



EQUALITY COMMISSION FOR NORTHERN IRELAND

Investigation of a complaint made under Paragraph 10 of Schedule 9 of the Northern Ireland Act 1998

Complainant & Department for the Economy

Investigation Report

February 2023

Introduction and Summary

1. Section 75 of the Northern Ireland Act 1998 (the Act) places a statutory duty on public authorities to have due regard to the need to promote equality of opportunity between various groups of people, and to have regard to the desirability of promoting good relations, when carrying out their functions in Northern Ireland. The Department for the Economy (Department) is a public authority for the purposes of the Section 75 duties.
2. Designated public authorities are required by Schedule 9(2) of the above Act to submit an Equality Scheme to the Equality Commission (the Commission) for approval. Equality Schemes are both a statement of the public authority's commitment to fulfilling the Section 75 duties and a plan for their performance. The Commission approved the Equality Scheme in 2012 as the Department of Enterprise, Trade and Investment and the Department of Employment and Learning Schemes. Following the transfer of their functions to the Department for the Economy in 2016, the Equality Scheme arrangements continue as approved in 2012.ⁱ
3. In November 2021, the Commission's Statutory Duty Investigations Committee (the Committee) authorised an investigation into part of a complaint (SDI/372/21), which related to an allegation that the Department failed to carry out equality screening of the High Street (Corona Virus, Financial Assistance) Scheme Regulations (Northern Ireland) 2021ⁱⁱ (HSS) at the earliest opportunity during the policy development and make it available.

4. At its subsequent meeting in February 2022, the Committee authorised an investigation into a further complaint (SDI/377/21) by the same Complainant against the Department relating to the same HSS policy. The Complainant alleged that the Department failed to comply with its approved Equality Scheme by failing to properly equality screen the HSS.
5. The two complaints are about the same policy (HSS) and the same equality screening process (timing and propriety) for it. This Investigation Report covers both complaints.
6. Commission staff considered documentary evidence provided by the parties in both complaints. Commission staff also conducted wider research to collect further, relevant information to assist the investigation process. An investigation meeting was held with Departmental representatives on 9 June 2022.
7. Commission staff assessed the evidence against the commitments the Department has made in its Equality Scheme and the standards set in the Commission's advice and guidance.
8. The Background, Facts and Evidence, Assessment, Findings and Recommendations are set out in the sections below.
9. Based on the evidence and assessment, the Commission finds that:
 - the Department has failed to comply with its commitments at paragraphs 4.2 and 4.5 of its Equality Scheme. The Minister could not take into account the Department's assessment of the equality impacts of the proposed policy that the HSS would be for those aged 18 and over; the screening presented the reasons for this being the policy option. The Department failed to equality screen this policy proposal at the earliest opportunity as it could have done, at or around the time when the policy option was included in a Ministerial statement, in April 2021.
 - the Department has failed to comply with its Equality Scheme commitment at paragraph 4.6. Given the weight given to age in the development and preparation of the policy option, the Department should have engaged with those representing those aged under 18 during its screening process; it engaged with other stakeholders on the potential equality impacts of the policy proposals.
 - the Department has failed to comply with paragraphs 4.8 and 4.9 of its Equality Scheme. It failed to present, in its screening document in draft, or as published on 10 September 2021, relevant information to set out its equality assessment of, or the potential impacts of, its proposed policy of a HSS for those aged over 18. It presented the reasons for the scope of this policy proposal under "Age" as needs, experience and priorities. It should have set out the policy proposal in these terms at the start and then showed its assessment of the potential impacts of this on those aged under 18.

- the Department to have complied with its paragraph 4.14 of its equality scheme, to make the screening document for the HSS available as soon as possible following its completion.
 - Given the Department is found to have failed on its Equality Scheme commitments as set out above, it could not have complied with paragraph 4.9 of its Equality Scheme, as intended by the standards set in the Equality Commission’s guidance, nor will it have complied with the other paragraphs in Chapter 4 of its Equality Scheme as covered in the two complaints under investigation.
10. Further, the Complainant alleged that the Department failed to comply with paragraph 1.2 of its Equality Scheme, which alleges that the Department did not have due regard to the need to promote equality of opportunity, as the screening exercise for the HSS was inadequate. As the screening form presented to the Minister in August 2021 stated, clearly, that the eligibility criteria on age was already decided, the Minister could not have made her decision with an open mind on the eligibility criteria for age. The Commission considers that the Minister could not have had due regard to the need to promote equality of opportunity when considering the policy proposal and deciding on the HSS in August 2021. The Commission therefore finds that the Department failed to comply with paragraph 1.2 of its Equality Scheme.
11. The Commission makes a number of recommendations for the Department, from the findings, which are:
- The Department should ensure that an equality assessment, and at least screening, is undertaken at the earliest opportunity during policy development processes. Where a preferred policy option or a proposed policy is identified, it should be screened so that the potential equality impacts of that specific option or proposal are identified and presented in a screening document.
 - A screening process should be conducted by the Department on a clear, consistent statement of the policy proposal, which should be included in the opening section of the screening document.
 - The Department should complete its screening process for its identified policy option and finalise its screening document in a timely manner, in advance of presenting it with all the relevant information to the decision maker on the policy concerned.
 - All Departmental policy developers and policy managers should implement the screening practices committed to in the Department’s Equality Scheme.
 - All Departmental policy developers and policy managers should ensure their understanding of equality screening purpose and practice, as committed to in the Department’s Equality Scheme. They should do so within six months of issue of this Investigation Report, using the Commission’s [online training resources for screening](#).

Background

12. To address the impact that the Covid-19 had on the local economy, the Department published a roadmap in February 2021 called the “Economic Recovery Action Plan” (ERAP).ⁱⁱⁱ
13. Under the heading “WHAT WE ARE DOING”, the ERAP says that the Department was already working on “...[D]eveloping High Street Stimulus” (HSS) Scheme to provide individuals throughout Northern Ireland with a personalised prepaid card to be spent at ‘bricks and mortar’ businesses including retail, hospitality and close contact services.”
14. The Department published a Ministerial Statement on 30 April 2021 announcing that “[E]very person in Northern Ireland aged 18 and over will be eligible to apply for a pre-paid card worth £100 to spend in their local high street.”^{iv}
15. The Northern Ireland Assembly Committee for the Economy held a meeting on 25 August 2021 with the Department where the matters discussed, amongst other things, included the age eligibility criteria as indicated in the 30 April 2021 Ministerial Statement.^v The Committee raised questions about the exclusion of under 18s from the HSS.
16. On 7 September 2021, the Complainant lodged the first complaint with the Department, alleging that it had failed to comply with its equality scheme commitments to equality screen the HSS at the earliest opportunity.
17. The Department completed, signed off and published the equality screening of the HSS on 10 September 2021^{vi}. Thereafter, it made the implementing regulations for the HSS on 22 September 2021, which were laid before the Northern Ireland Legislative Assembly and came into force on 24 September 2021.^{vii}
18. The Complainant made a further complaint to the Department on 7 October 2021, making several allegations of failure relating to the content of the published screening document, specifically that the Department failed to properly equality screen the HSS.

The Complaint

19. The Commission notified the Department of receiving a complaint on 12 October 2021 (SDI/372/21) and of the receipt of a further complaint (SDI/377/21) on 15 December 2021, from the same Complainant. The complainant alleges that the Department failed in relation to equality screening at the earliest opportunity of developing the High Street Scheme (HSS) and that it failed to properly equality screen the HSS. The Department responded to the notifications on 10 November 2021 and 27 January 2022 respectively.

20. In November 2021 and February 2022, the Commission considered and approved investigation of the two complaints.
21. The scope of the first investigation was to examine the complaint that, contrary to its Equality Scheme commitment at paragraphs 4.2 – 4.19, and 4.24, the Department has failed to comply with its Equality Scheme commitments. The investigation sought to establish, in particular, the Department’s compliance with paragraphs 4.2, 4.5 and 4.14 of its Equality Scheme in relation to the HSS as to whether:
- the screening informed the Department’s decision making;
 - the screening was carried out by the Department at the earliest opportunity; and
 - the Department made the completed screening document available at the soonest possibility.
22. The scope of the second investigation is to examine the complaint that the Department failed to comply with its Equality Scheme, at paragraphs 1.2, 4.5, 4.6, 4.8, 4.9, 4.11 and 4.14, as it failed to properly screen the High Street Scheme. This relates to the Equality Screening document that was published on 10 September 2021.
23. The key relevant paragraphs in the Department’s Equality Scheme are as follows:
- “1.2 Schedule 9 4. (1) of the Act requires DfE as a designated public authority to set out in an Equality Scheme how it proposes to fulfil the duties imposed by Section 75 in relation to its relevant functions. This Equality Scheme is intended to fulfil that statutory requirement. It is both a statement of our arrangements for fulfilling the Section 75 statutory duties and our plan for their implementation.
- 4.2 In making any decision with respect to a policy adopted or proposed to be adopted, we take into account any assessment and consultation carried out in relation to the policy, as required by Schedule 9 9. (2) of the Northern Ireland Act 1998.
- 4.5 Screening is completed at the earliest opportunity in the policy development/review process. Policies which we propose to adopt will be subject to screening prior to implementation. For more detailed strategies or policies that are to be put in place through a series of stages, we will screen at appropriate stages during implementation.
- 4.6 The lead role in the screening of a policy is taken by the policy decision maker who has the authority to make changes to that policy. However, screening will also involve other relevant team members, for example, equality specialists, those who implement the policy and staff members from other relevant work areas. Where possible we will include key stakeholders in the screening process.
- 4.8 In order to answer the screening questions, we gather relevant information and data, both qualitative and quantitative. In taking this evidence into account

we consider the different needs, experiences and priorities for each of the Section 75 equality categories. Any screening decision will be informed by this evidence.

4.9 Completion of screening, taking into account our consideration of the answers to all four screening questions...

4.11 Where we mitigate we will outline in our screening template the reasons to support this decision together with the proposed changes, amendments or alternative policy. This screening decision will be 'signed off' by the appropriate policy lead within the Department.

4.14 As soon as possible following the completion of the screening process, the screening template, signed-off and approved by the senior manager responsible for the policy, will be made available on our website... or on request from [the Department]'s Equality Unit. Our screening reports are published quarterly."

24. Paragraphs 4.2 and 4.5 are closely interdependent and are considered together under the Facts and Evidence, Assessment and Findings sections. The same is applied to paragraphs 4.8 and 4.9.
25. The following Sections on Facts and Evidence, Assessment and Findings of the report are set out in the following order:
 - the Department's function and the development of the policy concerned, with regard to paragraph 1.2 of its Equality Scheme;
 - the Department's commitments at paragraph 4.2 and 4.5 of its Equality Scheme regarding screening informing decision-making and being conducted at earliest opportunity;
 - the Department's commitments at paragraph 4.6 of its Equality Scheme to include key stakeholders in the screening process, where possible;
 - the Department's commitments at paragraph 4.8 and 4.9 [and paragraph 4.11, relating to mitigation] of its Equality Scheme to gather relevant information when considering the different needs, experiences and priorities for each of the S75 equality categories to inform the screening decisions and use the information to answer the screening questions;
 - the Department's commitments at paragraph 4.14 of its Equality Scheme to make the screening template available following completion of screening process.

Facts and Evidence

The Department's function and the development of the policy concerned

26. The February 2021 ERAP sets out that the Department is “Developing a High Street Stimulus Scheme to provide individuals throughout Northern Ireland with a personalised prepaid card to be spent at ‘bricks and mortar’ businesses including retail, hospitality and close contact services.”
27. In the 10 September 2021 screening template, the Department indicated that the HSS is a new policy and that it “...aims to boost demand in our struggling towns, city centres...following the easing of Covid restrictions...”. Additionally, the document states that the Department owns the HSS policy and its “[T]he Economic Strategy Group within the Department for the Economy has responsibility for initiating and writing the policy.”
28. The Department’s responses to the Commission when it was notified of the two complaints, indicated: “[T]he Department was tasked by the NI Executive to progress the HSS...with a financial envelope for the [HSS] set by the Executive at £145m...” and “the Minister had the responsibility of taking decisions that put boundaries around how the policy was to be implemented.”
29. In its response to notification of the first complaint, the Department also said:
- "The Minister took the decision, as agreed by the NI Executive, to restrict eligibility for a pre-paid card to adults aged 18 years of age on or before the closing date for applications. There were several reasons for this decision including:
- Regulatory/Financial Issues around issuing cards to minors: for example, if cards were to be issued to parent/guardians on behalf of a child, significant issues around consent and fraud may arise, with unacceptable risks for the appropriate governance and control of the scheme;
 - Including under 18s would have required the Department to consider, and where necessary, implement the child specific duties imposed by the UK GDPR, additional to the general provisions. The Department would need to craft a process which is compliant with the additional protections specific to minors which could delay the launch of the scheme;
 - There are no datasets which could be used to confirm the identity of 16/17 year olds. To verify this cohort it would lead to an increase in cost which could impact on the overall policy intent of the scheme and delay its introduction which was to provide a stimulus for local businesses. There were significant challenges in identifying cost effective and efficient means to verify adult applicants in line with current data protection guidelines and extending eligibility to include minors would have compounded the issues already being faced;
 - The current databases used to verify applications could not be used to verify the identity of minors. The work to identify and put in place technical and operational arrangements associated with verification/administration of those below the age of 18 meant that it would not be possible to implement the scheme within the proposed timeline.

With a financial envelope for the scheme set by the Executive at £145m, and the number of eligible beneficiaries (aged 18 years and over) in Northern Ireland numbering 1.4 million, this provided for a credible monetary value of £100 to be loaded onto the cards. Extending the eligible age range within this funding envelope could only be achieved by reducing the amount to be loaded onto cards, providing a lesser incentive to use the cards, and so the extent of the additional economic impact would not have been realised by extending the population scope of the scheme.

Given the tight timeframe in which to deliver the scheme, the Minister was content that from an affordability, operational and legal perspective, there was a strong rationale for restricting eligibility to adults aged 18 and over.”

30. During the investigation meeting of 9 June 2022, Departmental Officials provided the following information:
 - “[the HSS] started off with engagement between [the Department] and the Department of Finance... that engagement was very much framed at the broad population that could be included...”. Reference was made to a similar scheme that operated in Jersey;
 - an explanation of the policy development processes conducted with the Department of Finance in terms of funding envelopes. This included the risks in terms of deliverability and the implications of funding the scheme through two financial years;
 - that the subsequent allocation from the Department of Finance was in the region of £140 million, which fitted with the broad population estimates of the adult population. It was also noted that there was some scope at that stage to bid for further funding and/or extend the population.
31. In developing different policy options, the Departmental officials confirmed, in the investigation meeting, that they used different categories for estimates of the population and that age was one of the significant factors for these different categories and estimates. There were, as well as age, criteria such as residency and/or welfare related options considered. Specifically on age, it was stated: “We looked at the option of providing a prepaid card to everyone in Northern Ireland [then] to everyone...over 6...[then]...to everyone...over 16...[then] to everyone over age of 18.”
32. The Department referred to the above as “eligibility criteria” and also stated that, for the Scheme, these eligibility criteria were developed over a number of months and took into account a wide range of issues impacting not only children and young people but also other groups in society including those in the Section 75 categories.
33. In the investigation meeting, the Department also stressed the significance of the procurement process for the payment card and its effect on the policy development process of the payment card, in terms of a writ of summons lodged in June 2021; the stay on awarding the contract was not lifted until 9 July 2021; and that the delay caused by the writ resulted in a number of

potential policy options being no longer viable within the timeframe the Department was working in, including addressing the obstacles that existed in bringing the under 18 age group into scope of the Scheme.

The Department's commitments at paragraph 4.2 and 4.5

34. The Department's ERAP of February 2021 confirms that work was already underway to develop the HSS for the policy aim/purpose set out at the time, to: "...provide individuals throughout Northern Ireland with a personalised prepaid card to be spent at 'bricks and mortar' businesses including retail, hospitality and close contact services".
35. At the investigation meeting of 9 June 2022, the Department explained that the Department of Finance offered the second funding envelope of £145 million to the Department in early April 2021. It fitted with one of the policy options developed at that stage, based on age: the 18 or over, adult population of Northern Ireland.
36. The Department published a Ministerial Statement indicating the policy option, in April 2021, of the cash allowance being £100 to those aged 18 or over. The Department described this as the "issuing of a Ministerial Direction on 29 April 2021 which was endorsed by the Executive", and that its policy development actions followed this.
37. The Department published its equality assessment of the policy concerned as an equality screening document, of the HSS, on 10 September 2021. It shows it was completed and signed off on the same date. The Department provided this screening document to the complainant on 10 September 2021, as part of its response to the 7 September 2021 complaint that it had failed to comply with its Equality Scheme.
38. The screening document says: "[T]his equality of opportunity screening is being undertaken during the development phase of the HSS and prior to its implementation. The scheme is required to be developed at pace at the behest of the Minister for the Economy/NI Executive, to manage the significant impacts of the COVID-19 pandemic. Due to this, it was not feasible to undertake the screening ahead of the scheme's development."
39. At the investigation meeting of 9 June 2022, the Department clarified that the earliest that a draft equality screening document was available was on 17 August 2021, as it was provided to the Minister at that time, along with the ministerial submission. This information was the advice to the Minister on the policy options and preferences for her decision at that time on the HSS policy.
40. The Department provided a copy of the draft screening document, as presented to the Minister, following the investigation meeting. It is substantially the same to the one subsequently signed and published on 10 September 2021, in the equality assessment and age-related information it presents.
41. The equality screening document published sets out reasoning for the decision taken on the scope of the HSS Policy and why those aged under 18 were

removed from the scope of the policy during its development. The Department presents this information within its equality assessment and it reflects the legal advice that the Department reported receiving during the policy development process and in its development of policy options.

42. The Department, when notified of the complaint to the Commission, provided information for the Commission's assessment of the complaint. This letter included the following, and the legal advice referred to is quoted in the letter and is also presented in the screening documents (and as set out at paragraph 29 above):

"With regard to eligibility criteria for the HSS, consideration was given to a wide range of issues impacting upon individuals from all the respective Section 75 groups, including children and young people. In particular, the Department sought legal advice on the issue of including/ excluding individuals under 18 years of age."

43. The Departmental Officials stated that the only policy option to be subject to an equality assessment, by way of screening, was the option to a cash allowance of £100 for persons aged 18 or over in Northern Ireland.
44. The HSS, its development and proposals were subject to a high degree of scrutiny and public interest. For example, the Committee for the Economy examined the proposals during the summer of 2021. Its Official Report (Hansard) of 25 August 2021 on "High Street Voucher Scheme: Department for the Economy" sets out the following as conveyed by a Department Official at the start of its meeting on that day:

"I will start off by reminding the Committee that, following the agreement of the Executive, the Department for the Economy was asked to take forward the development and implementation of this economically focused initiative. A project team has been working since the end of April, with a target date of about four months, to put in place a safe and secure digitally based system to allow for what is now estimated to be about 1.5 million people over the age of 18 to receive a £100 prepaid card that can be used to purchase goods and services to support local businesses. It is envisaged that the scheme will run for about eight to 10 weeks, to finish at the end of November, and that any outstanding moneys will be recovered from the prepaid cards as soon as possible after the closure date. All accounts etc must be completed by the end of March."

45. During the 25 August 2021 Assembly Committee meeting, the Department Official also said, in response to a question: "The policy is, Chair, that we are making the scheme available only to those who are 18-plus. There are clear reasons why we should not open the scheme up to those who are under 18. We have to draw some boundaries around that. We continue to provide some final guidance and policy advice to the Minister, but the policy sits there at the moment in order to ensure that the scheme can be delivered as efficiently as possible within the time frames and the overall budget. If we are going to give £100 to every eligible adult in Northern Ireland — our most recent estimates from the Northern Ireland Statistics and Research Agency (NISRA) for this year

show that there are about 1.5 million adults— we have got only £140 million for that. There is a very thin margin in the middle of all that when you also take into account the issues on administering the scheme”^{viii}

46. The report goes on to set out some detailed debate about why the policy does not include 16 and 17 year olds, covering the Committee members’ questioning of Department Officials on their reasoning for this.
47. In its 10 September 2021 response to the Complainant, the Department stated that it considered the date of the publication of the screening template (10 September 2021) as the earliest opportunity to complete the screening document and make it available.
48. When asked during the 9 June investigation meeting whether the Departmental Officials had equality screened any of the other policy options that were developed or considered (see paragraph 30 above) earlier in 2021, the Departmental officials stated that it had not.
49. The Departmental officials clarified that: “It would not be our view that we would do a policy screening for every single option...” to provide to the Minister. They also stated that their approach is consistent with Equality Commission guidance.
50. The evidence presented establishes that the only policy option for the HSS to be subject to equality screening by the Department was the option to provide £100 to those aged 18 and over; the Department’s full equality assessment of this proposed policy was contained in the screening document that was presented as a draft for Ministerial decision in August 2021 and then published on 10 September 2021.

The Department’s commitments at paragraph 4.6

51. The screening document of 10 September 2021 states that the policy aim is to “...boost demand in our struggling towns, city centres and providing much needed support to our local businesses following the easing of Covid restrictions by the NI Executive and the gradual opening up of the economy...The HSS is aimed at all those living in Northern Ireland aged 18 and over, at the time the application portal closes. No specific evidence/information apart from the size of the population was used to inform this policy.”
52. The screening document also includes multiple references to the Department’s engagement with representatives of the over 18s age groups, especially older persons. The Department’s equality assessment of the policy, on age, shows that there is a potential equality impact of the HSS where that group could be digitally excluded. The screening sets out the mitigations the Department put in place to address the potential impact.
53. The screening document makes no reference to any similar engagement with representatives of the equivalent under 18s age groups, either during the policy development or during the screening process of the HSS.

54. Questions were asked about this at the investigation meeting of 9 June 2022. The Departmental Officials stated that it held stakeholder consultation meetings generally, where representative organisations of the under 18s age group were present, and that the Department used these meetings to gather information. There was specific reference to a meeting held on 13 August 2021 with various organisations, facilitated by the Northern Ireland Council for Voluntary Action. The Departmental Officials also stated that another meeting was specifically organised with the Children’s Law Centre (CLC) on 30 September 2021.
55. The Investigations Team asked CLC about these meetings, given its connections to the complaints made to the Commission on this matter. The CLC representative provided their understanding of the meetings concerned, on 21 July 2022. Its staff had attended an online webinar on 13 August 2021, understood to be one of the Department’s public briefing sessions on the HSS and not specifically a stakeholder consultation event.
56. The CLC representative indicated that the 30 September 2021 meeting “...was arranged on the back of the CLC questions raised at the meeting on 13th August 2021. The possibility of extending vouchers to under 18s was discussed and DfE cited the reasons outlined in the Equality Screening [of 10 September] as the reasons why this could not happen.”

The Department’s commitments at paragraph 4.8 and 4.9

57. Under the relevant section of the published screening document, as well as its 17 August 2021 draft, relevant information is gathered and presented for the over 18s age group to consider the needs, experiences and priorities of the Section 75 equality categories. This presents the Department’s assessment of the potential impact on older persons who could be at risk of being digitally excluded from the HSS.
58. This section, on needs and experiences, includes information on the reasons why the Department was unable to extend the scope of the HSS to include under 18s.
59. The information about under 18s is presented as a decision already taken on the scope of the policy itself, it does not present needs/experiences in the same way for this younger age group as it does for the older age group, nor for any of the other equality categories that the Department presents its equality assessment for.
60. At the investigation meeting, the Departmental Officials described the policy development process and the policy options considered that would differentiate the population to benefit from the HSS from the original policy aim of “individuals”. They also described the age-based options appraisal undertaken and the constraints identified through the policy development process. (See paragraph 29 above)
61. Apart from the two stakeholder meetings of 13 August 2021 and 30 September 2021 the Departmental Officials described, no other information was presented

by the Departmental Officials relating to gathering of relevant information for the purposes of paragraphs 4.8 and 4.9 of its Equality Scheme, for those aged under 18.

62. There was no evidence presented to this investigation that the Department, at any stage in its policy development and equality assessment of the proposed policy of the HSS, considered the potential equality impacts on those age under 18 of a policy option to provide £100 to those aged 18 and over.
63. The screening document, as published on 10 September 2021, presents as a decision the age factors the Department was advised on, was presented to the Minister and the Minister would have taken into account in the decision on the HSS policy. The Departmental Officials confirmed the Minister received the draft screening form as part of the information for her decision on the HSS in August 2021.
64. In the screening document, the information that the HSS would be open to those aged 18 and over is presented as though it is part of the Department's equality assessment of the HSS. It is not presented at the start to explain the scope of the policy, nor as its aims/outcomes, nor in the identification of the stakeholders to the policy.
65. As part of the screening template that presents the Department's equality assessment of the policy concerned, under "needs, experiences and priorities", the screening document says:

"Age

HSS is aimed at providing a financial boost to support local businesses impacted as a result of the COVID-19 pandemic, by providing to all those living in Northern Ireland aged 18 and over, by the time the application portal closes, a Spend Local pre-paid card to purchase goods and services from local businesses.

The rationale for this decision is as follows: ..." [emphasis added]

66. The reasons then presented are explained as "regulatory", "UK GDPR" and "verification" reasons and equivalent to what is set out in paragraph 30 above.
67. The draft screening form provided by the Departmental Officials as part of the investigation, which was presented to the Minister as part of the information for her decision making on the final policy in August 2021, presents the information on age in the same terms as described above and as published by the Department in its screening document of 10 September 2021.
68. At the investigation meeting, the Departmental Officials referred to its equality assessment, as presented in the screening document, in the wider context, and indicated that it took an appropriate and proportionate approach to its equality screening of the HSS. The Departmental Officials referred to wider issues and constraints it encountered through the development process. It also referred to

its assessment being of all the equality categories and that it considered it to be appropriate in the circumstances.

The Department's commitments at paragraph 4.14

69. The Departmental Officials stated in the investigation meeting, of 9 June 2022, that its practice was to carry out equality screening around the policy proposal that is presented for decision by the Minister, not for all the options that preceded it.
70. The Departmental Officials stated that no policy decisions were taken prior to its ministerial submission and the information gathered for it, including the draft screening document of 17 August 2021. The Departmental Officials confirmed that the screening document was presented in draft, to inform the Minister's decision at that time and it was on the policy option and proposal that the HSS provided £100 for those aged 18 and over.
71. The Departmental Officials also described that its process was to finalise the screening document, following the Minister's decision on the policy, sign it off and publish it.
72. The documents available to this investigation show that on or by 17 August 2021 the Department had prepared a draft screening document of the HSS. The screening document was completed and signed off on 10 September 2021.
73. On the same day, the signed screening document was published and a copy of it was provided to the Complainant.

Assessment

The Department's function and the development of the policy concerned

74. The Commission's advice and guidance anticipates that, in order to fulfil its statutory equality and good relations duties in Section 75 when it carries out its functions, a public authority will implement the arrangements and methods it has committed to in its Equality Scheme.
75. The Complainant alleges that the Department failed to comply with its Equality Scheme at paragraph 1.2, in that it failed to have due regard to the need to promote equality of opportunity in relation to the screening carried out on the HSS and the equality assessment it presented.
76. The standards expected from the Department to comply with its Equality Scheme generally and this paragraph are set out in Commission guidance and are based on principles established in caselaw. Specifically, for due regard to be paid, an equality assessment must be presented to the decision maker in advance of the decision and the information for the equality assessment must be presented so that the decision maker can consider the assessment, in

substance, with rigour and an open mind. The Commission would expect that the Department will apply its Equality Scheme processes to do this, in this case through an equality screening.

77. The Commission's "Section 75 – A Guide for Public Authorities" (Commission's Guide) sets out what is required in an equality scheme and the arrangements recommended for public authorities to commit to in their equality schemes.
78. The Department has a function which is considered relevant for the purposes of the Section 75 duties in the circumstances of this complaint. As set out above, the Economic Strategy Group within the Department is responsible for providing equality information as well as information on economic policies to the Minister for the Economy. It is the Minister who takes decisions on policies relating to the local economy of Northern Ireland; those decisions should be informed by the Department's equality assessment of the proposed policy.
79. In accordance with the Commission's Guide, the HSS is a policy and within the scope of the Department's equality scheme arrangements and commitments set out in Chapter 4 of its equality scheme.
80. The Commission also provided guidance to public authorities in relation to the continued delivery of their functions during the pandemic and their statutory equality and good relations duties in Section 75. The Commission's key message was: "It is important that public authorities recognise that the duties set out in Section 75 of the Northern Ireland Act 1998 continue to apply, even when implementing Covid-19 related policies. These duties provide a mechanism to identify and mitigate any adverse impacts of policies being developed and are important duties, particularly at a time of crisis and when policies need to be developed at pace".

The Department's commitments at paragraph 4.2 and 4.5

81. The Commission's Guide anticipates that a public authority will use its arrangements in its Equality Scheme to equality assess its new policies for potential impact on equality of opportunity. It commits to doing this through the processes of screening and equality impact assessment.
82. The Department is required, under Schedule 9 of the Northern Ireland Act 1998, to take its equality assessment into account when it decides on the policy concerned (paragraph 9.(2)). The Department commits to this in its Equality Scheme, at paragraph 4.2.
83. The Department commits to using equality "screening" as one of its arrangements to do the equality assessments it must to inform its decisions on policies. It also commits to doing this at the earliest opportunity in the policy development process in its Equality Scheme, at paragraph 4.5.
84. In its 10 September 2021 screening document, the Department states that the equality screening of the HSS was carried out during the development of the HSS. However, there is no evidence of this equality assessment being carried

out or the screening document developed prior to 17 August 2021, when the Departmental Officials reported that it put together its Ministerial submission for the HSS.

85. The investigation has established that during the development of the HSS, the Department progressed multiple policy options based on different factors to qualify or quantify the “individuals” who would be beneficiaries of the proposed policy. None of these options or their appraisal were, reportedly, informed by any equality assessment. Nor did the Departmental Officials view this to be needed. It is noted that the Department has described the above as the development of the eligibility criteria for the Scheme, and these were one part of the overall policy development process through the period from the Ministerial Direction in April 2021 to the final decisions on the Scheme in September 2021.
86. It is clear that the Department gave consideration to the eligibility criteria in terms of age. But the Department’s consideration of age and eligibility was presented in the draft Equality screening form as a decision already made, which the Department said was presented to the Minister for her decisions in early September 2021 (see paragraph 66 above).
87. It would appear, from the Department’s press release of 30 April 2021 that while no policy decisions were finalised at that stage, the policy options had been refined/developed from “individuals” to an option in relation to the population of Northern Ireland who were aged over 18. There has been no evidence presented to the investigation that this, the preferred policy option in terms of the eligibility criteria and the proposal on which subsequent development was based, was subject to any equality assessment.
88. The principles established for decision making that is in compliance with the Section 75 duties are set out in the Commission’s guidance^x. One principle is that the decision maker must make the decision with an open mind. All the necessary information should be provided for the decision – including any equality assessment. In this case, the equality assessment (screening) presented to the Minister for her decisions clearly refers to decisions already taken in terms of one of the equality groups and the eligibility criteria.
89. The Departmental Officials, at the investigation meeting, were categorical that no decision had been taken on the HSS policy prior to the Minister’s decision in August 2021, as reported. However, its screening document of 10 September 2021, and as presented in draft to the Minister in August 2021 is clear in its statement of policy aim/outcome, apparently as part of its equality assessment. It is clear in referring to a decision and providing the reasons for the policy applying to those aged 18 and over.
90. The statement in the screening document under “what is it [the policy] trying to achieve? (intended aims/outcomes)” says nothing about either the HSS providing a pre-paid card, or that it will be issued to all those living in Northern Ireland aged 18 and over. There is a clear omission in this section and

inevitable confusion for the reader created by presenting further information on the policy scope in a later section.

91. The Department does set out clearly in its screening form of 10 September the reasoning for limiting the scope of the policy from the original goal of providing individuals with a pre-paid card, and the factors contributing to the final policy option of providing adults aged over 18 with a pre-paid card. If the Department had assessed the potential equality impacts of this proposed policy, and in those terms, then it could have presented the age related constraints in it, and at an earlier stage in the policy development process. The Department would have had the information in a format that would have been transparent and accountable for the Complainant and others, also for the Assembly Committee when it asked.
92. The screening template of 10 September 2021 does not include any other policy options proposed or discussed during the development period of the HSS prior to or after the ministerial press statement of 30 April 2021. It does, however, present the Department's assessment of the potential impacts on other groups. It concluded that no further equality assessment was needed, by way of a full Equality Impact assessment.
93. There is no evidence found or presented to the Commission of an equality assessment of the proposed policy to providing a pre-paid card to those aged over 18, in terms of what the Department assessed as being the potential equality impacts on the grounds of age – other than the risk of digital exclusion for older people.

The Department's commitments at paragraph 4.6

94. The Complainant is particularly concerned that the Department should have engaged with stakeholders on the potential equality impacts of this policy on young people. Clearly there is a point at which young people under the age of 18 were excluded from benefiting from this policy, where they might have anticipated benefiting, from the information that was publicly available on the HSS as initially set out in the ERAP in February 2021.
95. In undertaking an equality screening exercise, the Commission's Guide recommends that the public authorities include the policy-decisionmaker and other staff whose work and expertise relevant to the policy area as well as the key stakeholders. This should be a helpful process during the development of the policy to inform those developing the policy concerned about how different options and proposals might impact on equality groups, and therefore how the policy options and proposals might affect equality of opportunity.
96. However, it appears, as set out above, that the Department did not use the screening methodology to inform or assist it to develop its policy option as announced in April 2021 for the HSS. There is no evidence of an equality assessment being carried out or the screening document developed prior to 17 August 2021, when the Departmental Officials reported that it put together its Ministerial submission for the HSS.

97. There were clearly opportunities between April 2021 and August 2021 for the Department to inform stakeholders of its equality assessment of the policy option and/or its consideration of the eligibility criteria. The CLC reports that it raised queries with the Department about the policy option in August 2021 at a briefing meeting on it. The Assembly Committee may have benefited from having the information prior to its meeting of 25 August 2021.
98. As outlined above, the Department confirmed in February 2021 that work was already underway to develop the HSS. Practically, the Department had a window of at least seven months to engage with some key organisations representing the different age groups. This includes those representing both the over and under 18s age groups.
99. The screening document of 10 September shows that the Department had engaged with those representing the over 18s age group, identifying the potential impact on older people, at risk of being digitally excluded from the HSS. It does not show that the same occurred for the under 18s age groups.
100. At meetings on 13 August and 30 September 2021, the Departmental Officials indicated they had engaged with representatives of young people. It has been established that the first meeting was in fact a public briefing webinar titled “High Street £100 Voucher Scheme Briefing” about the “...Voucher Scheme, how to access it and who will be eligible” open for public, held by the Department and facilitated and advertised for online by the Northern Ireland Council for Voluntary Action.^x
101. Regardless of its objective, the second meeting of 30 September 2021 could not serve the engagement purposes of paragraph 4.6 of the Department’s equality scheme as the Department already completed, signed off and published the equality screening template of the HSS on 10 September 2021.

The Department’s commitments at paragraph 4.8 and 4.9

102. The screening form, and as committed to in the Equality Scheme, prompts the public authorities to gather evidence/information (qualitative/quantitative) in order to answer the screening questions. Public authorities should consider the implications and the potential equality impacts of the policy being screened.
103. The Commission’s Guide also outlines that in taking this evidence into account, public authorities will need to consider the different needs, experiences and priorities for each of the Section 75 equality categories. The purpose of this is to fulfill the duty of having “due regard” to the need to promote equality of opportunity when it carries out its functions.
104. The Commission’s guidance also sets out that having ‘due regard’ and ‘regard’ means that the weight given to the need to promote equality of opportunity and good relations is proportionate to the relevance of the particular duty to any function of a public authority. Therefore, having ‘due regard’ or ‘regard’ entails

taking a proportionate approach in determining the relevance of equality of opportunity and/or good relations to a particular function or policy.

105. The Commission's Short Guide on the public sector equality, disability and good relations duties (2015) provides that complying with the arrangements outlined in [the] equality scheme will considerably help a public authority to comply with, and to demonstrate that it has complied with, the "due regard" duty in Section 75(1).^{xi}
106. In the screening template of 10 September 2021, under the heading "Evidence Available" and in answer to the question: "What evidence/information (both qualitative and quantitative) have [the Department] gathered to inform this policy", the Department indicated the following under the "Age" category: "...the Department have engaged with a number of groups who represent those who believe that older people may be digitally excluded from benefitting from the scheme with appropriate mitigations to be built into the processes associated with the scheme."
107. However, in relation to the under 18s age groups, the "needs, experience and priorities" section of the screening only presents the reasons as to why the Department was unable to include the under 18s age groups within the scope of the policy and the policy option.
108. The Department's information relating to the reasons indicated in the 10 September 2021 screening template (regulatory, UK GDPR, and Verification) that restricted its ability to include the under 18s age groups is therefore only connected to the needs, experience and priorities of the Department itself, in terms of the constraints on its policy options. It is intended that this section of a screening would relate to and present needs and/or experiences of those belonging to the various equality groups.
109. The part of the screening form which sets out the scope of the policy does not present the policy aims or outcomes and does not describe the policy in the same terms as it was presented in the ERAP, nor does it convey that it is a proposed policy for adults aged over 18.
110. The screening form does not therefore present the Department's equality assessment of the policy option that was presented to the Minister for decision, it presents the decision as described at paragraph 29 above.
111. Age has, in the development of the policy option, been given considerable weight, particularly in its use for the criteria for limiting the numbers of people to benefit from the policy and in the detailed advice on why those aged under 18 would be excluded from the scope of the policy. Schedule 9 anticipates that a public authority, through its Equality Scheme arrangements, will assess the likely impact of proposed policies on equality of opportunity. The Department's screening document does not present this; it presents its reasoning for the decision on the proposed policy. There is no evidence that an equality assessment in the terms set out in Schedule 9, or as anticipated by the Equality

Scheme commitments, occurred for the proposed policy that the HSS was open only to those aged 18 and over.

112. Arguably, the discussion at the Assembly Committee, as recorded in the official Hansard Report from 25 August 2021, presents an equality assessment of the proposed policy. There is a detailed discussion of potential impacts on those aged 16 and 17, particularly, and why they were excluded from the scope of the proposed policy at that stage.

The Department's commitments at paragraph 4.14

113. The Commission's Guide recommends that a copy of the Screening Template, for each policy screened, should be 'signed off' and approved by a senior manager responsible for the policy and made easily accessible on the public authority's website as soon as possible following completion. It should also be made available on request.
114. The screening template of the HSS was signed off on 10 September 2021. The Departmental Officials explained their practices and how the Minister's decision making at the end of August was informed by its equality assessment of the proposed policy, as set out in the draft of the screening document of 17 August 2021.
115. The Department's practice is to finalise a screening form, following the decision making. It did this, on this occasion, and published the screening form on 10 September 2021, after the decision made by the Minister on or around 17 August 2021.
116. However, the Department misinterprets the purpose of screening in these circumstances, given the screening was presented in draft to the Minister, and the copy of it shows an assessment that is substantively the same as the published screening document. The assessment is completed for the purposes of its presentation to decision makers. The Department should have presented a completed screening document to the Minister.

Findings

117. Based on the evidence and assessments set out in the preceding paragraphs, the Commission finds that the Department has failed to comply with its commitments at paragraphs 4.2 and 4.5 of its Equality Scheme. The Minister could not take into account the Department's assessment of the equality impacts of the proposed policy that the HSS would be for those aged 18 and over; the screening presented the reasons for this being the policy option. The Department failed to equality screen this policy proposal at the earliest opportunity as it could have done, at or around the time when the policy option was included in a Ministerial statement, in April 2021.

118. Based on the finding above and the evidence, the Commission finds that the Department has failed to comply with its Equality Scheme commitment at paragraph 4.6. Given the weight given to age in the development and preparation of the policy option, the Department should have engaged with those representing those aged under 18 during its screening process; it engaged with other stakeholders on the potential equality impacts of the policy proposals.
119. Based on the evidence and assessment above, the Commission finds that the Department has failed to comply with paragraphs 4.8 and 4.9 of its Equality Scheme. It failed to present, in its screening document in draft, or as published on 10 September 2021, relevant information to set out its equality assessment of, or the potential impacts of, its proposed policy of a HSS for those aged over 18. It presented the reasons for the scope of this policy proposal under “Age” as needs, experience and priorities. It should have set out the policy proposal in these terms at the start and then showed its assessment of the potential impacts of this on those aged under 18.
120. Based on the evidence and assessments outlined in this report the Commission has found the Department to have complied with its paragraph 4.14 of its equality scheme, to make the screening document for the HSS available as soon as possible following its completion.
121. Given the Department is found to have failed on its Equality Scheme commitments as set out above, it could not have complied with paragraph 4.9 of its Equality Scheme, as intended by the standards set in the Equality Commission’s guidance, nor will it have complied with the other paragraphs in Chapter 4 of its Equality Scheme as covered in the two complaints under investigation.
122. Further, the Complainant alleged that the Department failed to comply with paragraph 1.2 of its Equality Scheme, which alleges that the Department did not have due regard to the need to promote equality of opportunity, as the screening exercise for the HSS was inadequate. As the screening form presented to the Minister in August 2021 stated, clearly, that the eligibility criteria on age was already decided (see paragraph 66 above), the Minister could not have made her decision with an open mind on the eligibility criteria for age. the Commission considers that the Minister could not have had due regard to the need to promote equality of opportunity when considering the policy proposal and deciding on the HSS in August 2021. The Commission therefore finds that the Department failed to comply with paragraph 1.2 of its Equality Scheme.

Recommendations

123. Based on the findings, the Commission makes the following recommendations:
 - The Department should ensure that an equality assessment, and at least screening, is undertaken at the earliest opportunity during policy

development processes. Where a preferred policy option or a proposed policy is identified, it should be screened so that the potential equality impacts of that specific option or proposal are identified and presented in a screening document.

- A screening process should be conducted by the Department on a clear, consistent statement of the policy proposal, which should be included in the opening section of the screening document.
- The Department should complete its screening process for its identified policy option and finalise its screening document in a timely manner, in advance of presenting it with all the relevant information to the decision maker on the policy concerned.
- All Departmental policy developers and policy managers should implement the screening practices committed to in the DfE Equality Scheme.
- All Departmental policy developers and policy managers should ensure their understanding of equality screening purpose and practice, as committed to in the DfE Equality Scheme. They should do so within six months of issue of this Investigation Report, using the Commission's [online training resources for screening](#).

124. The Department should report to the Commission on the implementation of the recommendations within six months of the date of issue of the Investigation Report.

Endnotes

i Full text available at [DfE Equality Scheme 2016-2021 \(economy-ni.gov.uk\)](#)

ii Full text of the Scheme available online at [The High Street \(Coronavirus, Financial Assistance\) Scheme Regulations \(Northern Ireland\) 2021 \(legislation.gov.uk\)](#)

iii Available at [Economic recovery action plan - Rebuilding a stronger economy \(economy-ni.gov.uk\)](#)

iv Available at [Dodds announces further details of High Street Stimulus scheme | Department for the Economy \(economy-ni.gov.uk\)](#)

v Available at [committee-27240.pdf \(niassembly.gov.uk\)](#)

vi Available at [S75-Screening-HSS.docx \(live.com\)](#)

vii See footnote 2 above.

viii Available at [committee-27240.pdf \(niassembly.gov.uk\)](#) P5

ix [The Short Guide, including the Brown Principles](#)

x Details on advertising for the meeting available at [High Street £100 Voucher Scheme Briefing **REGISTRATION CLOSED** | NICVA](#); details on the content of the meeting available at [DfE briefing on the High Street £100 Voucher Scheme | NICVA](#)

xi [The Short Guide, including the Brown Principles](#)