

EQUALITY COMMISSION FOR NORTHERN IRELAND

FINAL REPORT OF COMMISSION INVESTIGATION UNDER PARAGRAPH 10 OF SCHEDULE 9 OF THE NORTHERN IRELAND ACT 1998

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&
LIMAVADY DISTRICT COUNCIL**

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INTRODUCTION

This investigation relates to Limavady Borough Council's alleged failure to equality proof (screening and possible Equality Impact assessment) its proposals to select its representatives for the Transition Committee for the proposed Causeway District Council. This Council will replace the existing Limavady, Ballymoney, Coleraine and Moyle Councils in 2011 as part of the ongoing Review of Public Administration in Local Government. The party affiliation of the five representatives chosen was as follows: 3 Sinn Féin, 1 SDLP and 1 UUC.

THE COMPLAINT

The complainant alleged that on 2nd December 2008 the Council applied a particular version of the d'Hondt system to allow it to arrive at a 4.1 split in terms of Nationalist/Unionist representation on the Transition Committee. He further alleged that this system had been adopted for the very first time recently when nominations were made to the District Policing Partnership, but on that occasion this new approach had made no substantive difference. He alleged that prior to that the Council had always used the d'Hondt system as operated by the Northern Ireland Assembly, and had that been used on this occasion a second Unionist would have been selected. He believed that this shift in policy had been deliberately adopted to increase Nationalist representation on the Transition Committee, and this policy should have been screened, and further that such screening should have identified the policy as

one that needed to be fully assessed by way of an Equality Impact Assessment (EQIA).

The complainant is aggrieved about this allocation, stating that given the composition of the Council (which in broad terms is 9 Nationalist, 6 Unionist) the nominations should have included 2 Unionists. Paragraph 10 complaints, however, must necessarily be that the public authority in question has, in the course of the issue raised, failed to comply with a commitment contained in its approved Equality Scheme. The complainant contended that the Council's actions did breach its Equality Scheme commitments in respect of screening and Equality Impact assessment.

The Complainant alleged that the Council's decision to alter the methodology of the d'Hondt system used by it constituted a new policy, and accordingly, because of the Council's commitment at paragraph 7.5 of its approved Equality Scheme, that policy should have been screened. Section 7.5 provides;

“any new policies will be screened for fuller impact assessment using the criteria identified at paragraph 6.2”

The complainant contends that the four screening criteria set out at Paragraph 6.2 of the Council's Approved Equality Scheme should have been applied to determine whether the policy created by the Council's new application of the d'Hondt mechanism had sufficient equality implications to require further analysis by way of an Equality Impact Assessment.

The Department of Environment Guidance on the Formation of Transition Committees states that their role is to “take the key decisions necessary to ensure that there are eleven effective Councils in place” and their terms of reference cover Implementation, Governance, Service Delivery, and Structural Reform. It further states that membership will consist of elected members from the existing Councils and should “proportionately reflect the political composition of existing Councils”. The complainant therefore alleges that a properly conducted screening exercise should have resulted in a decision to subject the policy to an Equality Impact Assessment, given:

- the important role to be played by such Transition Committees in the Review of Local Government

- the recognised need to ensure that such committees should proportionately reflect the participating Councils
- and the fact that the changed application of d'Hondt had resulted in the reduction of Unionist representation on the transition Committee from two to one.

Investigation was authorised to determine;

- Did the Council fail to comply with Section 7.5 of its Equality Scheme by not conducting a screening exercise of the methodology used to nominate its representative and/or the policy created by the decision to use a particular version of the d'Hondt system and if so:
- Should a properly conducted screening exercise have resulted in a decision that the proposed policy had sufficient implications for equality of opportunity to require an Equality Impact assessment to be carried out.

THE INVESTIGATION

Investigation has identified the following:-

1. The Council did not in fact alter its application of the d'Hondt system for this particular exercise and the previous one relating to the DPP. In fact the Council has never operated the d'Hondt system in exactly the same way as the Assembly. The d'Hondt methodology used to determine representation on the Transition Committee has been used by the Council since it was established following the local government elections in 2005. This method was first used at the 2005 AGM to allocate Council Committee Chairs and the position of Mayor and Deputy Mayor for the Council's four year life-span. It was next used for reconstituting the District Policing Partnership, and identifying the nominations to the Transition Committee. The only difference between these two exercises and that used for the original AGM was that the complainant had transferred from the DUP to the UUC, and this was taken into account to reflect current party strengths.
2. There are 2 main differences between the Council's methodology and the Assembly version of d'Hondt;

- When 2 or more parties have an equal average the Council selects from the party with the most first preference votes, whereas in the Assembly the number of first preference votes is divided by the party's divisor, and the candidate with the largest number as a result is chosen.
- The Council uses the number of first preference votes cast for successful candidates, whereas the Assembly method uses the total first preference votes cast for the party.

The Council's methodology will therefore result in the selection of candidates with the larger share of first preference votes when 2 or more candidates have equal averages. Whilst the advantage given to larger parties by not dividing first preference votes may be off-set somewhat by consideration of the candidate's rather than the party's first preference votes, it appears clear that the Council's methodology will tend to favour larger parties more than the Assembly's methodology. The Council accepted that had the Assembly methodology been applied in the instant case, two Unionists would have been appointed to its Transition Committee.

3. The methodology adopted by the Council in 2005 was not screened at that time to establish whether it needed to be subjected to an Equality Impact assessment. The policy came about as follows;

Following the election of a new Council in 2005, officers drew up a paper entitled "Proposals for Consideration setting out 3 methods by which posts could be allocated:-

Direct election
Power sharing
d'Hondt"

A paper was also obtained from Dr Sydney Elliott, Senior Lecturer in Political and International Law to explain the d'Hondt system. That paper put forward the d'Hondt system as now operated by the Council, rather than the Assembly version. A paper was also given to Councillors in advance of the AGM to show what the allocation of Council posts would be if the system were to be adopted. The Nationalist majority of Councillors voted in favour by adopting the d'Hondt system (as set out in Dr Elliott's paper). It would appear that the two distinctions between this system and the methodology now used at the Assembly were not evident and were not

discussed. Unionists Councillors favoured the retention of power sharing (which had been the practice up to that time) and initially withdrew and refused to take up positions.

4. As previously stated the Council accepts that the nuances between its application of the d'Hondt system from that used at the Assembly has reduced Unionist representation on this 5 person group. This impact would appear to have arisen from the small number of positions available on this occasion (5), whereas application of either methodology may result in the same outcome for filling the 24 Council posts that arise in the course of the Council's 4 year duration.

5. The Environment Minister has decided 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 fresh guidance from the Department. It appears that these Committees will make the important decisions relating to the reform of local government.

6. As a result of this investigation it would appear that the Council has realised that the form of d'Hondt used by it differs from the method used at the Assembly, and that its method may be less equitable than the Assembly method when used to fill a small number of positions. The Commission considers that had the original policy introduced in 2005 been subject to screening, it is likely that this issue would have been detected at that time. At the Council's AGM on 1 June 2009 it was agreed that in future the Assembly methodology would be used. Importantly, therefore, it would appear that the Assembly version will be used to decide membership of the Statutory Transition Committee to replace the voluntary one later this year (subject of course to any direction by the Department of Environment).

SUMMARY

It is clear that the complaint was incorrect in his belief that the Council deliberately changed its implementation of the d'Hondt system in December 2008 to influence membership of the Transition Committee. Therefore no requirement arose at that time to screen a new policy.

The particular aspect of the d'Hondt system used by the Council which may give rise to concern would appear to be the differences between it and the Assembly methodology, which appear to favour those parties with larger mandates. Having become aware of this issue as a result of this investigation, the Council has decided to replace its version of the d'Hondt system with the Assembly version. The Commission considers that if screening of the policy had taken place of the policy when it was first introduced, the Council would have realised at that time that the version being proposed had a propensity to favour larger parties as compared to the methodology used at the N. Ireland assembly, and the situation giving rise to this complaint may have been avoided.

FINDING

No policy change arose from the selection of representatives on the Transition Committee in December 2008 which would have required screening. Accordingly, the Council has not failed to comply with its approved Equality Scheme as alleged by the complainant.