

## **Draft revised Policy and Procedures for Complaints and Investigations under Paragraphs 10 and 11 of Schedule 9 of the Northern Ireland Act 1998.**

### **Rationale for revisions**

The purposes of the policy and procedures generally are 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 (the Act) where it must “*investigate the complaint; or give the complainant reasons for not investigating*”<sup>1</sup>;
- 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.

This document and the draft revised Policy and Procedures document can be accessed on the Commission’s website:

<https://www.equalityni.org/Consultation-ComplaintsAndInvestigations>

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<sup>1</sup> Schedule 9, paragraph 10 (1)(a) & (b)

## Key changes made to the procedures

1. 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 duties; and operational issues identified.
2. **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.
3. **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.
4. **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.
5. 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.

6. **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.

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