

**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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&
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INTRODUCTION

This investigation arises from an allegation that Strabane District Council (hereafter referred to as “the Council”) failed to comply with its approved Equality Scheme by not screening a policy relating to its decision to lease land owned by it at Vaughan’s Holm in Newtownstewart.

BACKGROUND

The Holm is of approximately 20 acres and runs along the bank of the River Strule in Newtownstewart. It was donated to the Council by a local farmer many years ago. About 12 years ago the Council agreed to sell two portions of the land, one to Ardstraw Youth and Community Forum, which is connected to a soccer club, the other to St Eugene’s GAA Club.

About ¼ of the land was sold to Ardstraw, on which it has built a pitch, a training facility and clubrooms. St Eugene’s GAA club was sold a larger portion, on which it has also built a pitch, a training facility and clubrooms. Both clubs are now anxious to acquire a further pitch at the Holm. Ardstraw currently has two teams, playing in different leagues, and believes it could field a third team if it had another playing pitch. It rents a pitch on the part of Vaughan’s Holm which is still owned by the Council. In July 2008 it expressed an interest to the Council in acquiring a further pitch at

the Holm if one became available, but was advised that it was Council policy to retain such land.

St Eugene's has grown considerably in the last 10 years, so that by 1998 it fielded a total of 15 different teams. It currently rents a further pitch at the Holm from the Council and is very keen to acquire a further pitch. In 2008 it also made a request to sell or lease land at the Holm.

In response to this request Strabane District Council commissioned consultants to prepare a Playing Pitch Strategy in September 2008. This identified a deficiency in pitch provision, and recommended that the Council not allow any loss of playing pitch provision. It was made clear that this prohibition also applied to the long-term leasing of sites:

“...it is recommended that the long-term leasing of sites not be adopted as a standard policy but be considered on a case by case basis. Any decision needs to be based on the impact...and surplus and deficiencies recorded for other sports.”

It further recommended that a public call for land suitable for recreation development be made to address this deficiency.

Despite this background, a majority of the Council voted in December 2009 to lease a Council owned playing pitch at Vaughan's Holm to St Eugene's. The Chairman of the Ardstraw soccer club lodged a complaint about this decision with the Commission under the aforementioned legislative provision. He contends that the policy created by this decision should have been screened to establish if it created a differential impact on any s. 75 groups.

Potential Failure to comply with approved Equality Scheme

The potential failure to comply with approved equality scheme being alleged by the Complainant, and the subject of this investigation, relates to the Council's undertaking to screen new policies set out at paragraph 7.4 of its approved equality scheme. The paragraph states;

“ Any new policies will be screened for fuller impact assessment using the criteria identified at paragraph 6.2.”

Such “screening” is simply the public authority’s procedure for identifying those of its policies which are likely to have a significant impact on equality of opportunity and which therefore should be subject to a full Equality Impact Assessment. It requires the Council to review the policy against 4 equality related questions which are set out in the Guide to the Statutory Duties and included in the Council’s approved Equality Scheme at paragraph 6.2. If any of these are answered in the affirmative, consideration must be given to whether an Equality Impact Assessment should be carried out on the policy.

Investigation was Authorised to Examine;

1. Did the Council fail to comply with Paragraph 7.4 of its approved Equality Scheme by not conducting a screening exercise of the policy created by its decision to depart from existing policy to allow playing fields to be leased to a third party, and, if so
2. Should a properly conducted screening exercise have resulted in a decision that the proposed policy had sufficient implications for equality of opportunity to require an Equality Impact Assessment?

THE INVESTIGATION

Investigation has identified the following:-

1. The motion was originally passed on 2 December 2009 by 8 votes (6 Sinn Fein and 2 Independents) against 4 (2 DUP and 2 UUP).
2. The Council did not screen this matter
3. This decision was contrary to;

The Council’s policy to avoid disposing of any of its current stock of playing pitches.

Advice provided to the Council from the Equality Commission that the decision needed to be screened to consider whether a full Equality Impact Assessment should be carried out.

Advice provided to the Council by its own Solicitor that the lease agreement should not be acted upon until the equality issues had been addressed.

Advice from the Council's Chief Executive that an Equality Impact Assessment would have to be undertaken if the Council agreed to lease the land.

4. The Council has not provided any explanation of its decision that this measure did not need to be screened.

INVESTIGATION HEARING

The Commission was determined to allow the Council every opportunity to explain its actions in this matter. To that end a hearing was arranged before the Statutory Duty Investigations Committee on 9/7/2010. This was attended by the Council's Chief Executive and its current Chairperson, who had also originally voted in favour of the lease in question. The Council officials were given an opportunity to provide any information which they considered relevant. The purpose of screening was explained to the Chairperson. She was unable to provide any explanation of the Council's decision that the proposed lease did not need to be subject to screening.

The Council indicated at the hearing that it would be seeking Counsel's opinion in this matter. The Commission understands that as a result of that Opinion the Council has now agreed to carry out an Equality Impact Assessment in relation to the Disposal of Council owned pitches, which will include consideration of the lease that features in this Investigation. That Assessment will necessarily consider the equality implications of the matters that form the subject of this investigation, and will be conducted in accordance with Equality Commission Guidance and Advice. The

Council will decide on how it should proceed on the basis of the Assessment, and will be obliged to take its results into account when finalising its decision.

The Commission shall be responding to consultation on the Assessment in terms of the substantive equality implications of the Council's proposals.

INVESTIGATION CONCLUSIONS

The Commission noted the very wide definition of "policies" contained in the Guide to the Statutory Duties at section 2.11 – 2.14 . This emphasises that "policy" is a broad inclusive term, and is simply;

“a course or principle of action, adopted or proposed”.

In the context of Section 75 the term "policy" includes all the ways in which an authority carries out its functions, and is not confined to policies on the promotion of equality of opportunity. It covers unwritten as well as written policies. The "revised" Guide to the Statutory Duty also emphasises the dynamic nature of policies, and that same are often reviewed/amended, or the way they are implemented are changed.

The revised Guide states;

“a change to a policy must be screened for impact on equality of opportunity in the same way as the original, existing or new policy”.

The Commission is satisfied that the proposal to lease in question clearly falls within the definition of a policy as set out in the Guide to the Statutory Duties, and therefore should have been screened.

The Commission also considers that, had the required screening been carried out, it would have identified this particular policy as having sufficient implications, from an equality of opportunity perspective, to require an Equality Impact Assessment.

INVESTIGATION FINDINGS

1. The Council failed to comply with paragraph 7.4 of its approved Equality Scheme by not conducting a screening exercise.
2. A properly conducted screening exercise was likely to have resulted in a decision that the proposed policy had sufficient implications for equality of opportunity to require an Equality Impact Assessment to be carried out.

INVESTIGATION RECOMENDATION

Strabane District Council, with the benefit of Counsel's Opinion, now accepts that an Equality Impact Assessment needs to be carried out in respect of the disposal of recreational land generally, and this lease in particular. In light of the Council's decision to carry out that Assessment prior to making a final decision in this matter, the Commission has concluded that it is unnecessary for it to make any recommendation at this time. The Commission shall reconsider this matter again when the Assessment is concluded.