

EQUALITY COMMISSION FOR NORTHERN IRELAND

Investigation of a complaint made under Paragraph 10 of Schedule 9 of the Northern Ireland Act 1998 Complainants & Ulster University

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. Ulster University (the University) 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 University's Equality Scheme in May 2012. It was most recently updated in 2021 and the Equality Scheme arrangements continue as approved in 2012ⁱ.
3. Paragraph 10 of Schedule 9 of the Act requires the Commission to investigate complaints made to it by a person who alleges that a public authority has failed to comply with its approved Equality Scheme, or to give reasons if the decision is not to investigate.
4. In November 2021, the Commission's Statutory Duty Investigations Committee (the Committee) considered identical complaints made at the same time by two separate Complainants against the University. The University requested a review of the Committee's decision to investigate the complaints made on 16 December 2021 and the Committee considered the request at its meeting in February 2022.

5. The Complainants alleged that the University had failed to comply with its approved Equality Scheme at paragraphs 43 and 44, by not undertaking screening of its proposals to restructure the Nurse Competence Testing Centre. The Committee authorised one investigation of the complaint made by the two Complainants (SDI 364/21 and SDI 365/21). This Investigation Report covers both complaints.
6. Commission staff considered documentary evidence provided by the parties to the complaints. Commission staff also conducted wider research to collect further, relevant information to assist the investigation process. An investigation meeting was held with the University's representatives on 7 September 2022.
7. Commission staff assessed the evidence against the commitments the University has made in its Equality Scheme and the standards set in the Commission's advice and guidance, and any relevant caselaw.
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:
 - Ulster University has given a reasonable account of how it follows Commission Guidance and has not, in its practices over years, undertaken an Equality Screening to inform its written proposals for restructuring individual areas of the University's business. Such restructuring is governed by its OSC Policy framework, which was subject to screening. The Commission also finds that the Complainants raised what they saw as potential adverse impacts of the proposals, on equality groups, as set out in the written restructuring proposals they were presented with in March 2021.
 - according to the Commission's Guidance the function performed by the University, in this case restructuring of the Test Centre, is a function relevant for the purposes of its Section 75 duties. However, the Commission finds that it is not clear from the evidence that the University conveyed to the Complainants how it had paid due regard to the need to promote equality of opportunity, specifically, in carrying out its functions in either the Test Centre itself, or in its proposals to restructure the Test Centre.
 - given the commitments made at paragraphs 43 and 44 of its Equality Scheme and the Commission's expectation that a public authority will implement its Equality Scheme arrangements to fulfil its duties in Section 75, the University should have presented an equality assessment, using its screening form, for the proposals in March 2021. There is a difference between compliance with Equality Scheme commitments, in terms of screening in this case, and having due regard to the need to promote equality of opportunity when the University carries out its functions in this case. The University should have explained in the proposals, or to the Complainants, when they raised their concerns about the potential impacts

on equality groups, its actions and approach on the restructuring proposals of March 2021 in terms of its statutory equality and good relations duties in Section 75.

10. Based on the findings, the Commission makes the following recommendations:

- The University should ensure that it refers to and applies its definition of policy, as stated in its Glossary to its Equality Scheme. The Equality Scheme is approved by the Commission and sets out the University's arrangements for fulfilling its duties in Section 75 when it carries out its functions.
- The University should be clear, in presenting restructuring proposals to staff, how it has taken into account the need to promote equality of opportunity in those proposals.
- Although it is not the only way that a Public Authority can evidence that it has given due regard to the need to promote equality of opportunity, the most effective way to present how the University has considered the need to promote equality of opportunity in any circumstances of carrying out its functions is to present an equality screening form, containing its assessment of the potential equality impacts of the proposals concerned. The Commission recommends that the University continues to apply its Equality Scheme commitments.

Background

11. The complaints concerned the University's proposals of March 2021 to restructure its Nurse Competency Test Centre (the Test Centre). They were made following the University's confirmation to the Complainants that it had not equality screened those restructuring proposals.
12. The Test Centre was established in 2017. It provides facilities for the administration of a test of competence, on behalf of the Nursing and Midwifery Council, for nurses and midwives who wish to register and work in the United Kingdom.
13. In 2019, the University's contract to operate and administer the test of competence was extended until February 2022, following which the University was awarded a further 3-to-5-year contract.ⁱⁱ
14. The University had identified a need to restructure the Test Centre in order to be competitive in the tender for the contract and to meet growing business needs. Its restructuring proposals presented a more formal staffing structure, with a predominantly salaried workforce whilst retaining some flexibility to enable it to respond to fluctuations in demand.

15. The business case for the Test Centre restructuring proposals was approved in February 2021. The University subsequently began a period of consultation with affected staff in March 2021, in accordance with its 2017 Organisational Structural Change Policy (the OSC Policy).
16. The proposals for change, as presented to affected staff, included both proposed changes to contractual arrangements and the results of analytical evaluation of Test Centre job roles. The Complainants claimed that these proposals had adverse impacts on equality of opportunity and that they had been directly affected by the alleged failure to screen the proposals.
17. The complaints were made to the University in April 2021 and subsequently to the Commission in July 2021.

The Complaint

18. On 27 July 2022, the Commission notified the University that it had received the complaints (SDI 364/21 and SDI 365/21) on 16 July 2022.
19. The Complainants alleged that the University had failed to comply with paragraphs 43 and 44 of its approved Equality Scheme, by not undertaking screening of its proposals to restructure its Nurse Competency Test Centre.
20. One Complainant stated that, in not screening the CTC restructuring proposals, the University had failed to consider the potential adverse impacts of the restructuring proposals on women and those from a Roman Catholic background, in particular. Both Complainants claimed that the restructuring proposals adversely impacted on pay and conditions of work.
21. On 24 August 2021, the University responded to the Commission's notification in respect of both complaints.
22. The scope of the Investigation is:

“To examine the complaint that, contrary to its Equality Scheme commitments set out at Paragraphs 43 and 44, the University failed to screen the restructuring proposals for its Nurse Competency Test Centre.

The Investigation, in the particular circumstances of these complaints and the Nurse Competency Test Centre restructuring, will include consideration of:

- (i) the application of relevance and proportionality in the University's application of its Equality Scheme arrangements for restructuring and its approach to screening in these circumstances;
- (ii) how the University applies its arrangements in these paragraphs to its “policies” and whether the University should have considered the specific proposals to restructure the CTC as a policy for the purposes of paragraphs 43 and 44 of its Equality Scheme commitments;

(iii) the Commission’s recommendation from its Investigation of 2014 relating to “screening of its [the University’s] strategic decisions and the policies created by same”, in the particular circumstances of these complaints.”

23. The relevant paragraphs in the University’s Equality Scheme are as follows:

“43. The University uses the screening and equality impact assessment (EQIA) tools to assess the likely impact of a policy on the promotion of equality of opportunity and good relations. In carrying out these assessments it relates them to the intended outcomes of the policy in question and follows Equality Commission guidance.

44. The purpose of screening is to identify those policies which are likely to have an impact on equality of opportunity and/or good relations. Screening is completed at the earliest opportunity in the policy development/review process and normally before implementation. More detailed strategies or policies that are to be put in place through a series of stages will be screened at various stages during implementation.”

24. The following Sections on Facts and Evidence, Assessment and Findings of the report are set out in the following order:

- the function and the policies concerned; and
- Screening: Application of Equality Scheme paragraphs 43 and 44

Facts and Evidence

The function and policies concerned

25. The function in this case is departmental restructuring, as governed by the University’s OSC Policy.

26. The departmental restructuring involved the University’s Test Centre which provides services to the Nursing and Midwifery Council for the testing of nurses and midwives wishing to work in the United Kingdom.

Test Centre restructuring proposals

27. On 23 August 2021, the University had summarised the rationale behind the Test Centre restructuring proposals as being ‘... based on the need to have a predominately salaried workforce in the [Test Centre] that gives assurance of business continuity and a more acceptable working practice.’

28. At the Investigation meeting held on 7 September 2022 the University further explained that it considered the Test Centre staffing structure to be unsuitable for meeting future business needs and the University’s contractual obligations.

29. The Test Centre restructuring proposals included the following changes, as stated in the proposal document:
- “Move from sessional contracts to fractional contractions ...
 - Invigilator role removed and new Examinations Coordinator role introduced.
 - Additional Executive Assistant post identified as necessary (currently in operation through reasonable adjustment of invigilator role).
 - Majority of staff become core and minimal reliance on flexible staff.
 - Manager post changes from academic to academic related – meets with the business model needs.
 - Deputy Manager role formalised into the structure.”
30. The Complainants alleged on 27 April 2021 that the Test Centre restructuring had had a “significant detrimental impact on [their] pay and conditions of work” and “...would mean a reduction in pay for all of my... CTC colleagues, the majority of whom are female, and from a Catholic community background”.
31. The University had disagreed, however, stating in correspondence of 16 December 2021 to the Commission that the restructuring “...was specifically intended to deliver a positive outcome, particularly in terms of their... contractual status and associated terms, for staff...”.
32. At the Investigation meeting, the University representatives stated that they considered that the substance of the complaints, stated as potential adverse impacts by the complainants (see paragraph 20 above), were being addressed in terms of the perceived “detriments”. The University representatives related this to the analytical job evaluations and not to a failure to screen the Test Centre restructuring proposals. They stated that this was because the analytical job evaluations relate to job roles rather than to equality group characteristics, such as those protected by Section 75.
33. Although the analytical job evaluations were separate to the Test Centre restructuring proposals, the results of the evaluations were presented to Trade Unions and staff as part of the Test Centre restructuring proposals in March 2021 (see paragraph 29 above).
34. The University representatives, at the Investigation meeting, described the Test Centre in relation to its establishment and continuation that is subject to competitive contracting arrangements. They also outlined that the University decided to address the changes in the contractual arrangements through the University’s restructuring framework – that being the OSC Policy.

Organisational Structure Change Policy

35. The University’s approach to restructuring was stated in correspondence sent to the Commission on 24 August 2021. It stated that “[a]n individual restructuring is not a policy rather it is the operational implementation of an existing policy (the Organisational Structure Change Policy) which has already been screened”.

36. The University representatives said, in the Investigation meeting, that the University had not, at any stage, subjected its individual restructuring proposals to an equality screening. They also stated that restructuring exercises over the years were many and various and occurred regularly, given the continuing requirements to structure its business to meet current needs.
37. The University representatives described their processes and the circumstances for developing and implementing the OSC Policy in 2017 as a framework for their restructuring exercises.
38. The OSC Policy sets out the principles and the procedural stages for typical departmental restructuring exercises “where there is the potential for a significant impact on the contractual position of a significant number of employees”. The University screened its OSC Policy in 2017 and revised it in February 2018. The screening document stated that the OSC Policy would “benefit all [section 75] categories” and concluded that the OSC Policy was “specifically designed to ensure equality of opportunity. Therefore, the Policy will have positive consequences for all employees affected by the restructuring exercise”.
39. The University stated on 24 August 2022 that the OSC Policy has not yet been reviewed but that monitoring of the policy had “shown no discriminatory impact on any of the S75 categories”.
40. The University stated in correspondence to the Complainants, dated 25 May 2021, that because “[t]he OSC policy applies to all major restructuring activities undertaken by the University in the course of its business...” and because the “...precise aim of the OSC policy is “to ensure consistency of treatment of all Section 75 categories” it does “... not therefore equality screen individual decisions regarding restructuring at a departmental level”.
41. It further stated that the University considers that the screening of the overarching OSC Policy in 2017 had “fulfilled [the] function” of screening which it described as “...to identify and mitigate any potential discriminatory impacts...”.
42. During the Investigation meeting the University confirmed its reliance on the 2017 screening of the OSC Policy and also confirmed its position that:
 - (i) the OSC Policy processes ensure equality of opportunity during departmental restructuring due to its core principles and stated commitment to adhering to relevant equality legislation.
 - (ii) the OSC Policy ensured consistency of approach to all restructuring exercises.
 - (iii) the individual mitigation measures, combined with substantive consultation, built into the OSC Policy processes were sufficient in terms of ensuring equality of opportunity during restructuring exercises and in addressing any issues raised.

- (iv) the OSC Policy process was able to deal the issues raised as a result of Test Centre restructuring proposals, and the University was addressing what the Complainants had raised in their complaints not as adverse impacts on the equality groups, but in terms of potential “detriment” at an individual level. The use of the term detriment was understood by the Commission to be used as it would be in a complaint of unlawful discrimination in employment.
- (v) that the application of the OSC Policy procedures “should be more effective” than a screening exercise of an individual departmental restructuring proposal.

43. It is evident that the University considers that its screening of and application of the OSC Policy is sufficient to comply with its Section 75 duty to have due regard to the need to promote equality of opportunity in the circumstances of what the OSC describes as typical departmental restructuring exercises.

Definition of Policy

44. The University has 3 different definitions of what a “policy” is, for the purposes of its Equality Scheme commitments, which it set out in its correspondence sent to the Commission on 24 August 2021. It stated at the Investigation meeting that the 3 definitions are complementary, have equal importance and are not mutually exclusive. These definitions are:
- (i) the definition of policy as stated in the Glossary to its [Equality Scheme](#),ⁱⁱⁱ which equates to that given in the Glossary of the Commission’s [Guidance for Public Authorities](#)^{iv} ;
 - (ii) a definition contained in its screening form which states that a policy “...includes any strategy, policy (proposed/amended/existing) or practice and/or decision, whether written or unwritten”, and
 - (iii) a working definition of policy, adopted in 2014, which states that a “policy is a written statement, which defines the University’s position or strategy in regard to its core processes. A policy defines the parameters for decision-making and clarifies compliance issues for staff and students”.
45. Definition (ii) above is consistent with the Commission’s recommendations in guidance. Definition (iii) is not as broad in scope as the definitions provided in Commission guidance. In its correspondence sent to the Commission on 24 August 2021, the University stated that in 2013/14 it had sought advice from the Commission in relation to its working definition of policy.
46. During the Investigation meeting the University stated that its working definition of policy has not replaced the definition provided in the Glossary to its Equality Scheme and described how its policy development processes incorporated the application of its Equality Scheme commitments. It confirmed that it routinely applies all 3 definitions of policy during policy development and that policy developers are given access to the 3 definitions.

47. The working definition of policy (iii) is the only definition provided in the University's Framework for Reviewing and Developing Policies. In addition, it has been added to the University's screening form template which also includes the definition set out at (ii) in paragraph 44 above.
48. The University representatives stated at the Investigation meeting that the working definition of policy had been adopted in order to give greater clarity to policy owners and to enable the University to carry out its functions in a timely manner.
49. Following the Investigation meeting, the University provided its document setting out its 5-year review of its Equality Scheme, from 2017. The report states: "[r]efining the definition of 'policy' has meant that policy screening does not diminish operational effectiveness."
50. It is evident that the University has adopted and is using a definition of policy in its policy development processes which, while being used alongside two others, differs to Commission guidance for how to define a policy for the purposes of Equality Scheme arrangements. The University stated that its working definition was developed and implemented with the intention of providing clarity to policy owners and to enable it to meet its operational needs.

Screening: Application of Equality Scheme paragraphs 43 and 44

51. Paragraphs 43 and 44 of the University's Equality Scheme commit the University to screening 'policies' and doing so at the earliest opportunity in the policy development process (see paragraph 24 above). The Complainants alleged that the University failed to comply with these Equality Scheme paragraphs.
52. In correspondence sent to the Commission on 24 August 2021 the University had set out the how it applies its Equality Scheme arrangements generally. It stated that "[e]ach University policy is assessed in terms of its impact on equality or opportunity and good relations using standard screening questions and a prescribed screening protocol". It also confirmed that it had screened several related policies including the OSC Policy and its current Framework for Policy Review and Development.
53. At the Investigation meeting, the University representatives provided their understanding of the purpose and value of screening policies and did so in very clear terms that were in accordance with Commission guidance. In particular, it demonstrated their understanding of the need, at an early stage in the policy development process, to identify any potential impacts of the policy proposals on equality of opportunity and/or good relations.
54. During the Investigation meeting the University representatives also described how the University applies its Equality Scheme arrangements when developing and reviewing policies. It referred to its Equality, Diversity and Inclusion

strategy and outlined its Policy Clinic approach to policy development and training for staff which was adopted in October 2021.

55. The University representatives referred to an earlier Commission investigation that centred on the University's approach to restructuring and that they believed that the University had complied with the recommendation contained in the Commission's Paragraph 11 Investigation of 2014, which related to "screening of its [the University's] strategic decisions and the policies created by same".

Relevance and proportionality

56. As stated above, the University relies on the screening of the overarching OSC Policy as evidence that it has complied with its Section 75 duties in carrying out its functions on restructuring the CTC. It was established at the Investigation meeting that the University believes that this approach is proportionate in circumstances where it could be dealing with 10-20 restructuring exercises each year.
57. At the Investigation meeting the University representatives:
- stated that the Test Centre restructuring was at the lower end of the scale in terms of staff numbers and the changes proposed. It stated that no jobs were at risk and there were no significant alterations to grade profiles.
 - asserted that it would be too impractical for it to screen each restructuring proposal.
 - confirmed that they viewed the OSC Policy as being capable of accommodating equality issues resulting from implementing restructuring exercises with the OSC framework, in this case the Test Centre restructuring proposals.
 - compared the University's position on restructuring exercises to its approach to screening in relation to procurement, and relating to Commission guidance, where it has screened the overarching Procurement Policy but not each procurement decision which is viewed as the operational implementation of the Procurement Policy.
 - noted that, as a competitive contracting exercise, the Test Centre restructuring proposals could have been progressed outside the OSC Policy framework and that the University could have made changes to contracts without implementing the OSC Policy processes.
58. During the Investigation meeting the University representatives stated their view that complaint made to the Commission related to individual "detriments" and that they were treated as such, rather than seen as a need to equality screen the proposals made.
59. The University representatives, at the Investigation meeting, asked the Commission to take into account point (iv) above (paragraph 57), in particular, when considering its application of relevance and proportionality in the

application of its Equality Scheme arrangements for restructuring and its approach to screening in these circumstances.

Assessment

The function and the policy concerned

60. The functions and policies assessed are those set out above for the purposes of considering the allegations made.
61. Public authorities, in carrying out their functions relating to Northern Ireland, are required by Section 75 of the Northern Ireland Act 1998 to have due regard to the need to promote equality of opportunity between the nine equality categories and regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.
62. The function performed by the University was departmental restructuring to meet operational business needs, in this case restructuring of the Test Centre. According to the Commission's Guidance this is a function relevant for the purposes of its Section 75 duties^v.

Test centre and restructuring functions

63. The University's approach to having due regard to the need to promote equality of opportunity when carrying out its departmental restructuring has been clearly set out, through its work in 2017 to develop and screen the OSC Policy and the planned review of it.
64. The fundamental disagreement between the University and the Complainants, who assert that the 2017 screening of the OSC Policy could not have predicted the alleged adverse equality impacts of the Test Centre restructuring proposals, is the basis of the complaint made alleging that the University had failed to comply with its Equality Scheme.
65. The Investigation has established that the University believes that the OSC Policy processes of consultation and subsequent mitigation on an individual level are sufficient to address any equality issues raised in restructuring exercises, and therefore meet their Section 75 duties.
66. For this reason the University considered that the application of the OSC Policy process "should be more effective than a screening" of an individual restructuring exercise.
67. The statutory duties, however, relate to particular groups of people rather than individuals and there was no evidence presented that the OSC Policy processes provided for an assessment of any potential equality impacts on the Section 75 groups of this particular proposal for restructuring the Test Centre.

The Complainants were not aware of how the University might have equality assessed the restructuring proposals in these circumstances.

Definition of Policy

68. It is the University's responsibility to identify what constitutes a policy in the context of its particular functions, for the purposes of applying its Equality Scheme arrangements.
69. The purposes of an Equality Scheme, as stated in the Introduction, are both a statement of the public authority's commitment to fulfilling the Section 75 duties and a plan for their performance. It is expected that a public authority will use the processes in its Scheme, when it carries out its functions, in order to pay the regard that is due in the circumstances.
70. Schedule 9 requires that the Equality Scheme arrangements, such as screening, apply to "policies". The Commission recommends a wide interpretation of "policies".
71. In this case the University has characterised the Test Centre restructuring proposals as the "operational implementation" of the OSC Policy and consequently did not subject it to an equality assessment, in terms of screening.
72. This has been the University's longstanding approach, as evidenced, for restructuring. It has meant that decisions around the Test Centre restructuring proposals and others have been made in the absence of an equality screening of those proposals.
73. The Commission's Guidance details what is meant by the term "policy"^{vi} for the purposes of Equality Scheme arrangements. The Commission recommends that public authorities apply the definition of policy provided at paragraph 4.1 of its Model Equality Scheme^{vii}, in which the term policy is "very broadly defined" and that the public authority's commitments on defining a policy forms part of the equality assessment arrangements in its Equality Scheme. In terms of decision making, the Commission also recommends that public authorities take equality assessments into account - paragraph 4.2.
74. The University acknowledges the broad scope of the term policy in the definition provided in the Glossary to its Equality Scheme. The University's Equality Scheme was approved by the Equality Commission in 2012. Its arrangements for assessing and consulting on policies have not been changed since and remain, as set out in its Equality Scheme of May 2021.
75. The University's working definition of policy, which was adopted in 2014, does not reflect the broad nature of the term. It does not include informal unwritten policies.
76. The working definition of policy, which was not part of the complaint made to the Commission, has been included for consideration as part of the scope of the investigation.

77. The 2014 working definition of policy (iii), while more restrictive, applies in this case, as do the other two, as the Test Centre restructuring proposals were presented in a document for staff in March 2021.
78. As a policy, the Test Centre restructuring proposals are therefore within the scope of the University's equality scheme arrangements and commitments as set out at paragraphs 43 and 44 of its Equality Scheme.

Screening: Application of Equality Scheme paragraphs 43 and 44

79. In general, the Commission's advice and guidance states that screening should take place in accordance with equality scheme commitments "[w]here a decision or activity, proposed or existing, comes within the definition of 'policy'".
80. 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.
81. In this case, the University has set out its arrangements for assessing the likely impact of policies on the promotion of equality of opportunity and good relations in order to meet its Section 75 duties "due regard" and its "regard" duties at paragraphs 43 and 44 of its Equality Scheme. The University has stated that policy owners apply 3 definitions of policy when deciding what is a policy for the implementation of Equality Scheme arrangements (see paragraph 44 above). It may not be apparent, however, to potential complainants that the University has adopted and applies definitions of policy beyond that given in the Glossary to its Equality Scheme.
82. The University has committed to assessing policies at the start of the policy development process and it has confirmed that it has strategies and systems in place to assist it in applying its Equality Scheme arrangements.

Relevance and proportionality

83. The Commission's guidance recognises that certain functions may be more relevant to the Section 75 duties than others. It recommends, however, that all policies are screened to assess the level of relevance that a proposed policy has to the need to promote equality of opportunity and whether an Equality Impact Assessment is required.
84. The guidance states that "As a general rule-of-thumb, where the level of relevancy is high, then a proportionately high level of consideration is required; and vice versa"^{viii}.
85. The guidance itself refers to case law^{ix} which states that "[i]n a case where large numbers of vulnerable people, many of whom fall within one or more of the protected groups, are affected, the due regard necessary is very high."

86. The Investigation has established that the University viewed the Test Centre proposals as low in relevance to the promotion of equality of opportunity. This view was based on the reliance on the 2017 screening of the OSC Policy, the scope of the Test Centre proposals themselves and the number of staff involved. In addition, the University considered that it would be too impractical to screen every restructuring exercise.
87. The University's approach to restructuring applies to all typical departmental restructuring exercises to which the OSC Policy has been applied. There was no evidence presented of any circumstances in which the University would consider any exceptions to this approach.
88. The Commission's guidance on Budgets and Section 75^x, makes two points that are relevant to these circumstances where there is an overarching framework, the OSC Policy, with related policies, the Test Centre proposals, relevant to the due regard duty:

"Assessments should be proportionate. Public authorities should use the screening/EQIA methods to tailor the scale of the assessment to the scale of the decision. The assessment information must be available to inform decisions".
89. It would have been consistent with Commission advice for the University to have conducted a proportionate equality assessment of the Test Centre proposals, i.e. to have screened it.
90. The Commission's short guide to equality assessment also says^{xi}: "It is good practice to consider policies and practices with similar aims and objectives within a strategic framework for screening and/or EQIAs. This enables a public authority to adopt a consistent and coherent approach to policy development".
91. It would also have been consistent with Commission advice for the University to consider, in restructuring terms, that the scale of the Test Centre changes being proposed in March 2021 compared to other restructuring proposals, meant it was not very relevant to its duties to pay due regard to the need to promote equality of opportunity and its action to fulfil its duties in Section 75 was therefore proportionate in not applying its Equality Scheme arrangements of screening.
92. The University is clear that it followed Commission guidance in the circumstances of this complaint, and that its Organisational Structural Change Policy enabled any consideration of equality matters for specific restructuring exercises carried out.
93. However, from the evidence provided in this instance it remains unclear whether the OSC Policy framework enabled the University to have due regard to the need to promote equality of opportunity in the case of the Test Centre restructuring proposals, as there was no screening of the proposals and the Complainants raised points that they considered to be adverse impacts of the proposals on equality groups.

94. The OSC Policy framework for departmental restructuring enables the University to adopt a consistent approach to individual departmental restructuring exercises, in this case the Test Centre proposals.
95. It is not, however, equivalent to an equality assessment. The University representatives clarified that the OSC policy processes enabled action at an individual level in this case, rather than providing for any consideration of impact on the Section 75 groups, which the University is obliged to do. In applying its approach to restructuring the University may overlook and fail to consider impacts on the Section 75 groups.
96. The extent of the impact of the Test Centre restructuring proposals on equality of opportunity for the Section 75 groups identified by the Complainants is a matter of dispute between the Complainants and the University. This is not, however, a matter which the investigation of the specific complaint made, about the absence of an equality screening of the written proposals to restructure the CTC, can resolve.
97. It is assessed that the OSC Policy processes do not clearly provide transparency or accountability about the regard that the University paid in March 2021 to the need to promote equality of opportunity in the restructuring proposed for the Test Centre.
98. The University should, however, have addressed this in an appropriate and proportionate way, using the screening methodology. This approach might have been helpful for the Complainants and their understanding of the University's approach and fulfilling of its statutory duties in carrying out this function of both restructuring generally, and also changing how the Test Centre would operate. The University should also have explained the matters in terms that were more clearly focused on explaining how it had fulfilled its statutory duties in Section 75 when the initial complaint of failure to comply with its Equality Scheme was made. See paragraphs 40 and 41 to illustrate how the University conveyed information to the complainants.

Findings

99. Based on the evidence and assessments set out in the preceding paragraphs, the Commission finds that the University has given a reasonable account of how it follows Commission Guidance and has not, in its practices over years, undertaken an Equality Screening to inform its written proposals for restructuring individual areas of the University's business. Such restructuring is governed by its OSC Policy framework, which was subject to screening. The Commission also finds that the Complainants raised what they saw as potential adverse impacts of the proposals, on equality groups, as set out in the written restructuring proposals they were presented with in March 2021.
100. The Commission finds that, according to the Commission's Guidance the function performed by the University, in this case restructuring of the Test Centre, is a function relevant for the purposes of its Section 75 duties.

However, the Commission finds that it is not clear from the evidence that the University conveyed to the Complainants how it had paid due regard to the need to promote equality of opportunity, specifically, in carrying out its functions in either the Test Centre itself, or in its proposals to restructure the Test Centre.

101. The Commission finds that, given the commitments made at paragraphs 43 and 44 of its Equality Scheme and the Commission's expectation that a public authority will implement its Equality Scheme arrangements to fulfil its duties in Section 75, the University should have presented an equality assessment, using its screening form, for the proposals in March 2021. There is a difference between compliance with Equality Scheme commitments, in terms of screening in this case, and having due regard to the need to promote equality of opportunity when the University carries out its functions in this case. The University should have explained in the proposals, or to the Complainants, when they raised their concerns about the potential impacts on equality groups, its actions and approach on the restructuring proposals of March 2021 in terms of its statutory equality and good relations duties in Section 75.

Recommendations

102. Based on the findings, the Commission makes the following recommendations:

- The University should ensure that it refers to and applies its definition of policy, as stated in its Glossary to its Equality Scheme. The Equality Scheme is approved by the Commission and sets out the University's arrangements for fulfilling its duties in Section 75 when it carries out its functions.
- The University should be clear, in presenting restructuring proposals to staff, how it has taken into account the need to promote equality of opportunity in those proposals.
- Although it is not the only way that a Public Authority can evidence that it has given due regard to the need to promote equality of opportunity, the most effective way to present how the University has considered the need to promote equality of opportunity in any circumstances of carrying out its functions is to present an equality screening form, containing its assessment of the potential equality impacts of the proposals concerned. The Commission recommends that the University continues to apply its Equality Scheme commitments.

Endnotes

ⁱ Full text available at [Ulster University Equality Scheme May 2021](#)

ⁱⁱ [Nursing Competence Test Centre awarded new contract](#)

ⁱⁱⁱ The formal and informal decisions a public authority makes in relation to carrying out its duties. Defined in the New Oxford English Dictionary as ‘a course or principle of action adopted or proposed by a government party, business or individual’. In the context of Section 75, the term policies covers all the ways in which a public authority carries out or proposes to carry out its functions relating to Northern Ireland. Policies include unwritten as well as written policies. Equality Scheme for Ulster University February 2021.

^{iv} The formal and informal decisions a public authority makes in relation to carrying out its duties. Defined in the New Oxford English Dictionary as ‘a course or principle of action adopted or proposed by a government party, business or individual’. In the context of Section 75, the term policies covers all the ways in which a public authority carries out or proposes to carry out its functions relating to Northern Ireland. Policies include unwritten as well as written policies. Equality Commission for Northern Ireland Section 75 of the Northern Ireland Act 1998, A Guide for Public Authorities, April 2010.

^v [Section 75-A Guide for Public Authorities](#)

^{vi} In respect of this guidance, the term ‘policy’ is used to denote any strategy, policy (proposed/amended/existing) or practice and/or decision, whether written or unwritten. With regard to policies, four particular points should be noted: 1. Policy is a broad, inclusive term. A policy is defined in the New Oxford Dictionary of English as - “a course or principle of action adopted or proposed by a government, party, business or individual”. In the present context, the term policies covers all the ways in which an authority carries out or proposes to carry out its functions relating to Northern Ireland. As has been indicated above, an authority’s employment and procurement policies are an integral aspect of the way in which an authority carries out its functions. Accordingly, the scheme must cover the arrangements for assessing the impact of such policies. Policies include unwritten as well as written policies. Equality Commission for Northern Ireland Section 75 of the Northern Ireland Act 1998, A Guide for Public Authorities, April 2010.

^{vii} In the context of Section 75, ‘policy’ is very broadly defined and it covers all the ways in which we carry out or propose to carry out our functions in relation to Northern Ireland. In respect of this equality scheme, the term policy is used for any (proposed/amended/existing) strategy, policy initiative or practice and/or decision, whether written or unwritten and irrespective of the label given to it, eg, ‘draft’, ‘pilot’, ‘high level’ or ‘sectoral’. Model Equality Scheme November 2010.

^{viii} [Public Sector Equality and Disability Duties-Short Guide 2015](#) pages 3 and 4

ix [R\(Brown\) v Secretary of State for Work and Pensions \[2008\] EWHC 3158 \(Admin\)](#)

x [Budgets and Section 75: a short guide 2015](#) pages 4 and 5

xi [Section 75 Advice: Screening and Equality Assessments](#), Page 7