

EQUALITY COMMISSION FOR NORTHERN IRELAND

FINAL REPORT OF COMMISSION INVESTIGATION UNDER PARAGRAPH 11 OF SCHEDULE 9 TO S. 75 OF THE NORTHERN IRELAND ACT 1998

LISBURN CITY COUNCIL: ADOPTION OF FORMAL MECHANISM (d'Hondt) TO DETERMINE NOMINATIONS TO TRANSITION COMMITTEE

October 2009

INTRODUCTION

Section 75 of the Northern Ireland Act imposes statutory duties on public authorities to pay due regard to the need to promote equality of opportunity and regard to the desirability of promoting good relations. Designated public authorities are required by Schedule 9 (2) to submit an Equality Scheme to the Equality Commission for approval. Such Equality Schemes are both a statement of the public authority's commitment to fulfilling the s. 75 duties and a plan for their performance. Schedule 9 (11) allows the Equality Commission to investigate potential failure by a public authority to comply with its approved Equality Scheme. Investigation of this matter was authorised on 25 October 2006.

SUBJECT OF INVESTIGATION

This investigation relates to a potential failure by Lisburn City Council to comply with paragraph 10.3. of its approved Equality Scheme, which provides;

“The Council in taking any decision with respect of a policy adopted or proposed to be adopted by it will take into account any equality impact assessment and consultation carried out in relation to that policy”.

This potential failure arises out of a policy adopted by the Council in 2008/2009 to use a formal mechanism (d'Hondt) to determine its

Council representatives on the joint Lisburn/Castlereagh Transition Committee. The purpose of the Transition Committees is to “take the key decisions that will be necessary to ensure that there are eleven effective Council’s in place in May 2011”. Original Department of Environment guidance on the establishment of Transition Committees was that “nominations should proportionately reflect the political composition of the existing councils”. However, as a result of concerns that have arisen concerning the proportionality of the original Transition Committees put in place, it has now been decided that the original Transition Committees will be replaced by Statutory Transition Committees after the Local Government Finance Bill becomes law in c. April/ May 2010. Membership of the Statutory Transition Committees will be re-constituted on the basis of revised guidance (which the Department is currently working on), to ensure that the Committees are politically representative.

BACKGROUND

The Council had carried out an equality impact assessment in 2003 on the promotion of equality and social inclusion/civil leadership which had established its policy for filling Council positions on Committees. It decided that filling positions by a formal system such as d’Hondt should be avoided, and to use an informal system by which nominations are agreed between the parties. This system was applied consistently by the Council when filling such positions, apart from a limited number of occasions involving appointments to outside bodies, when use of d’Hondt was imposed on the Council.

As previously stated, the original guidance issued by the Department of the Environment simply stated that “nominations should proportionately reflect the political composition of the existing councils”. There was therefore nothing imposed by the sponsoring department to prevent the Council following the policy adopted by it as a result of its 2003 Equality Impact Assessment to determine its nominations.

Current political representation on Lisburn City Council is as follows;

- 12 DUP
- 7 UUP
- 4 Sinn Féin
- 3 Alliance Party
- 3 SDLP
- 1 TUV

Council Meeting 10 November 2008

At its strategic policy meeting on the 10 November 2008 the Council decided that the 8 elected members from Lisburn City Council to sit on the Transition Committee would be chosen by use of the formal d'Hondt method, resulting in the following allocation:-

- 4 DUP
- 2 UUP
- 1 Sinn Féin
- 1 Alliance Party

The Council's Chief Executive had however recommended that as the Department's guidelines relating to Transition Committees highlight the need for proportionality with regard to political representation that all parties should be included, and that membership should be:-

- 3 DUP
- 2 UUP
- 1 Sinn Féin
- 1 Alliance Party
- 1 SDLP

This approach would appear to be consistent with the policy arrived at following the 2003 EQIA to avoid a formal system of proportionality. The Chief Executive pointed out that this was the first occasion the Council had used the d'Hondt system to elect a Committee, and this policy had not been screened as required by the Council's approved equality scheme.

Council Meeting 25 November 2008

When the matter progressed to a full Council meeting on 25 November 2008, the Chief Executive again recommended that the formal d'Hondt system should not be applied and that the allocation should include a representative from the SDLP. This recommendation was rejected, and the earlier decision by the Strategic Policy Committee was ratified.

Council Meeting 1 December 2008

At the strategic policy meeting on 1 December 2008, the Chief Executive sought guidance from Councillors as to whether the d'Hondt system would now be used to fill all Council positions as a result of a precedent created by the Council's decisions of 10th/25th November. It was decided that the d'Hondt system would not be used in the future.

Consequently on receiving a complaint about this matter, the Council carried out an investigation, and reported its findings to the Strategic Policy Committee on the 5 January 2009. Its report highlighted the Council's commitment at paragraph 10.3 of its approved Equality Scheme to take the results of any EQIA and associated consultation into account when making a policy decision. It pointed out that the decision to use the d'Hondt mechanism on this occasion:-

- Had changed the Council's policy (developed through the EQIA process) from an informal to a formal system for determining a Committee.
- Was a selective use of the formal mechanism for one particular Committee.
- Resulted in one political party not being represented on the Transition Committee.

The Council's investigation concluded that its actions were "open to challenge by the Equality Commission". The report also indicated that a screening exercise had now been carried out on the decision to adopt the d'Hondt system, and had identified adverse impact in that one political party would not be represented

on the Transition Committee. It suggested two methods to address this adverse impact:-

1. using an alternative formal method
2. reverting to use of the previously agreed informal approach.

The paper recommended that one of the above systems be adopted with the result that all political parties on Lisburn City Council would be represented on the Transition Committee. Again, however, this recommendation was rejected. The Council, at a further meeting on 27 January 2009, ratified the decision of the Strategic Policy Committee.

INVESTIGATION FINDINGS

The policy to avoid filling committee positions by a formal system such as d'Hondt and to use an informal system by which nominations are agreed between the parties had been arrived at as a result of an EQIA completed in 2003. The benefits of this type of approach would appear to be that it might allow smaller political parties to play an active role that they might otherwise be denied by use of a formal system.

As a result of its decision of 10 November 2008 and confirmed in subsequent Council meetings, the Council unilaterally and without consultation decided to forgo its previous policy, arrived at through equality impact assessment, in favour of a policy to adopt a formal d'Hondt mechanism. As a result one political party (SDLP) which would have been allocated one seat on the Transition Committee under the previous arrangement, is now unrepresented.

The Commission finds that this action represents a clear failure by the Council to comply with the commitment contained at Section 10.3 of its approved Equality Scheme. The Council's action, which appears to have ignored advice from the Chief Executive and an equality report prepared by staff, raise concerns about the Council's commitment to its approved Equality Scheme, and in particular demonstrates a propensity to ignore policies arrived at through the Equality Impact assessment process. The policy recently adopted by the Council is inconsistent with the policy

introduced as a result of the 2003 EQIA. The practical effect of abandoning the previous policy arrived at by EQIA is that the SDLP, which would have had 1 representative under the previous arrangement, is now unrepresented. This appears to be the very outcome that the 2003 EQIA was seeking to avoid. Furthermore, this decision was ratified even when screening of the policy, which took place belatedly in the process after the original decision had been made, identified adverse impact.

RECOMMENDATION

The Commission recommends that Lisburn City Council immediately re-constitute the membership of its representatives on the current Castlereagh/Lisburn Transition Committee, applying the policy that was adopted as a result of the Equality Impact Assessment the Council carried out on the promotion of social inclusion. The Commission understands from the recommendation made to the Council by its Chief Executive at the Strategic Policy Meeting on 10th November 2008 that this approach will allow the SDLP, which is currently not included in Lisburn City Council's representation, to be represented in a re-constituted group.

The Commission understands that in April/May 2010 it is intended that all the original Transition Committees will be re-constituted as Statutory Transition Committees, with membership to be reviewed and if necessary re-constituted to ensure fair and proportionate representation on the basis of new guidance from the Department. The Commission will consider whether it should issue any further recommendation when such guidance is issued by the Minister for the Environment.