



Consortium for the Regional Support for Women in Disadvantaged and Rural Areas

Response to: ECNI Revised Policy and Procedures for Complaints and Investigations

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Women's Centre Derry
ACCESS & EMPOWERMENT

WOMEN'STEC
Enabling women into non-traditional employment

Foyle Women's Information Network

Women's
RESOURCE & DEVELOPMENT AGENCY
Supporting Women's Groups & Networks across Northern Ireland

**nirwn**
Northern Ireland
Rural Women's Network



Women's Regional Consortium: Working to Support Women in Rural Communities and Disadvantaged Urban Areas

1. Introduction

1.1 This response has been undertaken collaboratively by the members of the Consortium for the Regional Support for Women in Disadvantaged and Rural Areas (hereafter, either the Women's Regional Consortium or simply the Consortium), which is funded by the Department for Communities and the Department of Agriculture, Environment and Rural Affairs.

1.2 The Women's Regional Consortium consists of seven established women's sector organisations that are committed to working in partnership with each other, government, statutory organisations and women's organisations, centres and groups in disadvantaged and rural areas, to ensure that organisations working for women are given the best possible support in the work they do in tackling disadvantage and social exclusion.¹ The seven groups are as follows:

- ♀ Training for Women Network (TWN) – Project lead
- ♀ Women's Resource and Development Agency (WRDA)
- ♀ Women's Support Network (WSN)
- ♀ Northern Ireland's Rural Women's Network (NIRWN)
- ♀ Women's TEC
- ♀ Women's Centre Derry
- ♀ Foyle Women's Information Network (FWIN)

1.3 The Consortium is the established link and strategic partner between government and statutory agencies and women in disadvantaged and rural areas, including all groups, centres and organisations delivering essential frontline services, advice and support. The Consortium ensures that there is a continuous two way flow of information between government and the sector. It

¹ Sections 1.2-1.3 represent the official description of the Consortium's work, as agreed and authored by its seven partner organisation

also ensures that organisations/centres and groups are made aware of consultations, government planning and policy implementation. In turn, the Consortium ascertains the views, needs and aspirations of women in disadvantaged and rural areas and takes these views forward to influence policy development and future government planning, which ultimately results in the empowerment of local women in disadvantaged and rurally isolated communities.

1.4 The Consortium works to advance the interests and enhance the wellbeing of disadvantaged, marginalised women in some of the most deprived areas of Northern Ireland. This includes women who have suffered discrimination and face inequalities in their everyday lives.

1.5 The Women's Regional Consortium appreciates the opportunity to respond to the Equality Commission for Northern Ireland's Revised Policy and Procedures for Complaints and Investigations.

2. General comments

2.1 *"If you don't work in the field of gender equality it can be easy to assume that the equality of opportunity that is now embedded into our society through anti-discrimination law means there should be no difference in how women and men experience the world."²* It is the widespread assumption that despite over 40 years of anti-discrimination legislation that women are now equal in economic, political and social life in Northern Ireland. However the reality is far from the case.

2.2 While there is no doubt there have been improvements in securing greater equality in Northern Ireland there is much still to be done in this regard. The number of enquiries made to the Equality Commission every year evidences the need for continued work and focus on enduring inequalities. Enquiry statistics to the Commission in 2017/2018 show that of the 3,500+ enquiries in

² Women at the Heart of Public Consultation, A guide for Public Authorities and Women's Organisations, WRDA, 2018

that year 25% contacted with a gender enquiry. This is the second biggest area of enquiry second only to disability at 44%³ “Over the past five years, the percentage breakdown of enquiries has been quite consistent. Disability discrimination is always the most reported, and sex discrimination is consistently the second most reported.”⁴

2.4 Section 75 of the Northern Ireland Act 1998 requires that all designated public authorities, in carrying out their functions relating to Northern Ireland, shall have due regard to the need to promote equality of opportunity and regard to the desirability of promoting good relations between various section 75 groups.

2.5 These duties apply to designated public authorities such as government departments and agencies, local councils, health trusts, housing associations, colleges and universities and education and library bodies. Public authorities need to consider equality in all aspects of their organisation. This includes how they plan and deliver a service, to policies on employing people, enforcing the law, buying services, approving budgets and regulating others.⁵

2.6 Northern Ireland has a relatively large public sector and a proportionately smaller private sector compared to other UK regions. It is therefore vitally important that the public sector “gets it right” with regards to equality as its actions have the potential to impact on many people in Northern Ireland. The public sector should be seen as a shining example of how equality should be considered in all aspects of their work and organisation.

2.7 We believe that gender inequality is a much underreported issue and much more needs to be done to tackle its root causes and to enforce all equality legislation, including the public sector duty, so that it can truly act as a deterrent to discriminatory attitudes and behaviours.

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<https://www.equalityni.org/ECNI/media/ECNI/Publications/Corporate/Annual%20Reports/AnnualReview2017-18.pdf>

⁴ <https://www.equalityni.org/Footer-Links/News/Individuals/Complaints-of-discrimination-2016-2017>

⁵ <https://www.equalityni.org/S75duties>

2.8 One way to help tackle the problem of inequality in whatever form it exists is to ensure that any complaints process is as simple, open and accessible as possible. This helps to ensure that those with any kind of complaint, including those who have complaints against public authorities, are able to pursue these in an efficient and timely way. There should be no unnecessary obstacles or bureaucratic processes in their way which would deter them from making their complaint in the quickest, most efficient manner.

3. Specific comments

2. Information and Guidance

We welcome ECNI's explicit encouragement to complainants to ask for advice and that this advice can be provided through the stages of a complaint. However this must be backed up by an open and accessible complaints procedure which does not deter complaints because of the nature/complexities of the process.

5. Confidentiality and Publicity

The document asks complainants to keep confidentiality and states:

5.3 When the Commission receives a written complaint, it asks the complainant to maintain confidentiality while the complaint is being assessed and during any later investigation.

While ECNI asks the complainant to do so it does not have the power to enforce this request. In many cases the complaint will be raised by an organisation/campaigner who may wish to raise the issues publically and they should not be denied from doing so in the course of their work. While we understand that there is a need to anonymise personal data, we would like to see this as a transparent, open process, not one that is conducted behind closed doors with a culture of secrecy.

7. Variation of policy/procedure

We are concerned about the following statement within the proposed complaints procedure:

"The Commission may, at any time and at its own discretion, vary or amend this policy/procedure."

This should be removed. If the ECNI is able to change any policy/procedure at any time and at its own discretion the value of holding a public consultation on these changes is severely eroded. This variation clause provides the ECNI with too much potential for bias and diminishes public confidence that valid complaints will be investigated.

Timeframes

The timeframes within this procedure give cause for concern for a number of reasons. Throughout the whole process the only person required to comply with a specific timescale is the complainant. In other instances no specific timeframes have been set or if they have been they are too vague or too long. This runs the very great risk of damaging this process and providing for an unsatisfactory procedure.

The policy refers to how long a public authority should take in getting back to a complainant when the complaint is first raised and states:

8.14 The public authority's timescales for this should be set out in the section of its Equality Scheme that deals with complaints. The Commission advises that one month should normally be sufficient, that is 20 working days.

However if the complainant does not hear back from the public authority the onus is put on the complainant to follow this up with the public authority:

8.15 If the public authority does not respond within the timescales set out, the complainant should contact the public authority in the first instance."

This second contact with the public authority does not have a set timeframe. This could leave a complainant vulnerable to feeling “fobbed off” by the public authority and deter them from continuing the process. ECNI need to clarify that complaints will be accepted after the initial 20 working day period if the complainant has to go back to the public authority again.

The policy states only two timeframes in relation to ECNI. With regards to assessment of the complaint the policy states:

9.4 Written complaints to the Commission will be assessed by the Committee in a timely manner....

9.5 The Commission aims to present complaints to the Committee within 16 weeks of receipt of the written complaint and consent from the complainant.

It is difficult to understand why it should take four months to decide whether to investigate a complaint or not. This further lengthens the time taken to resolve complaints and may prevent a complainant accessing justice by effectively removing the possibility of judicial review. An application for leave for judicial review must usually be filed no later than three months from the date when the grounds for the application first arose.

Time delays within this process have already been criticised. A report by Dickson and Harvey⁶ criticises the ‘minimum time’ that the ECNI state they can complete an investigation (16 weeks) and describe this as ‘regrettable’ as during this time the alleged failure could be having an adverse effect on one or more of the groups protected by Section 75.

Most failures to comply with Equality Schemes are fairly straightforward, for example, a failure to Equality Screen or to consult at all. This would suggest that a reasonable time for an initial assessment should be much shorter than

⁶ Assessing the Role of the Equality Commission in the Effectiveness of Section 75 of the Northern Ireland Act 1998, Brice Dickson and Colin Harvey, November 2006

16 weeks. A shorter timeframe could include the possibility of an extension if the complaint is particularly complex.

Procedural Issues

A number of procedural issues may contribute to the 16 weeks timeframe and if amended could help to reduce this. The 16 weeks only start when a complaint has been submitted and then a complainant must give consent in writing. It would seem to remove an extra delay to the process if the consent from the complainant was sought at the same time as the complaint was lodged.

In addition the Committee to which the Commission has delegated responsibility for its duties on complaints and investigation of these (the Statutory Duty Investigations Committee (SDIC)) normally meets five times a year. This would also seem to introduce unnecessary delay into the process. It would seem more reasonable that the SDIC should meet on a monthly basis with any requests being considered at the next available meeting. This would help to reduce delay in the process.

The process does not detail any communication between the complainant and the ECNI other than receipt of the written complaint. This seems inadequate and gives too much space for misunderstandings to arise. The process can only benefit from the incorporation of some structured lines of communication both at pre-investigation and investigation phase. It may also be useful to provide for complainants to present their case directly to the SDIC Committee. This would allow for open communication, remove the possibility for misunderstandings and allow the complainant to be asked questions directly by the SDIC.

Factors in reaching a decision to investigate a complaint

The revised draft policy contains a non-exhaustive list of factors that determine whether to investigate a complaint. The previous policy contained a non-exhaustive list of reasons for not investigating a complaint. It would instead be useful if the list could be divided into the factors for and against investigating a complaint. This would ensure the correct interpretation of these.

One of the proposed factors gives particular cause for concern because there is no clarification around whether it is a factor for or against an investigation:

- *The Commission has investigated similar matters alleged within the preceding two years.*

We would argue that it is surely more concerning if a similar matter has already happened within the previous two years and could be indicative of recurring breaches. Therefore an investigation must be carried out. Greater clarity within this section can only enhance the final document.

The SDIC should commit to an investigation if the factors in favour of an investigation outweigh those against. In general, more legal certainty in the decision making process around SDIC decisions would remove any potential bias and ensures trust in the process.

Ambiguities in Chain of Command

The document sets out a number of statements on the roles of both the SDIC and the Commission but there are a number of ambiguities regarding their roles. Section 6 of the document states:

6.1 The Commission has delegated responsibility for its duties on complaints, and investigation of those complaints, arising from paragraph 10 of Schedule 9 of the Northern Ireland Act 1998, to a Committee of its Commissioners. The Committee is known as the Statutory Duty Investigations Committee.

6.2 The Committee will make recommendations the Commission should form a belief that a public authority may have failed to comply with its approved Equality Scheme and investigate, as set out in Paragraph 11(b) of Schedule 9. The Commission decides whether to investigate.

Then in Section 9 the document makes a number of references to the Committee having the authority to decide whether or not to investigate a complaint. Section 10 goes on to say that the SDIC can “recommend

authorisation of an investigation to the Commission.” Overall this process is not clear and statements within the document seem to contradict each other.

In order for this document to provide clarity and openness around the process it needs to clearly describe the chain of command for deciding if a complaint will be investigated or not.

Paragraph 11 Complaints

Section 10 of the document outlines how ECNI decides when to use these powers to investigate where it believes that a public authority may have failed to comply with its Equality Scheme. These investigations are carried out at the ECNI’s own initiative without a complaint having to be made.

However in reality this is not happening and most have been raised by a third party. The Equality Coalition’s Equal to the Task report⁷ said:

“In examining the ‘Own-Initiative’ Investigations Reports that have been produced to date it appears that very few have been entirely at the Commission’s own initiative.”

The document does not address this important issue and could lead to these powers falling completely into disuse. In an environment where Equality Scheme compliance is problematic this seems to be an area where ECNI could be proactively leading the way on equality and shining a light on significant and persistent breaches.

⁷ Equal to the Task?, Equality Coalition, January 2018
<https://www.equalitycoalition.net/wp-content/uploads/2018/01/Equal-to-the-Task-Jan-2018.pdf>

Recommendations

The Women's Regional Consortium is represented on the Equality Coalition and we concur with their detailed analysis of how the process and timescales would best serve complainants. We agree with the series of recommendations regarding timeframes and process raised in the Equality Coalition's response⁸ to this consultation as follows:

- The ECNI should consider a complaints template/form that includes seeking necessary consent from the complainant at the time of the complaint being lodged in order to prevent an unnecessary delay in commencing the process;
- The SDIC should meet once a month to make decisions on investigations as well as considering draft and final reports (if necessary the size of this committee should be reconsidered);
- The ECNI should set a time frame for an initial assessment of a complaint to go to the SDIC within two weeks of receipt (or the next available meeting) factoring in a ten day period for initial public authority response; this could be extended to four weeks in particularly complex cases;
- Timeframes should be introduced for the actual investigation. We recommend one month, with a view to this being extended in complex cases by a further month;
- We recommend that draft reports are then sent to the next SDIC committee, final reports to a subsequent SDIC committee and that reports are published as soon as possible thereafter;
- In relation to the process we recommend provisions are inserted allowing complainants a face to face or telephone engagement with the ECNI investigating Official at the initial and other stages of the process whereby clarification or further information could be gathered;

⁸ Equality Coalition Formal Submission on Consultation of Equality Commission "Revised Policy and Procedures for Complaints and Investigations Draft", Equality Coalition, May 2019
<https://www.equalitycoalition.net/wp-content/uploads/2019/05/EC-submission-on-ECNI-investigation-powers-May-2019.pdf>

- Explicit provisions for the ECNI to assist complainants in filing admissible complaints should be added to the procedure;
- All SDIC decisions, anonymised where necessary, should be published accessibly by the ECNI on their website, in the same section as investigations reports, this would better reflect the level of work undertaken by the ECNI;
- We welcome a codified process for a review (appeal) of a decision be included in the procedures.