EQUALITY COMMISSION FOR NORTHERN IRELAND

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

Andrew Kennedy

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INTRODUCTION

This complaint concerns a policy in place in Northern Ireland entitled "Restricted Zone Access Permits – Issues & Management" and in particular its operation in Coleraine and the specific effect it has had on the complainant's life. The complainant alleges that in pursuing this policy, the Department (DRD) and executive agency thereunder, the Roads Service (RS) has failed to comply with sections 1.1, 1.2, 2.1, 3.2 and 4.1 of its approved Equality Scheme.

At its meeting on 9th October 2007, the Commission's Statutory Duty Investigations Committee authorised investigation of this complaint in respect of the following:

1. Was consultation carried out in an inclusive fashion as required by Section 4.1?

2. Was the consultation exercise consistent with the commitment contained in Section 4.4?

3. Was it reasonable to conclude that the policy could not be altered to better promote equality of opportunity?

4. Did the screening exercise actually consider the equality implications arising from the policy of applying parking restrictions on disabled drivers which had previously been in place, but had not been enforced?

5. Was it reasonable to conclude that the impacts of the policy on disabled persons were not so significant as to require further analysis by way of an equality impact assessment?

BACKGROUND TO THE COMPLAINT

Andrew Kennedy's (hereinafter referred to as the complainant) complaint relates to the Department for Regional Development 's (hereinafter referred to as DRD) policy in relation to parking entitlement in restricted zones for those with a disability in Coleraine's Pedestrianised Zone (CPZ). The complainant is paraplegic and has chronic lymphocytic leukaemia and therefore is a wheelchair user. The complainant states that from April 2000 to November 2006 he was allowed unrestricted access to CPZ providing he displayed his disabled parking badge. However, from November 2006, responsibility for administering parking policy throughout N. Ireland was outsourced to National Car Parks Ltd (NCP). NCP enforced the policy which had existed since the creation of Pedestrianised Zones since 1978 which restricted the parking of blue-badge holders entitled to restricted parking in the zone, a policy that had not been enforced by the PSNI nor the RUC previously. This policy states that displaying the disabled parking badge is not sufficient in itself and in addition, that disabled badge holders have to apply for a Roads Service Permit, which entitles the holder to park within CPZ for a maximum of two designated hours each week which must be applied for and booked in advance. (Further adjustments can however be agreed with the Blue Badge Issuing Officer). As a result, since November 2006 the complainant has had to nominate in advance the specific times that he wants for parking, which he argues is inappropriate given the unpredictable nature of his illness and the impossibility of predicting far into the future when he may, for example, need to attend the optician or solicitor. The complainant alleges that in allowing this policy to be operated, DRD failed to comply with sections 1.1, 1.2, 2.1, 3.2 and 4.1 of its approved Equality Scheme.

DRD/PLANNING SERVICE'S POSITION

Commission representatives met with representatives from RS and DRD Equality Unit on 2nd May 2008 to discuss the issues raised by the complainant in respect of the Restricted Zone Access Permit – Issues and Management Policy and whether its actions constituted a failure on the part of DRD to comply with their approved Equality Scheme.

1. **Was consultation carried out in an inclusive fashion as required by Section 4.1 of the DRD approved Equality Scheme?**

The complainant alleged that consultation on the screening of the policy had not been sufficiently inclusive, in that it was limited to seven organisations, only 5 of which responded, and the main respondent was alleged to be closely associated with the Department. Investigation however indicates that the challenged consultation exercise was in fact a pre-consultation exercise, the purpose of which was to assist in formulating policy proposals. DRD has confirmed that its subsequent decision to screen this policy out was communicated to all its consultees by way of a biannual report listing all policies that DRD had considered during the previous six months and whether or not these were screened in. Where it was proposed to screen out any particular policy, consultees were given the opportunity of challenging this determination and asking DRD to reconsider. DRD stated that no such submission was received after the biannual report was issued.

The Revised Guide to the Statutory Duties has identified this type of approach as being a legitimate method of consulting on the screening of policies. Section 3(a)(v) states, inter alia;

> *"Consultation on the screening of new and proposed policies helps to identify those policies that have the most impact on equality of opportunity. It provides an important means of enabling those who may be affected by public policy to participate in the process of policy making. Public authorities should therefore provide, at least annually, a list of new and proposed policies (with summary information on the policy*

aims) to consultees……...This list should identify policies included or excluded for equality impact assessment through screening. In much the same way that initial screening exercises helped public authorities to finalise their first equality impact assessment timetables, asking consultees about new and proposed policies ensures that those with most significant equality impact are impact assessed."

2. **Was the consultation exercise consistent with the commitment contained within Section 4.4 of the approved Equality Scheme?**

When investigation of this complaint was authorised, it appeared that what DRD has now identified as pre-consultation at the formative stage of the policy was in fact the substantive consultation on the screening determination. DRD has clarified that that this was not the case and that they consulted on the screening determination in compliance with Section 4.4 of their approved Equality Scheme by way of the biannual screening report which was disseminated to all consultees listed in the Department's consultation list.

3. **Did the screening exercise actually consider the equality implications arising from the policy of applying parking restrictions on disabled drivers which had not previously been enforced?**

There is no evidence that, when this policy was screened, consideration was given to the fact that a greater degree of restriction would now operate in respect of parking in Pedestrianised Zones by disabled drivers. DRD simply advised that the policy of restriction had been in place since the creation of pedestrianised zones in 1978 and that lack of enforcement by the RUC/PSNI was the reason that the complainant enjoyed unrestricted access to park in Coleraine's pedestrianised zone. DRD stated this was beyond their control as the enforcement of this policy was under the remit of the PSNI, and the RUC before it. DRD stated that it was their understanding that the failure to enforce the policy was due to a general lack of resources.

DRD stated that the overall policy was discussed at length during the pre-consultation stage predominantly with IMTAC, and no mention had been made of the effect of enforcing restrictions in areas where they previously were not enforced. DRD also stated that it is still engaged with Disability Action to examine ways of amending the policy if any particular problems arise at local levels.

DRD maintain their position that the policy position in respect of Restricted Zone Access Permits has remained unchanged albeit unenforced since 1978 and state that the real reason for the changes that Mr Kennedy has been complaining of is that the enforcement of policies relating to restricted access zones and parking has now been outsourced to National Car Parks Ltd (NCP), who now carry out the enforcement under the Decriminalised Parking Enforcement Policy (DPE Policy). It was this policy that transferred the enforcement of restricted zone access permit policies from the PSNI to National Car Parks Ltd (NCP). DRD advises that the DPE policy was widely consulted upon prior to it being put into operation. DRD has provided the Commission with a Screening Analysis form relating to the DPE policy. Although that policy attracts one positive response when the screening criteria are applied, overall DRD has decided to screen the DPE policy out on the basis that it simply transfers an enforcement function from the PSNI to NCP and does not introduce any new parking offences or regulations and overall should have a positive impact of the travelling public. Significantly, there is no reference to the fact that parking restrictions on disabled drivers were likely to be enforced rigidly as a result of the implementation of this policy, with NCP staff unlikely to be able to exercise the level of discretion that may be available to a police officer. Neither was any consideration given to the equality implications that might thereby arise.

4. **Was it reasonable to conclude that the policy could not be altered to better promote equality of opportunity?**

DRD has emphasised that it has a responsibility to all user groups, not just those that are mobility impaired. Various examples were offered such as protecting the interests of visually impaired persons who could reasonably expect to enjoy unencumbered access to the pedestrianised zone in Coleraine and elsewhere as well as general

safety issues arising from having motor vehicles present in pedestrianised zone where young children may also be. DRD recognised the difficulties that the complainant had been experiencing but stated that a policy such as Restricted Zone Access Permits – Issues & Management could never satisfy everyone, as it necessitates the balancing of conflicting interests from a variety of user groups.

DRD also advised the Commission that there is a degree of flexibility in the Restricted Zone Access Permit policy as it is possible for individuals to make a case to the Blue Badge Issuing Officer and make a case for an increase in the time allotted for access to restricted zones. DRD stated that it had increased the complainant's entitlement from two hours to six hours.

5. **Was it reasonable to conclude that the impacts of the policy were not so significant as to require further analysis by way of an equality impact assessment?**

DRD confirmed that it was of the belief that the impacts of the policy were not so significant as to require an equality impact assessment. Although Commission guidelines never state that an equality impact assessment is obligatory, it does state that if the screening exercise attracts one or more affirmative responses, genuine consideration must be given to whether or not an equality impact assessment is necessary.

DRD stated that it did not consider an equality impact assessment into the Restricted Zone Access Permit was necessary. It argued that it had obtained the views of a wide variety of user groups during the pre-consultation stage, took these views on board and applied them to the final policy outcome. DRD once more stressed their view that it was always going to be the case that the policy would not please everyone and stated that it would be impossible to formulate a policy that entirely matches the needs of the complainant without infringing upon the rights of other Section 75 groups.

INVESTIGATION CONCLUSIONS AND FINDINGS

The Commission has noted the emphasis that the Department has placed in the context of this investigation on its responsibility to all user groups when developing policies. One specific example is the point it makes that it had to protect the interests of people with visual disability, who it argued should be able to enjoy unencumbered access to Pedestrianised Zones. Whilst it is clearly the case that a public authority should consider the needs of all, the Commission would wish to emphasis that the promotion of Equality of Opportunity is a proactive duty, which will often require particular measures or policies to be put in place to address factors that prevent individuals or groups taking advantage of opportunities, or not being able to do so in the same way as others.

The Commission considers that a crucial factor that should have been taken into account is that the arrangement as originally drafted when Pedestrianised Zones were created, and applied since NCP became responsible for enforcement, is that as a result of these policies a severely disabled person such as the complainant who can only visit the town centre by parking within the Pedestrianised Zone, must effectively apply for parking permission in advance to be able to visit Coleraine Town Centre, or avail of its facilities. This is not required of any other user, and it creates obvious and substantial adverse impacts on people with severe disability including the complainant.

The Commission would emphasise that the promotion of Equality of Opportunity will require adjustments to be made for disabled persons to enable them to be able to use facilities and services, and engage in public life. Equality of opportunity is not a formulaic concept which simply requires the avoidance of unfavourable treatment, less still that everyone is treated in the same manner. It is concerned with substantive social progress, and looks to the ability of persons to be able to avail of opportunities, and should address the reasons why particular individuals or groups cannot do so. This is reflected by the Guide to the Statutory Duties ;

“The promotion of Equality of Opportunity entails more than the elimination of discrimination. It requires proactive measures to be

taken to secure Equality of Opportunity between the categories identified under s. 75."

In the specific area of disability, the foregoing is further emphasised and reinforced by the inclusion of the "reasonable adjustment" duty in Disability legislation, and the Disability specific statutory duty to promote the participation of people with disability in public life.

The Commission is strongly of the opinion that the original written policy as drafted (but not enforced) restricting parking by disabled persons, and the policy of enforcing these rules since enforcement passed to NCP is inconsistent with the proactive duty to promote equality of opportunity when applied to persons with severe disability. The Commission considers that it is unacceptable to require people with severe disability to stipulate their parking requirements in advance, and that this policy will effectively preclude such individuals from visiting town centres such as Coleraine, and engaging in the normal day-to-day activities associated. The Commission is strongly of the view that severely disabled persons should be allowed considerably greater levels of access to Pedestrianised Zones – up to and including unrestricted access - than is reflected in the policy, particularly as no evidence has been adduced by the Department to suggest that the practical impact of the policy restricting parking for disabled persons was ever considered, whether through the Screening exercise on "Restricted Zones Access Permits - Issues and Management", or the "Decriminalised Parking Enforcement Policy", which the Department itself identifies as being more pertinent to the issue raised by the complainant. Neither has the Department argued that allowing unrestricted access for people with severe disability would unduly compromise the pedestrian nature of the zone.

The Commission finds that:

The Department did comply with the consultation requirements contained in Paragraph 4.1 and 4.4 of its approved Equality Scheme when it screened the Restricted Zone Access Permit policy, on the basis of the information set out at pages 3-4 of this report

The screening exercise carried out on the Restricted Zone Access Permit policy failed to consider the equality implications arising from the policy of restricting parking by people with a disability in pedestrianised zones. The Commission has also noted that neither were these equality issues considered in the context of screening of the subsequent policy on decriminalised parking enforcement, which the Department itself identified as being relevant to the issues raised by the complainant.

No finding is made in respect of whether it was reasonable to conclude that the Restricted Zone Access Permit policy could not be altered to better promote equality of opportunity, or whether it was reasonable to conclude that the impacts of the policy were not so significant as to require further analysis by way of an equality impact assessment. In the Commission's opinion it would have been unreasonable to screen this policy out if the written provision restricting parking by people with a disability had been enforced, as has been the case since parking enforcement has been decriminalised.

Recommendation

Having considered all the issues and in the light of its views already expressed, the Commission recommends that DRD conduct an Equality Impact Assessment with immediate affect on both the original written policy applying restrictions on the parking by people with disability in Pedestrianised Zones and on the manner in which that policy is now applied, to consider the practical effects of this policy on disabled persons and to consider alternative policies and/ or mitigating measures in response to the adverse impacts identified.