users and employees. We strongly believe that training is required for front-line civil servants, both in the application of the HRC, and more generally in the principles of equality and human rights. Such training and other measures would be taken by any organisation truly committed to preventing discrimination, rather than merely responding to it.

In terms of the example described here, a consistent approach to equal treatment and access to services would reduce SWAO waiting times and the resources required to operate that office, which has been increased by the addition of nine new appeals officers this year. Under these circumstances, a preventative approach to equality and consistent and fair decision making should be a cost-neutral measure.

Legislative measures should also:

2.3 Expand the scope of the Equal Status Acts 2000 to 2011 to explicitly include the functions of the state. The legislation would thus cover the role of the state in exercising its powers in areas such as policing, immigration controls, social protection, education and housing.

While the introduction of positive duties of care in respect of equality and human rights would, if implemented properly, reduce the incidents of actual discrimination experienced by the state

bodies' service users, it remains the case that the protection of legislative measures prohibiting discrimination on the basis of the nine grounds is a key requirement in ensuring a robust system to prevent discrimination. It appears to us to be entirely absurd that the state's own functions do not fall under the legislation.

Service users who experience discrimination at the hands of the agents of state bodies have little access to redress. They are dependent on various *ad hoc* appeal and complaints systems which lack transparency and independence. They should have access to the systems provided by statutory guarantees of equal treatment, just as they do as service users in the private sector.

2.4 Empower trade unions and non-governmental organisations to take cases in their own name.

Where the human rights or equality rights of an individual or to a particular category of persons arises, the only systematic option available to them (in the absence of independent and transparent complaints or appeals systems) is to pursue Judicial Review procedures in the High Court. In those cases, it is most unfortunate that an individual must bear the burden and financial risk of becoming a test case. Trade Unions and independent (non-governmental) organisations should be empowered to take cases based on the experiences of one or more people who have experienced a particular infringement of their human rights or a particular type of discrimination.

3. Integrated Case Study:

Current and widespread infringements on the right to an adequate standard of housing without discrimination as to national origin - the difference the HREC could make.

The Social Housing (Miscellaneous Provisions) Act 2009 (hereafter referred to as "the 2009 Act") governs the management and allocation of social housing in the State. The 2009 Act does not deal explicitly with non-EEA nationals, and the legislation does not make any explicit distinction between Irish nationals and non-nationals in relation to the provision of housing.

Urban and rural Local Authorities are charged with administering the allocation of social housing. The Application Form prescribed for use by the Local Authorities under the 2009 Act contains a checklist which includes the following item:

"Proof of citizenship or leave to remain in Ireland. [Where applicable, evidence of having Stamp 4 Immigration Stamp Endorsement on a passport for a period of 5 years should be provided.]"

Instructions which have been issued to the Local Authorities by the state Department of Environment Heritage and Local Government have included instructions which explicitly discriminate against non-EEA nationals. Circular SHIP 2010/19 stated as follows:

“The two main changes to policy set out in this Circular relate to access to social housing support for non-EEA nationals, who are **not** classified as either refugees, programme refugees or who have subsidiary protection status.

The following rules apply to such persons:

- an non-EEA national applicant for social housing must have a Stamp 4 endorsement³ for at least 5 years in order to be eligible for consideration for social housing support; and
- the spouse and/or dependents of an eligible non-EEA national applicant, who are usually given a “Stamp 3”⁴ endorsement, must have that endorsement for at least 5 years in order to be eligible for consideration as part of an application for social housing support.”

Authoritative legal advice that we have sought on the subject confirms our belief that it is not within the discretion of the local authority to make such an administrative rule. Because the purported rule is not within the principles and policies of the parent statute, it falls foul of the parent legislation, is *ultra vires* and thus invalid.⁵

We are aware of several applicants whose applications for social housing have been formally refused on the basis that they have not held “Stamp 4” residency permission for a period of 5 years prior to their application.

Case Study:

Maria (not her real name) arrived in Ireland in 2003. She held a work permit granting her permission to work for a particular family, as a care worker in their home. She worked there for a year, but the hours were long, she was required to live in, and her rent was deducted from her pay, which was below minimum wage. She looked for other work, and found

³ “Stamp 4” is endorsed on the “Certificate of Registration”, a card carried by legally-resident non-EEA nationals in the State, and it serves as evidence that the holder has permission to live and work in the State, for a stated period of time.

⁴ “Stamp 3” is evidence that permission has been granted to live but not to work in the state, usually on foot of an application for family unity, where the spouse or parent of the holder holds some form of permission to live and work in the state.

⁵ Under sections 3, 20 and 32 of the 2009 Act, the Minister is entitled to periodically revise the eligibility thresholds and mechanisms for assessment of eligibility for social housing by introducing ancillary legislation governing those details. Revised governing regulations were promulgated pursuant to the 2009 Act in the form of Statutory Instrument No. 84 of 2011 on 1st of April 2011, the Social Housing Assessment Regulations (hereafter referred to as “the 2011 Regulations”). The 2011 Regulations include a revised Application Form, which unfortunately includes the unamended checklist referred to above. The Circulars issued in conjunction with the Regulations fail to correct the policy outlined above.

another employer who applied for a work permit for her. She has been employed in the same care home for the elderly for many years now. She finds the work hard but rewarding. In 2007, Maria was joined in Ireland by her husband and her 14 year old daughter. The family has made Ireland its home. Maria was granted a “Stamp 4” in 2010, meaning that she is now free to work for any employer. She has stayed on at the care home, where she is treated well.

In 2011 Maria applied for social housing. Maria’s wages are low, and her husband has been in and out of work over the last few years. The family has been living in sub-standard rented accommodation for years. Maria’s daughter is asthmatic, and Maria worries that her health is affected by the damp conditions in their current home. They have moved several times over the years since the family was reunified, sometimes because the accommodation was unhealthy, and sometimes because the landlord had other plans for the property. Maria and her family would prefer the security of knowing that their home is theirs for as long as they want to live there, and to pay rent to the City Council rather than to a private landlord. Above all, they cannot afford to live in a healthy house for as long as they are dependent on the private rental sector.

Maria’s application to be put on the local authorities housing list was refused. The letter of refusal stated that “Under current regulations you are required to have 5 years on a stamp 4 **prior to applying** for housing and therefore you are **not eligible** for inclusion in our social housing list.”

There is no appeals mechanism from such refusals. Maria’s advocate at Nasc wrote a letter to the Local Authority requesting a review of the decision. We have received a response from the Local Authority confirming that their decision was made on the basis of the above-mentioned Circular. Maria’s only alternative route of appeal is by way of Judicial Review to the High Court. However, should the case fail, Maria would bear the risk of the costs of the State being awarded against her. Maria does not wish to take that risk.

Growing numbers of non-EEA residents are have been presenting to Nasc and to other non-governmental organisations with similar letters of refusal in hand.

We believe that the State is failing to fulfil its obligations under Section 2 of the International Covenant on Economic Social and Cultural Rights, namely to guarantee that the rights enunciated in the Covenant, which include the right to adequate housing without discrimination as to national origin, will be exercised without discrimination of any kind as to national or social origin. **Any state body or department having a positive duty to have due regard to equality and human rights in carrying out its functions would carry out equality and human rights proofing of its internal processes and policies in a systematic way and on a regular basis. A breach of human rights obligations and equality principles such as that outlined here would have been flagged at an early stage, and could then have been reviewed and amended in a timely manner.**

We believe that the preclusion operating under the scheme constitutes direct discrimination, and that it would contravene the Equality Acts, should the Department concerned fall under the Equality legislation. **Had the breach not been flagged, victims of discrimination like Maria would have recourse to the Equality Tribunal, which should be adequately resourced to deal quickly and effectively with breaches like these. An effective Equality Tribunal would cost less and operate more quickly than High Court Judicial Review procedures.**

If the matter did require review by the High Court, Maria should be able to avail of independent assistance from the HREC in taking the case on her own behalf. Alternatively, should an organisation representing Maria and others in similar situations be empowered to take cases in its own right, in the public interest, the burden of testing the state's failure to safeguard human rights and to guarantee equal treatment for all its residents would not fall on the shoulders of a vulnerable individual. **These measures would allow effective access to justice and demonstrate the state's genuine commitment to equality and human rights.**

- **Ends**

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Appendix 1: Overview of Studies of Racism and Discrimination in Ireland

Amnesty International's report on racism in Ireland, 2001, found racist incidents on the street to be the most common form of racism, with 44 per cent of respondents experiencing this. They also found high levels of racism in shops and pubs.⁶

The Central Statistics Office included a module on discrimination in its Quarterly National Household Survey for the last quarter of 2004.⁷ Discrimination on the basis of race/skin colour/ethnic group/nationality was just one of a number of grounds for discrimination investigated. The survey found that 31% of those from other ethnic backgrounds experienced discrimination, which was higher than any of the other subgroups studied.⁸

The Economic and Social Research Institute published a study on Migrants' Experience of Racism and Discrimination in Ireland in 2006.⁹ The study indicated that the experiences of harassment and insults by neighbours or on the street are clearly highest among Black Africans. Nearly one quarter of this group had experienced insults or harassment by neighbours in the year preceding the study, over half experienced insults on the street or in public transport. For both these questions Black South/Central Africans' experience was significantly different from that of East Europeans.

The ESRI study also suggested that group most likely to experience harassment by neighbours or on the street (Black Africans) were least likely to report such an incident to the police. Overall levels of reporting of insults and harassment or violence/serious crime to the police was found to be low, concurrent with results from the Central Statistics Office's survey of equality and discrimination (referred to above), which found that persons from 'other ethnic backgrounds' in Ireland were much less likely than other groups to take action when discriminated against. This was also the conclusion of the RAXEN Focal Point for Ireland's 'National Analytical Study on Racist Violence and Crime'.¹⁰

An Irish Times survey published in November 2009 indicated that "Irish attitudes towards immigrants are hardening as people search for someone to blame for their worsening economic

⁶ This study was carried out in summer 2001 on a sample of 622 Irish Travellers, Black Irish, Europeans, Black Africans, North Africans and Asians. The sample was collected using NGO contacts and by snowballing, following quotas for gender, country of origin and residence in or outside Dublin: it does not claim to be a representative sample of these migrant groups in Ireland. FAQs Research (2001) *Racism in Ireland: The views of Black and Ethnic Minorities*. Dublin: Amnesty International (Irish Section).

⁷ This module was based on a sub sample of the QNHS, around 24,600 individuals of whom approximately 1,720 non-nationals. Central Statistics Office (2005) *Quarterly National Household Survey: Equality, Quarter 4 2004*. Cork: CSO

⁸ This discrimination could have been experienced on a variety of grounds including the other nine grounds examined in the survey, though we would expect much of it to have been on the grounds of racial/ethnic origin for this group.

⁹ This was the first large-scale nationally representative sample of immigrants' subjective experience of racism and discrimination in Ireland. The findings were based on usable postal questionnaires from 679 work permit holders and 430 asylum seekers. It was conducted by the ESRI for the European Union Monitoring Centre on Racism and Xenophobia.

¹⁰ RAXEN Focal Point for Ireland (2003) *National Analytical Study on Racist Violence and Crime*. Vienna: EUMC

situation...” and that “72 per cent of people want to see the number of non-Irish immigrants here reduced.”¹¹

The EU Agency for Fundamental Rights (EU FRA) conducted a Europe-wide survey to provide data that can be used to inform evidence-based policies (the EU Minorities and Discrimination Survey – EU-MIDIS) in 2008. The survey interviewed 23,500 people with an ethnic minority or immigrant background across the EU’s 27 Member States, and is the largest EU-wide survey of its kind on minorities’ experiences of discrimination, racist victimisation, and policing. The data provides evidence that is essential in the development of policies and action to address fundamental rights abuses in these fields. Thanks to the FRA, policymakers in Ireland were presented with the opportunity to gain an insight into the perceptions of 1,000 members of ethnic minorities who live in our capital.

One of its most disturbing findings of EU-MIDIS survey was that most members of minorities were unaware that discrimination against them was illegal and that machinery existed to combat it. Reporting rates among sub-Saharan Africans surveyed were as low as 16%. The authors noted that “[t]his is hardly surprising given that 59% of that group had experienced at least one random stop by the Gardaí in the 12 months preceding the survey, bringing black people living in Dublin into joint second place in Europe in terms of the frequency with which they are stopped by the police.”

¹¹ <http://www.irishtimes.com/newspaper/ireland/2009/1126/1224259488680.html>