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Accessing Financial Services

Section II article 4 of the Framework Convention for the Protection of National Minorities states that “the parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political, and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority”. In the draft Second State Report on Ireland, the Committee of Ministers concluded that, “...much remains to be done in the implementation of the Framework Convention, in particular in areas covering accommodation, education, employment, health care, and access to certain goods and services by members of the Traveller community”. Financial inclusion is paramount to the successful implementation of the Framework Convention for the Protection of National Minorities.

The issue of whether people are being unfairly and discriminately denied access to financial services arises from growing reports that the practices being followed in a number of financial institutions implementing obligations under the anti-money laundering rules are leading to financial exclusion. Individuals are experiencing difficulty in opening bank / credit union accounts as a result of new identification rules being applied by financial institutions to new customers.

This, in and of itself, is an undesirable outcome and would seem to contradict stated government policy to encourage people to save and to have access to financial services. There is also an added concern that it is not only leading to financial exclusion *per se*, but that it is disproportionately affecting people from socially excluded groups, in effect burdening them with not only social but also financial exclusion. Such socially and financially excluded groups include members of the Traveller community, the immigrant communities, people out of home, unemployed, youth, aged, and those whom because of their intellectual capacity or socio-economic status are dependent on another, live in shared accommodation, and/or do not have house hold bills in their names.

This would appear to be a classic case of indirect discrimination – where legislation is not in itself discriminatory (see Appendix 1, paragraph 28) but its impact is. This would run contrary to the Equal Status Act 2002 and European Convention on Human Rights.

The following examines the obligations placed on financial institutions to take measures to establish the identification of customers, the policies put in place to implement those obligations, and whether such policies are compatible with the Equal Status Act 2000 and the European Convention on Human Rights.

- The Criminal Justice Act 1994 imposes obligations on financial institutions to take reasonable measures to establish the identity of customers and to retain information of their identity, for the purpose of combating money-laundering. The policies adopted by financial institutions in implementing these obligations can lead to financial exclusion and discrimination.
- The most often used policy by financial institutions is to require ID by way of a passport or driving licence and the production of utility bill in a customer's name. This strict policy means that those who, for legitimate reasons, cannot produce the above forms of ID are not permitted to have access to financial facilities.
- In many cases it may be that the policy is adopted out of caution without regard to the adverse impact that the policy has on certain individuals or groups, or that it may be discriminatory. However the policy could also potentially be adopted to deliberately exclude groups, who financial institutions consider to be less desirable clients. For example it has been noted that many financial institutions are refusing individuals access to bank accounts not on the basis of a lack of sufficient identification, but because an individual is unemployed.
- Financial exclusion of any legitimate clients, particularly those who come from communities or sector who have historically not had access to financial services, or have not had saving accounts, is not desirable and goes against government policy to include as many as possible in saving schemes and to ensure everyone has equal access to financial services. It is particularly problematic where normal interaction with the state through state sponsored work, training or social schemes require participants to have bank accounts and then the same participants cannot access financial institutions.
- In some cases it is the status of someone which leads them to not having the necessary documentation e.g many members of the Traveller community will not have a passport or driving licence - in addition utility bills are not an option for many Travellers due to the nature of their accommodation, and use of pre-paid utilities.

- Policies which lead to one group being treated less favourably as a result of their gender, marital or family status, age, a disability, religion, sexual orientation, race, or membership of the Traveller community are discriminatory and contrary to the Equal Status Act (ESA) 2000. The ESA 2000 prohibits indirect discrimination as well as direct discrimination, which means that policies which have an disproportionately adverse impact on one of the nine groups protected by the Act, are prohibited. Strict policies such as requiring individuals to produce documents that certain groups, or communities are less likely to possess, or are unable to possess, are therefore likely to be discriminatory in the absence of strict justification for the policy.
- In the case of access to financial institutions, conditions or restrictions on access to establishing a bank account is a restriction on enjoyment to individual property – savings, or social security entitlements, for example which may have to be paid into a bank account. That right is protected by Article 1 of Protocol 1 of the European Convention on Human Rights (ECHR). Although the right can be subject to condition and limitation, those limitations cannot operate in a discriminatory manner. Article 14 of the ECHR prohibits discrimination. As with the Equal Status Act, policies, which have a discriminatory impact on persons for reasons related to their status, will be prohibited.
- The primary cause of financial exclusion does not stem from the primary legislation or from the Guidelines laid down in 2002 (see Appendix 1) which sets out an obligation to take reasonable measures to combat money-laundering. Rather financial exclusion stems from the policies adopted by each financial institution. It should therefore be a matter for the regulating authorities, together with the financial institutions, to review the policies and practices of each financial institution to ensure that they do not breach either the ESA or the ECHR. Revised policies, clearly ensuring access for all, must then be adopted by all financial institutions and implemented via training for staff. The public should be made aware of the legislation and it should be monitored to ensure that the legislation is being complied with. Assistance from the Equality Authority is available to assist in policy development.
- Failure to comply with the ESA means that individuals who experience discrimination may take cases to the Equality Tribunal, and the Equality Authority may also take action itself if it believes that there is evidence of a practice of discrimination.
- The ECHR Act 2003 introduces an obligation to interpret legislation in a way which is compatible with the ECHR if possible. Although the Act does not apply directly to private bodies, because financial institutions require a public licence to operate, and are regulated through statutory authorities, the regulatory bodies will be required to make sure that the operation of financial institutions are in compliance with ECHR standards. Failure to comply with the ECHR may lead to

litigation action in Ireland, and can be taken to the European Court of Human Rights in Strasbourg.

Proposals

The problem with identification procedures does not stem from the 1994 Act or from the Revised Guidance Notes on Credit Institutions (2002), but from the policies put in place by individual institutions to comply with the 1994 Act.

1. All financial institutions can only operate under their respective legislation and their licence. The regulatory bodies should monitor whether institutions apply policies which comply with other obligations eg ESA and the ECHR.
2. Policies implementing obligations under the 1994 Act should be reviewed and amended in light of an equality and human rights proofing exercise.
3. The policies must be flexible to allow all to reasonably comply. There should be structures in place, so that individuals can be assigned responsibility to deal with cases, which may involve relying on documentation other than that usually requested.
4. Policies should be displayed clearly in financial institutions so that all customers know the requirements.
5. Staff should be trained in their obligations under the ESA and ECHR as well as other obligations.