

Equality Commission for Northern Ireland

Statutory Duty Investigations Committee

FINAL REPORT OF COMMISSION INVESTIGATION UNDER PARAGRAPH 11
OF SCHEDULE 9 OF THE NORTHERN IRELAND ACT 1998

Belfast Education & Library Board

File No: SDI/01/04

Paragraph 11

Subject of Investigation

The Belfast Education and Library Board's (thereafter referred to as BELB) alleged failure to subject a policy relating to the proposed closure of an educational establishment for the purpose of providing education to Stage 3 & 4 pupils exhibiting emotional and behavioural difficulties (hereafter referred to as EBD) to consultation as part of the screening of this policy.

BACKGROUND

BELB undertook an overall review of EBD educational provision in May 2001, outlined in a paper entitled "Review of BELB Policy and provision for pupils exhibiting emotional and behavioural difficulties". Initially BELB confirmed the decision to close the educational facility in question without undertaking any screening of that particular policy decision. However it subsequently decided that it would "retrospectively" screen the policy and this was carried out in September 2001. The facility was closed in December 2001.

The purpose of this investigation is to determine whether external public consultation took place on the likely equality impacts of this decision as part of the "retrospective" screening exercise and, if it did not, whether this constitutes a failure by BELB to comply with its approved Equality Scheme.

INVESTIGATION FINDINGS

BELB did not engage in proper screening consultation in accordance with the guiding principles on consultation and the screening procedure set out in the Equality Commission's "Guide to the Statutory Duties", in respect of the "retrospective" screening exercise, that took place in September 2001, of the proposal to close the educational facility in question.

The consultation that took place in respect of the general review of the provision for pupils exhibiting emotional and behavioural difficulty does not appear to have addressed the equality issues arising from this general review and did not address the issue of the possible closure of the educational facility in question.

The Committee noted that by correspondence dated 29 September 2002 to a former Principal of the educational establishment in question, BELB asserted that it is not required by its Equality Scheme to engage in external consultation on the screening of policies. The Committee is satisfied that this statement is incorrect and that all designated public bodies are;

- required to engage in consultation as part of the screening process,
- required to address the likely equality impact of the policy being screened on the promotion of equality of opportunity,
- and such consultation must be conducted in accordance with the guiding principles on consultation as set out in the Equality Commission's "Guide to the Statutory Duties".

In reaching this conclusion the Committee notes:

- (1) Paragraph 4 of Schedule 9 requires designated public authorities to consult upon screening.
- (2) Paragraph 2.14 (page 12) of the Equality Commission's Guide to the Statutory Duties states "The public authority must engage in consultation about the likely impact (on the promotion of equality of opportunity) of its existing and proposed policies, and in making decisions about such policies, it must take the consultation into account."
- (3) At paragraph 7 of its approved Equality Scheme, BELB undertakes to screen all its existing and proposed policies and at paragraph 7.4 identifies the 4 criteria to be considered including:-

"have consultations with relevant groups, organisations or individuals indicated that policies of that type create problems specific to any relevant group".

The Committee considers that this criterion is a commitment to consult on screening and that BELB could not properly consider this criterion unless such “relevant” groups are consulted from an early stage and made aware of the intention to close the facility. In particular, the Committee is of the view that Approved Equality Schemes and Guidance upon them is an articulation of the duty in s75 to “have due regard to the need to promote equality of opportunity”. The Committee has concluded that a ‘retrospective’ screening in this case, relying upon a general consultation prior to the approval of the BELB’s Equality Scheme, does not satisfy paragraph 7.4 of the Scheme.

The Committee notes that, in a letter dated 19 May 2004 from the BELB, it was stated, “The board has since addressed this issue and all consultees are consulted prior to screening and on the outcome of such screening exercises.” An example is given of the full consultation process in respect of The Best Value Review of the Provision of Behaviour Support. The letter concludes “This process is only one of a number of equality consultation exercises the board is involved in and is an indication of the board’s progress in implementing sophisticated procedures to deal with such matters.”

RECOMMENDATIONS

In these circumstances, the Committee has determined not to make any recommendations in relation to this failure to comply.