

# **EQUALITY COMMISSION FOR NORTHERN IRELAND**

## **Audits of Employers' Article 55 Reviews 2009-2011**

**May 2012**

### **1. Background**

- 1.1 Equality law on religion and politics places distinct and proactive responsibilities on employers and a duty on the Equality Commission to ensure that employers comply with these duties. An overview of the legislative background with regard to fair employment employer duties is provided in the appendices.
- 1.2 The Commission's Corporate Plan for 2009-2012, and associated Business Plans, contained objectives committing the Commission to ensuring high levels of employer compliance (95%) with FETO duties, as well as the continued utilisation of employer reviews for the promotion of affirmative action and fair participation. The performance target for this latter objective was, 'improvements in employment practices, as exhibited by the audit of Article 55 Reviews in targeted employers'.
- 1.3 The purpose of this report is to show the impact of the Article 55 Review process on improving employment equality practices

of those employers who submitted reviews to the Commission in the three calendar years 2009, 2010 and 2011.

## **2 Executive Summary**

- 2.3 This report outlines the continuing implementation of the proactive duties under fair employment legislation by employers and the high levels of compliance and success in bringing about change in practices.
- 2.4 Over the period 2009-2011 the Commission received 441 Article 55 Review reports. There is a consistently high degree of employer compliance (98.2%) with the requirement to carry out these reviews. The very small number of employers (n:8) not initially complying with legislative requirements in this period were private sector employers.
- 2.5 The report shows that the Article 55 Review process continues to have an impact in terms of planned improvements to employment equality practices, with 441 employers planning a total of 851 improvements to practices. Almost 43% of the planned changes relate to changes to employment practices, mainly in the areas of developing and/or reviewing recruitment, selection and promotion policies and procedures and the delivery of training associated with these policies. A further 25% of planned improvements related to the development and/or review of equal opportunity policies and the training

associated with these policies. The Commission continues to independently survey employers to further measure the outcomes with regard changes to employment practices.

2.6 The Commission worked with some 219 employers in this period to promote reasonable and appropriate affirmative action measures. Of these 219 employers, almost 60% (58%) were broadly affording fair participation to both communities. In a further 61 employers (27.9%), it was determined that there was some under-representation of Protestants and in 26 employers (11.9%) there was some under-representation of Roman Catholics.

2.7 Commission staff also monitored progress in terms of implementing existing affirmative action agreements and reviewing workforce trends with a further 70 employers.

2.8 In conclusion the report exhibits the effectiveness of the Equality Commission. The work has found clear evidence of the compliance by employers with their proactive duties to self audit their equality practice and to implement further improvements where necessary.

### **3 Employer Article 55 Reviews received by the Commission**

3.3 The Equality Commission continues to utilise employer reviews of employment practices (Article 55 of the Fair Employment and

Treatment (NI) Order) as a strategic mechanism for the promotion of affirmative action and fair participation<sup>1</sup>.

3.4 The Commission provides advice to all registered employers to enable them to comply with their FETO legislative duties. This includes the provision of training, guidance documentation and an enquiry line. The Commission audits all reviews received to ensure that they comply with the legislative requirements<sup>2</sup> and engages on the promotion of affirmative action with larger employers, where the concept of under-representation is more meaningful.

3.5 Over the period 2009, 2010 and 2011 the Commission received 441 Article 55 Review reports. Of these, 39 were public sector and 402 were private sector reviews (Table 1). Analysis of Article 55 Reviews received by size of employer is shown in Table 2.

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<sup>1</sup> Affirmative action is action taken by an employer to secure fair participation in employment by members of the Protestant or Roman Catholic community. This may include the adoption, modification or abandonment of employment practices. Fair participation, while not defined in the legislation, is in summary, a workforce that fairly reflects the religious composition of those available for employment in the local area.

<sup>2</sup> The Equality Commission has a duty to ensure that employers comply with their legal obligations to carry out Article 55 Reviews. Employers will comply with this duty if they review their workforce composition and employment practices at least once every three years, “for the purposes of determining whether members of each community are enjoying... fair participation” and the “affirmative action (if any) which would be reasonable and appropriate.” (Article 55).

**Table 1: Breakdown by public/private sector of Article 55 Reviews**

<b>Year</b>	<b>Public</b>	<b>Private</b>	<b>Total</b>
2011	21	156	177
2010	5	109	114
2009 <sup>3</sup>	13	137	150
<b>Total</b>	<b>39</b>	<b>402</b>	<b>441</b>

**Table 2: Article 55 Reviews by size of employer**

<b>Number of Employees</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>Total</b>
11-50	33	47	53	136
51-100	16	29	41	84
101-250	51	26	40	117
251+	50	12	43	104
<b>Total</b>	<b>150</b>	<b>114</b>	<b>177</b>	<b>441</b>

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<sup>3</sup> 1 employer de-registered and did not submit a review.

3.6 Table 3 shows the rationale for the Commission requesting reviews over the 3 year period. The level of employers complying with their Article 55 Review requirements was consistently high (Table 4). Of the 441 reviews received, 433 (98.2%) were in compliance with the duty to review their workforce composition and practices at least once every three years and advice was provided to the remaining 8 employers to enable them to comply. These employers subsequently provided additional information and complied with Article 55 requirements.

**Table 3: Equality Commission Rationale for requesting Article 55 Reviews**

<b>Year/ Rationale for Requesting Reviews</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>Total</b>
<b>Compliance</b>	40	67	45	152
<b>Affirmative Action</b>	110	47	132	289
<b>Total</b>	150	114	177	441

**Table 4: Article 55 Review Compliance with requirements**

<b>Year</b>	<b>Compliance</b>	<b>Non-Compliance</b>	<b>Comment on non-compliance employer</b>
2011	177	1	<ul style="list-style-type: none"><li>• 1 250+ employer</li></ul>
2010	110	4	<ul style="list-style-type: none"><li>• 4 private sector employers (1 employing &lt;100 employees and 3 employing between 101 and 250 employees.</li></ul>
2009	146	3	<ul style="list-style-type: none"><li>• 3 private sector employers (1 employing &gt;25 employees; 1 &gt; 100 and 1 more than 250 employees.</li></ul>
Total	433	8	

3.7 Table 5 provides details on planned improvements to equality practices as part of the review process. This shows that almost 43% of the planned changes related to changes to employment practices, mainly in the areas of developing and/or reviewing recruitment, selection and promotion policies and procedures and the delivery of training associated with these policies. A further 25% of planned improvements related to the development and/or review of equal opportunity policies and the training associated with these; and 10% of planned improvements related to the development of policies/procedures and associated training in the area of promoting a good and harmonious working environment.

Almost 20% of planned improvements related to the development and implementation of outreach affirmative action measures and associated policies. Such measures include advertising practices, community engagement and specific training. A further 39 (5%) of planned improvements related to identifying goals and timetables against which to measure progress.

**Table 5: Planned improvements to equality/employment practices**

<b>Year</b>	2009 (n: 149)	2010 (n: 114)	2011 (n:177)	Total
<b>Equal Opportunities</b>	88	41	86	215 (25.3%)
<b>Working Environment</b>	35	23	25	83 (10.1%)
<b>Employment Practices</b>	152	81	130	363 (42.7%)
<b>Outreach</b>	59	34	58	151 (17.7%)
<b>Goals</b>	11	10	18	39 (4.6%)
<b>Total Actions</b>	<b>345</b>	<b>189</b>	<b>317</b>	<b>851 (100%)</b>



## 4. Affirmative action

4.1 The Commission utilises employer Article 55 Reviews of employment practices as a mechanism for the promotion of affirmative action and fair participation with individual employers. While there are some difficulties summarising the complexity of individual employer assessments of fair participation and progress in terms of affirmative action, an outline is provided below. See Appendix 2 for further commentary. **Promoting Affirmative Action–2009-2011: 219 employers**

- Almost 60% of employers (126: 58%) were broadly affording fair participation to both communities. Five of these employers were recruitment agencies and further work was carried out with these employers, regarding practices and procedures.
- In 61 employments, it was determined that there was some under-representation of Protestants, either in the workforce or among applicant flows.
- In 26 employments, it was determined that there was some under-representation of Roman Catholics, either in the workforce or among applicant flows.
- In one employment affirmative action was required to attract Protestants and Roman Catholics to differing locations.

- In a further 5 employments a reasonable determination of fair participation could not be made based on the information contained in the reviews.

## **Implementing Affirmative Action**

- 4.2 During the period 2009-2011 Commission staff reviewed progress of affirmative action programmes with a further 70 employers. Many of these affirmative action programmes have been in place for a period of time dating back to the early 1990s. It is noted that the potential for change in some of the employments is limited, with some having minimal turnover and/or decreasing workforces. In other employments the locality in which they are situated is associated with 'chill' factors which deter applicants from the under-represented community.
- 4.3 The purpose of such reviews is to assess the impact of affirmative action measures and to monitor progress in terms of implementation of agreed measures and compositional change, in terms of workforce flows and composition.
- 4.4 Of these 70 employers, 8 are now broadly considered to be affording fair participation to both communities. Of these, 2 organisations which initially had under-representations of Roman Catholics are now taking affirmative action to attract applicants from the Protestant community for some job groups.

4.5 Progress was also reviewed with 23 employers, who were taking affirmative action to attract applications from the Protestant community and a further 36 employers, who were taking affirmative action to attract applications from the Roman Catholic community. There were a further 3 employers where progress was monitored which are taking affirmative action to attract applications from the Protestant and Roman Catholic community for specific grades/locations

## Appendix 1

### Fair Employment legislative requirements

#### 1. The Fair Employment and Treatment (Northern Ireland) Order 1998

requires registered and specified employers, amongst other duties to:-

- monitor the composition of their workforce and of those applying, appointed, leaving or being promoted (Article 52);
- submit an annual monitoring return to the Commission (Article 52); and
- review their workforce composition and employment practices at least once every three years, *“for the purposes of determining whether members of each community are enjoying... fair participation”* and the *“affirmative action (if any) which would be reasonable and appropriate.”* (Article 55).

2. When determining fair participation employers must first define catchment areas for each main job group, that is, the geographic area from which an employer would reasonably be expected to recruit its employees. An employer’s assessment of appropriate catchment areas will be determined by a range of factors associated with the particulars of the employment (eg the type of

job, the pay associated with it, the hours to be worked) as well as the local conditions in which the employer operates (eg travelling conditions, availability of alternative local employment). In terms of the health sector, it is therefore entirely reasonable that similar jobs in different Trusts will have differing catchment areas eg it may be reasonable for nursing jobs in the more rural West of the province to have more restricted catchment areas than those in Belfast.

3. Employers must then compare the composition of their workforce and applicants with the composition of available labour in the appropriate catchment area. For some job groups it is appropriate to use the composition of the general population i.e. the economically active or unemployed population, while for other job groups it may be appropriate to consider only those with certain qualifications. For example, for supervisory and senior nursing vacancies, only qualified nurses will be able to apply.
4. Fair participation will not be present where the composition of the workforce and/or applicants is not broadly in line with that expected. If these features exist it does not essentially imply a lack of fair practice, but it means that further investigation is necessary and affirmative action measures may be appropriate.

## Appendix 2

### Affirmative Action

Of those reviews submitted to the Commission for the promotion of affirmative action or to enable an evaluation of the effectiveness of affirmative action programmes, the following is noted:-

- Many of the affirmative action programmes have been in place for a period of time dating back to the early 1990s.
- The potential for change in some of the employments is limited. Some of the employers have limited turnover and/or decreasing workforces. In other employments the locality in which they are situated is associated with 'chill' factors which deter applicants from the under-represented community.
- The employment situation and the concept of fair participation differ for each employment. Some of the employers now employ relatively few employees and are not significant in terms of the number of employees which comprise the under-representation. By comparison some affirmative action agreements relate to larger public authorities and in some of these the under-representations relates to emerging trends or only specific job groups.
- It is not practical to summarise progress in terms of compositional change for groups of employers, given that the particularities of each employment situation must be taken into account.