

Equality Commission

FOR NORTHERN IRELAND

**Revised Procedures for Complaints and Investigations
Under Paragraphs 10 and 11 of Schedule 9 of the Northern
Ireland Act 1998**

Consultation Report

December 2019

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1. Summary of consultation process undertaken

1.1. The Commission identified a need to update and revise its Investigations Procedures (2010) and committed to do so during the 2018-19 business year. The rationale for revising the procedures was in order to provide:

- the Commission's service users and public authorities with a clear and accessible document that sets out how the Commission deals with enquiries and written complaints in accordance with the statutory requirements of Schedule 9.
- transparency and accountability in how the Commission fulfils its statutory duties as set out in Paragraph 10 of Schedule 9 of the Northern Ireland Act 1998 (the Act), where it must "*investigate the complaint; or give the complainant reasons for not investigating*"¹;
- the Commission's stakeholders, public authorities, service users and complainants with clarity on the processes by which the Commission fulfils its powers of investigation, as set out in Paragraph 11 of Schedule 9 of the Act;
- a clear and effective operational framework for the Commission's advice and practices for both complaints and investigations under Paragraphs 10 and 11 of Schedule 9 of the Act.

1.2. The need to develop revised procedures arose from a number of sources: from matters identified by the Commission's Statutory Duty Investigations Committee (SDIC); from changes in Commission structures and wider legislation; from the issues identified in the Commission's recent report on public authority practices in relation to their Section 75 duties²; and operational issues identified.

1.3. A number of key changes were made to the procedures and the resultant draft, revised procedures were presented for public consultation in April 2019. These changes were set out in a consultation questionnaire. A rationale document was also published during the consultation period which provided the following details:

- **Legal and organisational updates.** The structure of the document has changed substantially from the previous procedures. This will ensure its continuing applicability; many of the operational references to different teams and divisions in the Commission have been removed, with "the Commission" used throughout. The first sections have been streamlined to cover both the legal and practical points, such as data protection. There is greater coherence in presentation of this policy and procedure to the equivalent policy and procedure document for legal assistance.

¹ Schedule 9, paragraph 10 (1)(a) & (b)

² [S75 equality & good relations duties: Acting on the evidence of public authority practices](#), ECNI, 2018

- **Review mechanisms.** The document includes, in Section 9, a section titled: “*Asking for a review of decisions on Paragraph 10 complaints*”. This has been extensively redrafted and extends beyond the threshold criteria for Paragraph 10 to include the grounds on which the SDIC will consider a review. Corresponding review procedures have also been included for decisions taken under Paragraph 11.
- **Timescales.** Schedule 9 is silent on timescales for both the complaints and investigations processes. The document generally does not specify standards, such as timescales for issuing letters or responses, which is consistent with the Commission’s other similar policies and procedures. There are a number of places where 20 working days has been used. There is also one standard included, in terms of aiming for 16 weeks, for the Commission to process a written complaint received under Paragraph 10 for the SDIC’s consideration.
- The Commission fulfils quasi-judicial functions in the consideration of complaints and in making findings following an investigation. The timescales involved - from receiving and assessing complaints, conducting any investigation, to reporting findings - will depend on the particular complaint made or circumstances of the investigation and take a number of months.
- **Operational practices.** A number of enhancements and amendments have been made to the procedures. For example:
 - an updated list of potential factors (previously potential reasons) for not investigating a complaint is provided;
 - the processes relating to the Commission forming a belief of a potential failure, and how information is considered, are set out in paragraphs 10.2 -10.5. There is a new stage which reflects a concern raised or identified. The assessment process, referred to in paragraph 10.3 will be developed as part of the wider work for Commission’s development of its approach to investigations. Paragraphs 10.6 and 10.7 are drafted as interim for the same reasons.

1.4. The Commission consulted on the revised Procedures between April and June 2019. The Commission also held two events for stakeholders to provide their views on the draft procedures, and meetings were held with the Equality Coalition.

2. Consultation comments received and findings

- 2.1. Twelve written responses to the consultation exercise were received. The Commission held two consultation events in May. Both events were well attended and stakeholders from public authorities and those with an interest from a complainant perspective provided feedback. See Appendix 1 for a list of the stakeholders.
- 2.2. Consultees provided helpful comments ranging through the entire document, a summary is provided below.
- 2.3. In general, the comments received about the overall presentation of the revised Procedures, such as the use of “in brief” points and setting out the steps and stages, were positive and welcomed the approach taken.
- 2.4. Comments were made about Section 1 and the sections on accessibility, advice and variation of the policy, in terms of suggestions to clarify or simplify this section, as well as suggestions for examples to include.
- 2.5. A number of consultees suggested the inclusion of a flowchart to illustrate the processes from beginning to end.
- 2.6. Clarity was sought in relation to the purpose of the confidentiality section, with suggested amendments made.
- 2.7. Consultees suggested a different ordering of the sections to provide a clearer route through the procedures for readers
- 2.8. The roles and responsibilities section was highlighted by a number of consultees as one which needed to be clearer in its statement of roles and responsibilities and to align clearly with later references to the Commission’s decision making processes. Some comments were made on the frequency of the SDIC meetings.
- 2.9. Consultees generally welcomed the presentation of the sections setting out how to make a complaint and the processes of investigation and suggested amendments to the text.
- 2.10. Comments were made about the interpretation of key terms, specifically those as set out in Schedule 9 which set the statutory criteria for making a complaint under Paragraph 10, as well as about on clarity of language used.
- 2.11. Comments were made about the role of representative organisations and how this could or should be reflected in the procedures.
- 2.12. A number of consultees commented throughout on the use of timescales, both that they were too long and too short, particularly with reference to the 20 working days. There were also comments that the timescales were applied too selectively and should be extended through more stages.
- 2.13. A number of consultees commented on the stages set out for the Commission’s action on a written complaint, in particular making suggestions

for additions and/or amendments for communication with complainants, the proposed timescale for the Commission's assessment, consent, as well as how a written complaint is communicated to the public authority.

- 2.14. Consultees made many comments on a list of potential factors which were provided as examples of what the SDIC will consider in order to reach its determination on whether to investigate a complaint, as referred to on page 4 (paragraph 1.3) above. The comments covered the need for greater clarity on the factors presented, their interpretation and how they would be applied, and the identification of some risks.
- 2.15. The inclusion of the review processes was welcomed, both for complaints and Commission investigations on its own initiative. Specific comments were made about how complainants would be able to apply the grounds set out and what information would be needed in order to do so, as well as ensuring consistency between the two sections in the document.
- 2.16. A number of comments were made about what information the Commission might consider in order to inform potential areas for an investigation on its own initiative.
- 2.17. Comments were made about communications with parties to the investigation and timescales for the section on conducting an investigation.

3. Analysis, identification of key themes and Commission response

- 3.1. All the comments and suggestions received were carefully considered and amendments made throughout the document, not just on the sections or issues referred to in the Consultation Questionnaire. The revised Procedures give effect to the following points, as agreed by the Commission.
- 3.2. In general, the style of the document tries to give effect to its purpose as set out at 1.1 above, with direct language and accessible sections and stages described. The consultation exercise was very helpful in terms of the feedback given. As a result, a range of helpful additions to the text have been included, as have other amendments where consultees identified where clarification was needed.
- 3.3. The revised Procedures set out the statutory language used in the legislation. Consultees suggested additions such as a flowchart to be included in the revised Procedures, but also the use of separate templates and easy read/child friendly versions in order to make the processes of making complaints as clear and accessible as possible. These suggestions have been accepted and further work to develop supporting documents will follow.
- 3.4. The format and structure of the revised Procedures, in terms of setting out steps and stages were considered helpful and clear. Consultees made a number of comments and recommendations about: **consistencies** through the procedures; the need for greater clarity on **roles and responsibilities**;

and highlighted some additional information needs to be written into the revised Procedures in order for anyone to avail of the **review process** as proposed. All of these changes have been incorporated.

- 3.5. **Timescales** were asked about in the consultation questionnaire, and have been specifically referred to in the consultation responses, in particular by the Equality Coalition and its members. The feedback was that timescales should be included through **all the stages** and should clearly apply to the Commission's actions, as well as those by both complainants and public authorities. This has been addressed and additional timescales highlighted through all the stages, as and where appropriate.
- 3.6. Two questions were asked in the consultation questionnaire about factors. One about the factors (previously a list of possible reasons) that the SDIC might use when considering a complaint under Paragraph 10 (paragraph 5.14 in the revised Procedures). The other was about whether the information, on the way the Commission decides when to use its powers to investigate (under Paragraph 11), is clear and easy to understand (paragraph 6.8 in the revised Procedures).
- 3.7. The bullet points presented in both of these paragraphs in the Draft for Consultation were drawn from the equivalent paragraphs in the Commission's current Investigation Procedure (2010). Many comments were received about these two paragraphs, particularly in relation to: how they were applied in practice; what particular terms meant; how they might or could be interpreted; and also whether there should be any difference between the two lists of bullet points.
- 3.8. In the consultation questionnaire, consultees were informed that the *"Commission is separately reviewing its approach to investigations generally, and the factors identified in [now paragraph 6.8] will align to the outcome of the review"*.
- 3.9. Paragraph 5.14 in the revised Procedures, which refers to factors for complaints under Paragraph 10, has been amended to take into account the comments on how the SDIC will use the factors set out and has a cross reference to paragraph 6.8. There have been minor amendments made to the list to take into account suggested changes to make the factors presented clearer. The list has also been reduced in response to the comments made.
- 3.10. The comments on these two paragraphs will be retained and will inform the future work planned to *"further develop and confirm the Commission's strategic approach to investigations..."*³
- 3.11. Section 6 of the revised Procedures sets out how the Commission, on its own initiative, forms a belief. This section generally has not substantively changed from the Draft for Consultation.

³ Equality Commission Business Plan 2019-20

- 3.12. However, there were a number of comments received on this section, which related mainly to two issues. First, with reference to [now] paragraph 6.3 of the revised Procedures, were comments relating to: the type of information to be assessed; where the information comes from; whether there is a complainant; whether the information comes from complaints. These points will inform the operational practices and how staff will fulfil this part of the Procedures, rather than requiring amendments to paragraph 6.3. Also, a footnote has been added to show that complaints made under Paragraph 10, but which the SDIC determined did not meet the statutory criteria set out in Paragraph 10, may be included in the information that the SDIC assesses to identify evidence that may present concerns (see paragraph 6.3 of the Procedures).
- 3.13. Second, the issue was raised that this stage needed to include timescales. These have been identified and included, as and where appropriate (see paragraph 6.4 of the revised Procedures).

4. Equality Commission Procedures for Complaints and Investigations

- 4.1. The Procedures were approved, as amended, by the Commission at its meeting in September 2019.
- 4.2. The Procedures take effect in December 2019 and replace those from 2010.

Appendix one

Consultation respondents:

- Belfast City Council
- Children's Law Centre
- Department for Communities (Equality Officers' response)
- Equality Coalition (on behalf of its membership organisations)
- Health and Safety Executive
- Health and Social Care Trusts (6 organisations providing a combined response)
- Irish Congress of Trades Unions
- Legal Island
- Lisburn and Castlereagh Council
- Mid Ulster Council (staff response)
- Unison
- Women's Regional consortium

Consultation event attendance:

- CCEA
- Consumer Council
- Department of Finance
- Department of Infrastructure
- Department of Justice
- Invest NI
- Legal Island
- Libraries NI
- Loughs Agency
- Mid and East Antrim Borough Council
- Newry, Mourne and Down District Council
- NI Commissioner for Children and Young People
- NI Human Rights Commission
- NI Policing Board
- NI Social Care Council
- Probation Board NI
- Sinn Fein
- The Executive Office
- Tourism NI



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