



EQUALITY COMMISSION FOR NORTHERN IRELAND

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

DEPARTMENT FOR REGIONAL DEVELOPMENT: CESSATION OF FUNDING OF EASIBUS SERVICES IN BANGOR AND LONDONDERRY

INTRODUCTION

Section 75 of the Northern Ireland Act places a statutory duty on public authorities to pay due regard to the need to promote equality of opportunity between various categories of persons in society, including persons of different age and persons with a disability and persons without. 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 Paragraph 11 allows the Equality Commission to investigate when it believes that a public authority may have failed to comply with its approved Equality Scheme. Investigation of the cessation of funding of Easibus services in Bangor and Londonderry by the Department for Regional Development was authorised by the Commission in February 2011.

SUBJECT OF INVESTIGATION

The potential failure to comply with its approved Equality Scheme under investigation relates to a decision by the Department to discontinue revenue support for Easibus services operating in Bangor and Londonderry, leading to the termination of those services, and

specifically the Department's decision that same did not constitute a policy that needed to be screened. The Commission believed, when authorising investigation of this complaint, that the Department's actions may have constituted a failure by it to comply with Paragraphs 3.1 and 3.2 of its approved Equality Scheme ¹, which require it to screen all new policies. These state:-

“In identifying policies to be subject to equality impact assessment, the Department has both considered ongoing policies within the functions listed at Para. 1.5 and looked forward to new policies, which may be proposed for adoption during the term of the scheme.

The Department has considered the likelihood of significant impact of each current policy on equality of opportunity in terms of the nine categories listed at Section 75. For each policy the following criteria were applied:

- is there any evidence of higher or lower participation or uptake by different groups within any of the nine categories?*
- is there any evidence that different groups have different needs, experiences, issues and priorities in relation to the particular main policy area?*
- is there an opportunity to better promote equality of opportunity or good relations by altering policy or working with others in Government or the community at large?*
- have consultations in the past with relevant representative organizations or individuals within groups indicated that particular policies create problems that are specific to them?*

The main groups within each of the nine categories are identified at Appendix 6.

The Department will also apply the above factors when considering which new policies should be subject to full equality impact assessment criteria”.

The purpose of the investigation was, therefore, first to determine whether the decision to discontinue funding constituted a policy which

¹ DRD's Equality Scheme which had been approved in 1991 was in place at the relevant time, and is therefore the relevant Equality Scheme to be considered for the purpose of this investigation.

should have been screened in accordance with the commitment at paragraphs 3.1 and 3.2 of the Department's approved Equality Scheme. In addition, if that question was answered in the affirmative, the investigation would also consider whether, if such screening had taken place, should it have identified an impact on the promotion of equality of opportunity which would have required the Department to carry out an Equality Impact Assessment. The investigation also considered whether the Commission should recommend action to the Department.

BACKGROUND

Easibus was introduced in 2000 to provide accessible local bus services mainly, but not exclusively, for persons whose mobility impairment is such that they cannot avail of existing conventional services. At that time only a small proportion of the Ulsterbus fleet was low-floored, and the availability of flexibly routed accessible services in urban areas was sparse. The Bangor Easibus service followed 4 circular routes designed to ensure that the areas where users reside and the key facilities they visit - Bus Station, Cafes, Cinema, Health Care Centre, Hospital, College of Further Education, Job Market, Leisure Centre, Post Offices, Shopmobility facilities, Shops and Shopping Centre, Social Security Office, Housing Executive, were included.

The buses are only 9 metres long and therefore capable of negotiating the narrow streets of local estates. They are low floored and ramped to enable wheel-chair access. They therefore provided an accessible, regular, and comfortable means of public transport enabling wheelchair users, other persons with disability, and older people with reduced mobility to travel within their locality and to engage in normal day-to-day activities. A very important feature in terms of accessibility is that users could, subject to a number of exceptions for safety reasons, hail down an Easibus. It was therefore generally unnecessary to reach a defined bus-stop as is the case for conventional services, which itself might not be accessible because of, for example, the user's limited mobility. Because they catered for the needs of disabled persons and persons with reduced mobility, but could also be used by anyone, Easibus also provided a level of social engagement and interaction for users, and allowed them to play a more active role in their local community. Initially they were introduced in Belfast and subsequently in Bangor and Londonderry in 2000. These services were funded by the Department and provided by Translink.

The Department carried out an Equality Impact Assessment of its overall “Transport Programme for People with Disabilities” in 2004 which included consideration of the Easibus Service. By that stage, the service had eight daily routes operating in Belfast, four in Bangor, and two in Londonderry. This Assessment resulted in a decision by the Department to continue to provide support for the service.

The Bangor and Londonderry services ended, however, during 2010 as a result of the Department’s decision to discontinue funding. The Department explained the basis of its decisions as follows:-

“Bangor:- With increasing financial pressures, Government Departments’ must make the best use of available resources .The decision to withdraw Easibus Services in Bangor was taken in consultation with Translink in cognisance of improved accessibility to current scheduled town services following significant upgrading of the Ulsterbus fleet since Easibus was introduced in 2000. Translink would be making adjustments to its local town service to mitigate the effects of Easibus withdrawal.

*Londonderry: - The service in Derry has seen a decline in usage by people with a mobility impairment and has, effectively, become a local town service”.*²

The Department stated that although its policy remains to support Easibus (it still funds the service in Belfast), it could not continue to provide revenue support for a service that had been determined to be largely duplicated by existing services. In addition, it emphasised in the course of this investigation that Door to Door and Rural Transport minibus services have developed significantly across Northern Ireland to provide an accessible dial a ride service, particularly for older people and people with disability.

The Omnibus Partnership ³ , which originally brought this matter to the Commission’s attention, contacted the Department to contend that the decision to withdraw funding represented a policy which should have

² DRD correspondence to Omnibus Partnership 05/03/2010

³ An organisation of people with disabilities and older people who need and wish to use Public Bus Services, which worked with DRD to bring Easibus Services to Bangor and Groomsport. Its membership includes representation from Age Concern, Arthritis Care, Bangor Access Group, Bangor Chamber of Commerce, Better Bangor Campaign, Chest Heart & Stroke Association, Groomsport Evergreen Club, Groomsport Village Association, Home Start, Shopmobility Bangor.

been screened. The Partnership argued that the equality implications of the Department's decision were such that, had proper screening taken place, this would necessarily have resulted in an Equality Impact Assessment, requiring the Department to consider alternative policies or action to mitigate the consequences of its decision to end revenue funding.

The Department accepted that the decision was not screened. It contended that its policy was to continue to support Easibus Services, as evidenced by its provision of revenue support for the service in Belfast. It stated that its withdrawal of such support for the two areas concerned to reflect changing circumstances, did not constitute a change to that policy, but was a *“sensible operational adjustment to ensure the most efficient and effective use of public expenditure”*.⁴

During the course of this investigation the Department confirmed that it was prepared to carry out a retrospective screening exercise of the decisions relating to Bangor and Londonderry. The Department also agreed to consult with the Omnibus Partnership as part of the Bangor exercise. Accordingly the Omnibus Partnership provided the Department with a submission dated 2 August 2011, making the following points:

- Replacing Easibus with a combination of mainstream bus provision and a Door to Door Service would have a disabling impact on disabled persons and those with impaired mobility.
- The accessibility inherent in the Easibus Service for persons with disabilities and older people has not been replicated by the combination of standard service augmented by Door to Door Services which replaced it. One example is that public bus services do not travel along many of the former Easibus routes.
- Door to Door does not replace Easibus in terms of accessibility, availability or affordability, as:

Easibus services are ideal for disabled persons and those with impaired mobility as they use low floor ramped vehicles containing interior areas with no steps. In contrast Door to Door vehicles have a number of steps and a high rise ramp, making them painful or dangerous for significant numbers of disabled people.

⁴ DRD correspondence to Equality Commission 07/04/2011.

Easibus Services allowed passengers to use their concessionary passes, Door To Door does not.

Easibus Services travelled along regular routes at scheduled times, allowing passengers to engage in normal day to day activities such as shopping or visiting friends, which they could either plan in advance, or do on the spur of the moment, as is the case for the general population. Door to door on the other hand has to be booked well in advance, and even then, getting a booking is not a certainty.

- The cessation of the service in Bangor has resulted in significant numbers of disabled people and older people being denied equality of opportunity to travel in and around their home town as their non-disabled and younger peers can do.

In light of the above, the Omnibus Partnership concluded that the Department should conduct an Equality Impact Assessment of its cessation of funding for the Easibus service in Bangor, and that this should result in a reversal of its policy decision and the re-introduction of the Bangor service.

The Department responded to these criticisms of the accessibility of Door to Door by pointing out that all vehicles used in this service meet Disabled Person Transport Advisory Committee standards. It accepts that some vehicles are not suitable for transporting larger wheelchairs, but indicates that the operating contract requires operators to provide a larger vehicle where a booking is made by a passenger who has identified a need to accommodate such a wheelchair. It emphasises that these arrangements were agreed with the Omnibus Partnership and the Inclusive Mobility and Transport Advisory Committee prior to the award of the Door to Door contract.

The retrospective screening exercises (separate screening being carried out in respect of the decisions affecting Bangor and Londonderry) were completed in September 2011, with the Department concluding that the policy to discontinue revenue support did not need to be subject to an Equality Impact Assessment.

In respect of the Bangor Service, the Department acknowledges that the decision will mainly impact on persons with disabilities, that it also impacted on the Age category, and that the service post- Easibus does not replicate the former service provided for these groups. However, it states that the level of this impact is “Minor” and therefore the policy did not need to be subjected to an Equality Impact Assessment. The Department explains its view that the impact of discontinuing the Easibus Service on disabled people is only minor as follows;

“The Department does not accept that significant numbers of people are being denied equality of opportunity to travel as there are other transport options within the Bangor area including those specifically put in place to assist people with disabilities, or those who find it difficult using mainstream public transport.

The Department has a responsibility to ensure that funding is used as efficiently and equitably as possible and the review of Easibus services in Bangor, based on the information provided by Translink, showed that:

- *Recent investments in Translink buses have led to all buses being more accessible for people with disabilities.*
- *There was a duplication of routes by existing services.*
- *The service was not used sufficiently to make it viable.*

As there was an adequate level of service remaining to meet customer demand along the routes and the continuing availability of door to door and Rural Community Transport as an alternative, the Department agreed that funding for the Easibus Service should be withdrawn.

The changes bring Bangor into line with the measures of support from Transport Programme for People with Disabilities now available to all major towns across Northern Ireland (with the exception of Belfast where Easibus remains).

The Department accepts that the service now offered is not the same as that previously provided. However the Department has a responsibility to ensure that funding is used as efficiently, effectively and equitably as possible.”⁵

The Department also made the point, in setting out the background to the matter in the screening report , that Translink services now cover

⁵ DRD screening report on the decision relating to the Bangor Easibus Service.

91% of the previous Bangor Easibus route mileage and offer both earlier and later services to that previously provided.

Having determined that the impact on persons with disability (and older people) is minor, the Department decided that there was no need to carry out an Equality Impact Assessment. It reiterates the reasons set out above in reaching this determination.

The Department's reasons for screening out the decision to discontinue funding for the Londonderry Service are similar: the Department recognising that the main impact of the decision would be on persons with a disability, but categorising the level of this impact as minor, and concluding that an Equality Impact Assessment was not required.

INVESTIGATION

1. **Did the decision to discontinue revenue support constitute a policy, giving rise to a requirement to screen?**

The obligation to screen and carry out equality impact assessments arises in respect of "policies". The Commission does not accept the Department's contention that these decisions were simply operational adjustments which did not constitute a policy. The decision taken to discontinue revenue support changed the previous policy, and therefore did itself constitute a policy.

The Department's Equality Scheme was approved under the Guide to the Statutory Duties⁶, and must therefore comply with same. The Commission noted the very wide definition given to "policies" contained at sections 2.11 – 2.14 of the Guide. These emphasise that "policy" is a broad inclusive term, and is:-

*"...a course or principle of action adopted or proposed.
In the context of Section 75 it covers all the ways in which an authority carries out its functions, and is not confined to policies on the promotion of equality of opportunity. It covers unwritten as well as written policies".*

⁶ Guide to the Statutory Duties. A guide to the implementation of the statutory duties on public authorities arising from Section 75 of the Northern Ireland Act 1998. Equality Commission for Northern Ireland 2000.

The 2005 “revised” Guide to the Statutory Duty ⁷ further emphasizes the dynamic nature of policies, and that same are often reviewed/amended, or the way they are implemented is changed. This guidance is instructive in determining precisely what was intended by the term “policy”. It states:-

“A change to a policy must be screened for impact on equality of opportunity in the same way as the original, existing or new policy”.

The Commission’s current Guidance ⁸ is equally instructive, reiterating this message and explaining that “policy” includes any strategy, policy, practice or decision.

The Commission concluded that the decision to withdraw funding for the Easibus Service in Bangor and Londonderry clearly constitutes a policy, and therefore should have been screened. Accordingly the Commission finds that the Department did fail to comply with its approved Equality Scheme by initially failing to carry out a screening exercise.

This aspect of the investigation has been addressed as the Department has subsequently recognised the need to screen this policy and has carried out “retrospective” screening. This has resulted in a decision to “screen out” the policy. This leads to the second aspect of the investigation: if the required screening had taken place, should it have identified an impact on the promotion of equality of opportunity which would have required the Department to carry out an Equality Impact Assessment.

2. Should a properly conducted screening exercise have concluded that the proposed policy had sufficient implications from equality of opportunity perspective to require an EQIA to be conducted?

“Screening” is the public authority’s procedure for identifying those of its policies which are likely to have a significant impact on equality of opportunity and which therefore should be subject to a full Equality

⁷ Guidance for implementing Section 75 of the Northern Ireland Act 1998. Equality Commission for Northern Ireland. February 2005 Pages 50-51.

⁸ Section 75 of the Northern Ireland Act 1998. A Guide for Public Authorities. Equality Commission for Northern Ireland. April 2010 Pages 30-31.

Impact Assessment. It requires policies to be reviewed against four equality related questions which are set out in the Guide to the Statutory Duties^[7] and included at paragraph 3.1 of the Department's approved Equality Scheme. If any of these are answered in the affirmative, consideration must be given to whether an Equality Impact Assessment should be carried out on the policy⁹.

The Guide emphasises that public authorities **must** "subject to full impact assessment" proposed policies identified through screening as "having significant implications for equality of opportunity"¹⁰.

The Committee considers that, given the mandatory nature of the Guide to the Statutory Duties on this point and in the context of the statutory duty to have due regard to the need to promote equality of opportunity, there will be circumstances in which the "consideration" that is required by screening should require such an assessment to be carried out.

The Committee has set out its view that the Department should have carried out a screening exercise. Whether or not such a screening exercise should result in a decision to conduct an equality impact assessment will always be a question of degree depending on the particular circumstances of the case. In the event the Department subsequently carried out what it describes as a retrospective screening exercise, which concluded that the impact of the cessation of the service on people with disability was "minor" and did not necessitate an Equality Impact Assessment.

The decision in question led to the termination of a service providing accessible local bus services mainly, but not exclusively, for persons with mobility impairment. The Committee considers this to be the type of decision where Equality Impact Assessment would be extremely useful, and would have facilitated the Department to consider consciously and consult upon the impact its decision would have on disabled persons who had used the service, and whether or not their disability related needs would properly be catered for through improved mainstream provision supplemented by the Door to Door service .

⁹ This is a summary of the screening exercise as required under the Department's first approved Equality Scheme which was in place at the relevant time

¹⁰ At page 37 of the Guide to the Statutory Duties.

FINDINGS

- (1) The original decision did constitute a policy that should have been screened, and the initial failure to do so constituted a failure to comply with approved Equality Scheme.
- (2) The policy to discontinue revenue support was such that screening should have lead to a full Equality Impact Assessment.

RECOMMENDATION

The Committee recommends that the Department, in compliance with its responsibility to continue to monitor the impact of its policies on the s.75 groups, carry out a review of its decision relating to the Bangor Service. That review should be carried out in partnership with Translink and in consultation with the appropriate individuals from and organizations representing s. 75 groups. The review should consider:

- the effectiveness of the mitigation implemented to reduce the impact of the withdrawal of the Easibus Service in the Bangor area; and
- whether additional mitigation measures should be introduced.

The Department should complete this review and report its findings to the Commission within nine months of the date of this report.

23 May 2012