

EQUALITY COMMISSION FOR NORTHERN IRELAND

**Final Report of Commission Investigation under Paragraph 10 of
Schedule 9 of the N. Ireland Act 1998**

**David Hunter (Acceptable Enterprises (Larne) Ltd)
Larne Borough Council**

March 2014

Overview

In January 2013 the Statutory Duty Investigations Committee authorised an investigation into the adequacy of screening carried out by Larne Borough Council in respect of its policy:

“that at this time, not to enter into any social partnership arrangements in relation to Carnfunnock Country Park and manage the Park as it had been to date”.

This investigation under Paragraph 10 is now complete and the final report was adopted by the Committee on 18 November 2013. The Statutory Duty Investigations Committee has concluded that Larne Borough Council did not fail to comply with its approved Equality Scheme.

In accordance with the Investigations Procedure under paragraph 10 of Schedule 9 of the Northern Ireland Act 1998, final reports adopted by the Statutory Duty Investigations Committee are subject to approval by the Commission.

In accordance with paragraph 11(2) of the Schedule, the final report as approved by the Commission shall be sent to the Public Authority concerned, the Secretary of State, and the complainant. Under paragraph 11(4), the Commission shall notify the Assembly of any report sent to the Secretary of State and send the Assembly a copy of the Report.

Action

The Commission is invited to approve the final report in relation to the complaint under paragraph 10 set out in the report.

EQUALITY COMMISSION FOR NORTHERN IRELAND

STATUTORY DUTY INVESTIGATIONS COMMITTEE

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

**David Hunter
&
Larne Borough Council**

INTRODUCTION

Section 75 of the Northern Ireland Act places a statutory duty on public authorities to have due regard to the need to promote equality of opportunity between various categories of persons, including 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 10 allows the Equality Commission to investigate complaints by persons who believe that they have been directly affected by alleged failure by public authorities to comply with its Equality Scheme.

In January 2013 the Commission authorised a Paragraph 10 investigation to consider the adequacy of screening that had been carried out by Larne Borough Council in respect of a policy, namely;

“That at this time, not to enter into any social partnership arrangements in relation to Carnfunnock Country Park and manage the Park as it had been to date”.

The Council had decided that the policy in question should be screened out, i.e. it did not have sufficient implications in respect of Equality of Opportunity to require an Equality Impact assessment to be carried out. Acknowledging the potential connection between Social Enterprise Organisations and people from several of the Section 75 groups, the Commission wished to establish if this policy excluded Social Partnership Organisations per se, and if so, to examine the Council's reasons for screening that policy out.

BACKGROUND

The complainant is a Director of Acceptable Enterprises Limited, a social enterprise not-for-profit organisation providing disadvantaged people, primarily those with a disability, access to education, training and employment opportunities to enhance their lifestyle and allow them to become more effectively integrated into their local community.

In early 2010 Larne Borough Council sought expressions of interest from competent persons or organisations for the development of amenities and facilities within Carnfunnock Country Park, which AEL did in July 2010. Originally AEL and the one other tenderer had their expressions of interest accepted, but the other tenderer did not proceed with its application.

AEL was required to submit a Business plan by 30 June 2011. AEL submitted that plan as requested and was invited to make a presentation to the Council on 11 October 2011.

The Council convened a meeting of the project assessment panel to score AEL's proposal on 13 February 2012. It decided not to award the contract to AEL. In addition a resolution was passed by Councillors;

“That, at this time, Council is not seeking to enter into any social partnership arrangements in relation to Carnfunnock Country Park and the Park would be managed as it had been to date”.

AEL were informed of the Council's rejection of its tender and the Council's further resolution in relation to social partnerships on 14 February 2012. The correspondence stated;

"It was formally resolved by the Committee that the business proposal submitted by AEL for the development... not be accepted. It was further resolved that Council would not invite social partnership enterprises at this time".

THE INVESTIGATION

Council officials interviewed in the course of the investigation indicated that the decision not to award the tender to AEL was not based on the nature of the company as a social enterprise firm, but on the fact that AEL was seeking a social partnership arrangement requiring the Council to provide financial support. Accordingly, the policy screened related to this type of social partnership working, not social enterprise organisations per se. The Council contends that it became clear that AEL was suggesting a social partnership type arrangement, in that it did not have funds available to progress the proposal to development. It claims that AEL asked the Council to "agree in principle to move forward in partnership with them" and that the Council would need to help finance the project.

The complainant strenuously denies that AEL was seeking a partnership approach as suggested by the Council. It argues that the reference to "social partnership" was introduced by the Council's Chief Executive to mislead Councillor's into believing that it was proposing some form of joint partnership arrangement outside the normal Landlord-Tenant relationship. He believes that the Council's decision to reject AEL's tender was based on AEL's status as a Social Enterprise organisation, and that the policy screened represented a bar on social enterprise organisations.

INVESTIGATION CONCLUSIONS

The Commission authorised investigation of this complaint to examine the adequacy of the screening decision made. In particular

the Commission wished to establish whether the resolution passed by Council on 14 February 2012 that it was “*not seeking to enter into any social partnership arrangements in relation to Carnfunnock Country Park*” was based on AEL’s status as a Social Enterprise Firm. In light of the potential connection between Social Enterprise organisations and people from several of the Section 75 groups, it would be difficult to understand how screening of such a policy would not identify implications from an Equality of Opportunity perspective.

There is a dispute between the parties as to the reasons why AEL’s proposal was unsuccessful. AEL believe that it was rejected due to its status as a Social Enterprise Firm providing education, employment and training for disadvantaged adults. It believes that this is confirmed by the Resolution passed by Council and communicated to it when it was advised that its tender had been unsuccessful. The Council on the other hand claim that the references to “social partnership arrangements” in the original Resolution and “social partnership enterprises” when the Resolution was communicated to AEL, refer to the fact that AEL was seeking a partnership approach with the Council providing financial backing for its plans.

Irrespective of the dispute between the parties, it appears that the policy that was actually screened related to engagement in a partnership arrangement, as opposed to a ban on Social Enterprise Firms per se. The screening exercise was carried out by the Council’s Best Value/Policy Development Officer, who was not involved in the tender exercise and who considered partnership working in the disputed screening exercise. This is confirmed by the Policy Screening Form, which refers to “social partnership” rather than social enterprise organisations in setting out the title of the policy and its aims and refers to Council’s inability to support a partnership that required financial investment on its part. On that basis it appears that the screening determination was reasonable.

INVESTIGATION FINDING

Larne Borough Council did not fail to comply with its Equality Scheme by virtue of the screening exercise in question.