



**Request for Tenders:
Equal Access Project Research Report**



Funded by the European Union

Who we are:

The Equal Access Project ('EAP') is an EU funded initiative to improve access to justice for people who are subjected to racial discrimination, through the training of advocates and the conduct of relevant research. The project is a partnership between the Free Legal Advice Centres (FLAC) and the Irish Network Against Racism (INAR) and commenced in February 2021 to run for a two-year period. During the two-year period a course of training will be developed and delivered to advocates, to equip those advocates with the necessary knowledge and skills to represent complainants before the Workplace Relations Commission (WRC). In tandem the project is looking to have a piece of empirical and analytical research carried out in relation to the effectiveness of the current infrastructure available to victims of race based discrimination to make complaints and to seek remedies for same.

Objective:

To deliver high quality independent research in relation to the effectiveness of the implementation of the Race Directive in Ireland with recommendations for change. This research is needed to examine whether the WRC and relevant legislation provides an accessible and effective system for the adjudication of complaints on the race ground, including in relation to the Traveller community.

Background

The EU Race Directive¹ ('the Race Directive') requires each Member State to put in place legislation prohibiting discrimination in a range of contexts and to establish the means by which those who experience racial discrimination, as defined in the Directive, may seek redress. The Race Directive includes within its ambit discrimination arising in the context of employment and access to goods and services, including public services and social advantages. Before the Directive was transposed into domestic law, the Irish State already had equality legislation in place, in the form of the Employment Equality Act 1998 and the Equal Status Act 2000. Those pieces of legislation have been amended from time to time including in order to comply with EU law.²

The Workplace Relations Commission ('WRC'), established in 2015³, is the quasi-judicial body with jurisdiction to investigate and determine at first instance complaints of racial discrimination as provided for in equality legislation, and also provides a conciliation service in respect of such complaints. The WRC was the end product of the amalgamation of a range of bodies dealing with workplace disputes, and subsumed the functions of the Equality Tribunal, which was the specialised body that adjudicated on equality disputes covered by EU Law between 2000 and 2015.

The Irish Human Rights and Equality Commission ('IHREC') is an independent statutory body charged with the promotion of equality and human rights, including by means of providing

¹ Council Directive 2000/43/EC

² Currently the Employment Equality Acts 1998 to 2015 and the Equal Status Acts 2000 to 2018.

³ The Workplace Relations Commission was established by the Workplace Relations Commission Act 2015.

legal assistance to victims of discrimination and taking representative actions.⁴ IHREC is the designated national body for the promotion of equal treatment under the Race Directive.

The impact of the establishment of the WRC and the transfer of the functions of the Equality Tribunal to that body has not been the subject of any detailed research to date.⁵ While the WRC publishes various statistics in its annual reports, there has been no quantitative and qualitative research undertaken to establish how accessible and effective the WRC is as part of the adjudicative process for redressing discrimination under the Race Directive. In particular, there has been no focused research amongst minoritised communities in relation to knowledge and awareness of the WRC and its role in providing redress for incidents of racial discrimination either in the employment context or in the context of access to goods and services. Similarly, the role of IHREC as the national equality body and its effectiveness in combating race discrimination and providing information and legal assistance has not been analysed to date.

The Fundamental Rights Agency has published a report on the implementation of the EU Equality Directive across member states entitled “Access to justice in cases of discrimination in the EU, Steps to further equality.” The report provides a valuable insight into some of the obstacles and incentives that influence complainants and analysed the issue from the perspective of three key themes: structures, procedures and support.

FLAC and INAR on behalf of the Equal Access Project are seeking tender proposals from suitably qualified tenderers who wish to be considered to provide the research service outlined below. Responding Tenderers should have a strong track record to provide the required research services and in particular to have the required **legal expertise** and knowledge of equality, human rights and the public sector equality and human rights duty as well as sociological research skills.

The EAP has a project management team, which has also appointed an Advisory Committee of experts to guide the project. The Advisory Committee will review drafts of the research report as agreed and offer feedback and direction to the researchers. In addition, the Advisory Committee and project management team will agree with the researchers the final recommendations based on the research.

Research Project Requirements

The successful tenderer is required to provide a research report into the overall effectiveness of the legislation and infrastructure⁶ available to support victims and provide redress for incidents of racial discrimination in Ireland. The research should explore the extent to which the current system for investigating and providing redress for racist incidents (including the legislation) acts as an effective deterrent against further discrimination and make

⁴ IHREC was established under the Irish Human Rights and Equality Commission Act 2014.

⁵ There is some limited research carried out in the context of employment law to which the EAP has access.

⁶ The infrastructure is taken to mean any organisation or body with a legally defined role in promoting equality and combating discrimination, such as IHREC.

recommendations based on the research for strengthening the current legislation and infrastructure making it more responsive to incidents of racism in Irish society.⁷

The research should have regard to the FRA Access to Justice Report and the three themes identified in that report to analyse implementation of the Race Directive, namely: structures; procedures and supports, which provides a template for the present research. As detailed below, the proposed research entails analysis of the legal framework, drawing on existing literature as well as case law analysis. It also requires primary research on the experience and perceptions of those who experience race discrimination, using qualitative methods such as interviews and focus groups.

At a minimum the following issues should be addressed in the research:

Legal Obligations

1. To identify the minimum obligations of the State under the EU Race Directive, also having regard to the Charter of Fundamental Rights drawing on existing literature in the area;
2. To identify any gap(s) in the State's implementation of the EU Race Directive based on the identified minimum standards, including in respect of the powers and functions of IHREC, Ireland's equality body;

Awareness of complaint mechanism(s)

3. To establish the extent to which minoritised and racialised groups and the civil society organisations that support them are aware of the remedies available for incidents of racial discrimination;
4. To establish the extent to which such groups and organisations are aware of the infrastructure for providing redress and promoting equality;
5. To establish the extent to which such groups are aware of, or avail of, supports in respect of incidents of racial discrimination;
6. To establish the extent to which such groups are aware of the functions of IHREC, and would seek assistance from that body;
7. To establish the extent to which such groups report incidents of racial discrimination;

The factors that influence victims to seek redress

8. To establish the extent to which the complaint mechanism available for incidents of racial discrimination through the WRC is availed of by victims of racial discrimination;
9. To examine whether the availability of advice, advocacy services/ legal representation impacts on the willingness of victims of racial discrimination to refer a complaint to the WRC;
10. To examine the extent to which the identity of the perpetrator influences the decision to seek redress;

⁷ For the sake of clarity racism experienced by the Traveller community is included within the research notwithstanding the separate ground of membership of the Traveller community within equality legislation.

11. To assess the impact of section 19 of the Intoxicating Liquor Act 2003, and whether this impacts the choice of victims to seek redress;
12. To have regard to the gender dimension of experiences of victims of racial discrimination in accessing justice and to explore any additional burdens or barriers experienced by women on the basis of their gender;

Outcome of Complaints:

13. To identify the outcome, including the number of complaints upheld/ not upheld and any remedies, other measures ordered, in respect of complaints of discrimination on the race/ Traveller community ground submitted to the WRC until 31 December 2021, and to identify where such complaints included multiple grounds;
14. To establish, based on the existing literature and research in the area, whether there are identifiable factors that contribute to success or factors that tend to lead to a negative decision in respect of complaints of race discrimination;
15. Based on any existing research and /or an appropriate sampling exercise to consider specifically whether either party being represented before the WRC has a particular bearing on outcomes, including having regard to the form of that representation;
16. To provide a comparative analysis as regards numbers of complaint/ outcomes of complaints of racial discrimination in the period 2009-2014/ 2015 (Equality Tribunal) and 2015 to 2021 (WRC), and to identify any trends in respect of the handling of complaints by the respective bodies;

Conclusions

17. To identify factors that contribute to success or the factors that tend to lead to a negative decision before the WRC in the context of complaints of race discrimination;
18. To draw conclusions on the effectiveness of the current legislation and infrastructure for combating racism;
19. To develop recommendations for improvement of the current legislation and infrastructure for combating discrimination.

Period of the contract:

It is expected the research programme will commence in February 2022 and be completed by August 2022.

The application process:

Tenders and CVs should be submitted to ruth.kilcullen@flac.ie accompanied by a letter explaining why the candidate is interested in the research tender. The Tender should include evidence of experience in report-writing in a relevant area. Tenders should demonstrate an understanding of the infrastructure for dealing with complaints of discrimination in Ireland and relevant EU law. Tenders will be judged on previous expertise and reports written by candidates, and if necessary by interview. We especially encourage applicants from affected groups/communities to apply.

Tender bids must clearly specify information as follows:

- Details of the proposed approach and methodology to be adopted in carrying out work that is designed to meet the study's aim and objectives.
- A timeline for completing the various elements of the study work plan and schedule.
- The number of days proposed to work on and complete the study.
- The number of people who will work on undertaking and completing the study and the role of each person.
- A breakdown of costs per day and total of the fees being charged for completing work on the study.
- An outline of the bidder's relevant experience, skills and knowledge of the sector and study context. This information should include reference to and details of other similar work undertaken previously.
- **Demonstration of Previous Experience:** Provide a description of the person/organisation, types of activities undertaken and details of recent client projects. Respondents are asked to provide evidence of 3 years' minimum relevant consulting and clearly demonstrate their ability and track record in dealing with the areas specified in the Research Project Requirements (page 3).
- **Reference details:** Provide reference contact information, for (at least two) clients of recent projects.
- **Financial Capacity:** Provide the latest available Audited Financial Statements in relation to a Company or evidence of tax compliance in relation to a sole trader.
- **Track Record and Experience:** Provide CVs of same.
- **Conflict of Interest:** Any conflict of interest or potential conflict of interest should be fully disclosed.

Assessment of Bids:

The contract for the study is being awarded by a competitive tendering process. Tender bids will be assessed on related criteria as follows:

- Demonstrated knowledge, experience, skills and competencies to undertake and complete work related to the study as required and within the time frame;
- Appropriate legal expertise to fulfil the requirements of the research;
- Appropriateness and effectiveness of the approach and methodology proposed for undertaking and completing the research;
- Track record with respect to undertaking and completing similar contracted work;
- Evidence of capacity to complete all elements of the research within the time frame.

Conditions:

The completed study will be the property of the contracting body. The competitive tendering process for the award of the contract for the study will be in line with the information as set out. All tender bids received will be assessed against the criteria listed. The tender bid deemed most economically advantageous and capable of meeting the study aims and objectives will be selected for the award of contract. **Tenders may not exceed a**

budget of €45,000. The lowest tender bid price will not necessarily be awarded the contract. The successful tender bid submitter must have tax compliant status.

Queries can be sent to ruth.kilcullen@flac.ie until close of business on Monday, December 13th 2021.

The closing date for receipt of tender bid and letter is Friday, January 14th, 2022.