

EQUALITY COMMISSION FOR NORTHERN IRELAND

FINAL REPORT OF COMMISSION INVESTIGATION UNDER PARAGRAPH 10 OF SCHEDULE 9 OF THE NORTHERN IRELAND ACT 1998

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&

Department for Culture, Arts and Leisure

INTRODUCTION

This complaint concerns the introduction of Irish language legislation by the Department of Culture, Arts and Leisure (hereinafter referred to as DCAL) and the subsequent allegation by the complainant that in so doing, DCAL has failed to comply with its approved Equality Scheme. In particular, the complainant had alleged that DCAL had failed to comply with Sections 1.3, 5.4, 8.3, 9.14 and 11.2 of its approved Equality Scheme.

At its meeting on 9th October 2007, the Statutory Duty Investigations Committee decided to authorise investigation into this complaint under the following terms;

- The Commission shall investigate this complaint in order to establish whether the Department had taken the consultation submissions received by it in response to the equality impact assessments issued on 13 December 2006 and 19 January 2007 into account when it formulated the indicative legislative clauses issued on 13th March, as required by Section 8.3.

That Section states;

“In making any decision on a current or proposed policy, the Department will take into account any relevant equality impact assessment and the outcome of associated consultation. This is a statutory requirement under paragraph 9(2) of Schedule 9 to the Northern Ireland Act 1998.”

BACKGROUND TO THE COMPLAINT

The original commitment to Irish language legislation came about through negotiations between the British and Irish Governments and local political parties in October 2006 which resulted in the St Andrews Agreement. This states that the “Government will introduce an Irish Language Act reflecting on the experience of Wales and Ireland and work with the incoming Executive to enhance and protect the development of the Irish language.”

DCAL published an initial consultation paper on the proposed Irish Language legislation on 13th December 2006 which had a submission deadline of 2nd March 2007. DCAL states that the purpose of this consultation document was to seek views on the nature and content of possible Irish language legislation. This consultation paper also included an initial equality impact assessment of the commitment contained within the St Andrews Agreement to introduce an Irish language Act. This initial consultation paper received 668 responses. A further equality impact assessment focussing on the equality impact of a number of specific areas was published on 19th January 2007, the consultation deadline for this paper being 9th March 2007. This EQIA identified the following impacts of the policy to introduce an Irish Language Bill;

1. Those speaking or having some knowledge of Irish are more likely to be Catholic, Nationalist and Young. The policy could have a positive impact on those groups
2. The policy should have no adverse impacts

3. Facilitation of the use of Irish in legal proceedings may cause delay, which might impact on Catholics, Irish Travellers, people with dependents, single people, separated or divorced people, and people without disabilities.
4. Mitigating measures were identified to prevent delays in legal proceedings
5. Good Relations; the policy had the potential to improve good relations between persons of different religious belief and different political opinion, by giving the Irish language a more accessible platform for all sections of the community. However there is a sensitivity in the Unionist/Protestant communities that needs to be taken account of.

On 13th March 2007, DCAL published a third paper which included indicative draft legislative clauses. Consultation on this paper closed on 5th June 2007.

DCAL also published a summary of responses to its consultation documents of 13 December 2006 and 19 January 2007 in March 2007. DCAL maintained the conclusions it had reached by way of its previous equality impact assessment, including its view that the policy would promote better relations in terms of religious belief and political opinion. It also addressed and discussed counter-positions advanced by a number of political parties during consultation, who considered that the policy would actually have a negative impact on good relations. DCAL received 11178 responses to this third and final consultation paper.

The complainant's position

The complainant considers the introduction of Irish language legislation to be driven by the "political expediency of meeting a Republican demand and seemingly ignoring Unionist/Protestant sensitivities arising from the fact that the Irish language has been perceived to be closely aligned to Republican/Nationalist traditions. In his detailed consultation submission he discusses the proposed usage of the Irish language within Courts and Tribunals and specifically how the use of Irish could negatively impact upon the

cross examination of witnesses. He also alleges that use of Irish language within the Assembly would not only involve an “unnecessary and hugely expensive translation service” but would also have a stultifying effect on debate.

He alleges failure to comply with a number of the commitments contained in the approved Equality Scheme arising from the introduction of this legislation and also relies upon the content of his consultation submission in support of his complaint. In the consultation submission he specifically raises his concern regarding the Department’s ability to produce the paper including the draft indicative clauses only four days after the previous round of consultation had closed. His assertion was that for consultation to be effective it had to be meaningful with all opinions expressed being taken into account and that he could not see how this would be possible given the short period of time between the second consultation closing and the draft indicative clauses being published. This led the complainant to form the view that the second consultation exercise was simply window dressing and that the Irish Language Act was a “done deal”.

Department of Culture, Arts and Leisure’s position

Investigating Officers met with DCAL representatives on 6th November 2007 to give them an opportunity to outline their position with regard to the complaint that had been made. When asked how they managed to issue draft indicative clauses when the previous round of consultation ended just four days earlier, DCAL advised that they had not waited for the second consultation exercise to end. The second consultation paper was issued on 19th January 2007 and shortly after this DCAL received submissions stating that the consultation exercise would be much more worthwhile if draft indicative clauses were included to give a feel for exactly what form the proposed legislation would take. DCAL therefore set about drafting the clauses and continually amending them in the light of the consultation submissions. This meant that as the second round of consultation closed, very little work had to be done as the draft indicative clauses had been worked on since early in February 2007 on a continual basis. DCAL reiterated their belief that the review of

consultation submissions is an ongoing process and that there was no need to wait until the consultation had ended before assessing those replies already received and acting upon them.

DCAL were also able to present statistical evidence to show that the consultation paper containing the draft indicative clauses was particularly effective in mobilising further interest in and engagement with the consultation process. In the first round of consultation, submissions were 99% in favour of Irish language legislation. The response to the latest round of consultation was very substantial, with over 11,000 responses being received. When these were assessed a 65% / 35% split in favour of the Irish language legislation existed, showing a 34% swing against the proposed legislation.

DCAL also pointed out that the St Andrews Agreement Act 2006 simply imposes a duty to enhance and protect the Irish language. DCAL commented that this could quite easily be interpreted as recommending a strategy based approach as opposed to a legislative one. DCAL advised that several strategy options would be placed before the Minister for his consideration by spring 2008.

The Commission wrote to DCAL on 12th November 2007 requesting copies of all consultation submissions which proposed that indicative clauses should be issued for consultation. It also sought details of any consultation meetings at which this point may have been made. DCAL replied on 7th January, indicating that POBAL, an Irish language umbrella organisation, had made this point in their written response to the consultation paper and in direct communication with the Minister.

CONCLUSION

Section 8.3 of DCAL's approved Equality Scheme requires it to take into account any relevant equality impact assessment and the outcome of associated consultation when making any decision about a proposed policy. The decision in this instance was to issue indicative clauses for consultation almost immediately after the previous consultation period had ended. However, in taking this decision, DCAL took into account the views of consultees that consultation would be more meaningful if discussion was based on actual proposals for a draft Bill rather than possible models.

The Commission has concerns about the way the consultation into this policy has been progressed and particularly the fact that a very important decision relating to it was made, during consultation on the general policy, on the basis of the view expressed by one, albeit representative, organisation. Whilst the Commission recognises that the St Andrews Agreement may have created pressure on DCAL to act expeditiously, we nevertheless are of the view that it acted with undue haste. The Commission's view is that decisions relating to a policy that is being consulted upon should not be made until the consultation is concluded and the views of all consultees have been considered. We consider that the manner in which this has been progressed by DCAL could have contributed to the perceptions, as described by the complainant, that all opinions, including those opposed to Irish language legislation, were not genuinely being taken into account; that undue weight was being given to the views of one consultee - which was supporting the introduction of an Irish Language Act - because it mirrored the Department's intentions at that time; that all views expressed by consultees were not properly considered; and that there was no genuine intention to engage with consultees who opposed the introduction of this legislation.

FINDING

DCAL has provided an explanation as to how the draft indicative clauses came to be published so quickly. DCAL states that in making this decision, it was not ignoring opposition to the concept of an Irish Language Act, nor did its actions indicate that it would not consider such views in the next round of consultation.

As previously stated, the Commission considers that DCAL acted with undue haste in deciding to accede to the request of one organisation to issue draft indicative clauses whilst consultation on the general policy was ongoing. This could have contributed to a perception that the consultation process was not a genuine attempt to engage with all the opinions on what is a politically contentious issue.

On the other hand, however, the Commission notes that the consultation document issued on 13th March which set out the indicative clauses led to a high level of consultation response and a much more pronounced level of opposition to the concept of having an Irish Language Act. This suggests that the actions of DCAL and any perceptions created thereby were not such as to deter expressions of views contrary to the policy proposal. Based on these responses, DCAL is currently reflecting on the position, with consideration being given to a strategy-based rather than a legislative approach. (The Minister announced in October 2007 that he was not convinced of the need to have an Irish Language Act).

Notwithstanding the Commission's concerns outlined above, we do not consider that DCAL has failed to comply with section 8.3 of its approved Equality Scheme. The decision to draft and issue indicative clauses was supported by at least one consultee, an umbrella organisation co-ordinating responses of those supporting the legislation, and the first two consultation exercises produced overwhelming support for the introduction of the legislation. Consultation on the draft indicative clauses resulted in an increase in responses both from those supporting and those opposing Irish language legislation. DCAL's response to this (third) phase of consultation indicates that it was prepared to take the views of opponents of the legislation into account and serves to negate any

contrary impression that may have been created earlier in the process.

Therefore, whilst the Commission does consider that there have been shortcomings in the consultation on this policy, we find that a failure to comply with approved Equality Scheme has not been established.