



Northern Ireland
Assembly

Committee for the Office of the First Minister
and deputy First Minister

OFFICIAL REPORT (Hansard)

Disability Strategy: Equality Commission
Briefing

21 November 2012

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Mike Nesbitt (Chairperson)
Mr Chris Lyttle (Deputy Chairperson)
Ms Megan Fearon
Mrs Brenda Hale
Ms Bronwyn McGahan
Mr Stephen Moutray
Mr George Robinson

Witnesses:

Mrs Evelyn Collins	Equality Commission for Northern Ireland
Mrs Roisin Mallon	Equality Commission for Northern Ireland
Mr Michael Wardlow	Equality Commission for Northern Ireland

The Chairperson: I welcome Roisin Mallon, Evelyn Collins and Michael Wardlow from the Equality Commission. You are all very welcome. You are going to be dealing with two issues, Michael. We will do disability first and then we will get into the gender-neutral insurance. Should we get the other issue out of the way, particularly for new members?

Last time the Equality Commission was with us, some members raised issues about the religious profile of its workforce. What is clear is that there is an imbalance. The Equality Commission made the point, if I may paraphrase, that it is very aware of it and is proactively preparing to address it, but, at the moment, it is not recruiting and, therefore, there is no possibility to actually change the profile, but it is preparing to address it when that opportunity arises. We then engaged in correspondence with the Department, and as members will remember, last week, having asked the Department what its thoughts were on the Equality Commission's position, we got a letter dated 5 November that read:

"Thank you for your letter dated 11 September regarding the Committee's concerns about the Department's views on religious imbalance within the Equality Commission. We have passed your correspondence to the Commission for a full response."

So it is now asking you what it thinks you think we think somebody should think of you. Have you responded to that letter?

Mr Michael Wardlow (Equality Commission for Northern Ireland): We have not received any letter yet, so the answer is no.

The Chairperson: You have not received a letter that, on 5 November, we were told had been passed to you. This is now 21 November. OK.

Mr Moutray: I think we have a golden opportunity because we have the Equality Commission in front of us. We can bypass any letter and simply ask what it is going to do about that historical position.

The Chairperson: We can, but this is about us asking the Department what it thinks.

Mr Moutray: I understand that, but we do not have the Department here today; we have the Equality Commission.

The Chairperson: We had a good discussion last time, and certainly the DUP members were well into it, so can we suggest, Stephen, that you want to engage directly with the Equality Commission? Would that be OK?

Mr Moutray: We are more than happy to do that. We have done it on many occasions before and we have not seen much progress from it, but we are happy to do it again.

The Chairperson: OK, and we can give you a copy of the updated correspondence and data.

Mr Moutray: Thank you.

Mr Wardlow: Chair, thanks for that intervention. I was about to say that we were here on 13 June and gave a fairly robust explanation of where we are on the legacy issue that a lot of organisations face. I do not accept that nothing is being done, but I would like to take that up outside here. The offer stands, and has always been there, for us to talk to any political representatives.

The Chairperson: If Stephen is content, which he appears to be —

Mr Moutray: Absolutely, Chair.

The Chairperson: That is without prejudice to our engaging you on that subject again in the future, but we are here on this instance to discuss the draft disability strategy.

Mr Wardlow: Thanks very much for the opportunity. I will probably take about five minutes to give a quick run-through. Can I just check — there should be three double-sided pieces of paper, which, in summary form, deal with the insurance issue, which Roisin will pick up at the end, disability law reform, which Evelyn is going to pick up after my brief introduction, and the strategy to improve the lives of disabled people. You should have those. It may help if you have them available.

Mrs Evelyn Collins (Equality Commission for Northern Ireland): We have copies here, if not.

The Committee Clerk: I think we have two sides on insurance premiums.

Mr Wardlow: Yes. There are two sides on each, as far as I am aware.

The briefing is on the draft disability strategy and the consultation on the European Court of Justice ruling on what are called unisex premiums. Thank you for the invitation to come. Originally, we were invited to give our views on the legislation to protect people from age discrimination, which was in the Programme for Government, but I understand that that has been postponed until the new year. We will be very happy to come back at that time to engage with you on that.

The Chairperson: You are going to start with the draft disability strategy?

Mr Wardlow: Absolutely.

I am sure that you have read our response. We welcomed the Executive's commitment to developing the strategy. It was to challenge the barriers that are faced by people with disabilities. It also recognises the rights that are given under the United Nations Convention on the Rights of Persons With Disabilities (UNCRPD). Going off what I have written here, I asked several of my friends who live with disabilities whether there were priorities. To a person, they said that there was one priority:

inclusion. They want to be included. If there is a success factor, it is that people feel included. That is a whole range of things; their argument is that they are excluded and are disabled very often through a social model rather than a medical one. I will come to that later.

Members may be aware that we are jointly designated with the Human Rights Commission here in Northern Ireland as the independent mechanism for monitoring, promoting and protecting the implementation of the United Nations Convention on the Rights of Persons With Disabilities. We gave a detailed response on that consultation in July. We made specific comments at that time on the priorities that were set out in the draft. There were very detailed proposals, which I do not propose to go into today. In short, although we welcomed it, we pointed out that the strategy did not appear to address the full range of obligations that we believe are placed on government by the UN convention. In that context, we made a number of observations, and I am going to highlight a couple of them. The first is the suggestion that we should update the definition of "disability" to reflect the social model and to remove the list of capabilities. We would like disability equality legislation to be reformed to provide stronger protection for people who live with disabilities when accessing services, transport, built environment, schools, rented accommodation and employment. Awareness-raising is key to that. We would like to maximise those who live with disabilities in that participation. We would like to further address the barriers to accessing justice; to improve the accessibility of public service information, housing and transport; and to ensure that there is an effective delivery of independent living. I think that you referred earlier to the transition, not just into adulthood but at various stages of life.

In addition, we would like to promote access to education and sustainable employment, particularly in the context of this austerity climate and the economic downturn. We would also like — this is sometimes missed — to support measures for carers and recognise the role that carers play. That can be a lifelong commitment that often goes without people wanting to trumpet it from the rooftops. They contribute highly to the quality of life for people who live with disabilities. Furthermore, we would like to develop a new strategic priority for health and social care. That links to what I said earlier about the medical and social model. We also want to develop mitigating measures to any adverse effects of welfare reform. We were at the Social Development Committee only a few weeks ago talking about some of the issues that we might have under welfare reform.

As for the outworking of the strategy and the design and delivery of it, we suggest that the Executive revise the vision and purpose of the strategy to reflect more clearly the intent for the Executive's obligations under UNCRPD to ensure that the strategy sets out how the Executive will contribute to the full range of responsibilities that we alluded to earlier. We want to be assured that there is a proactive and effective participation throughout this. I think that Brenda earlier mentioned involvement with, and not simply asking for, information. It is about partnership working. We want explicitly to allocate appropriate resources. We know that this is a time of austerity and that everybody is screaming for resources, but if we do not have money, and resources other than money, put at this, we are not going to deliver.

We need to develop an action plan and a monitoring framework. Picking up on what Mike said earlier, it has to include targets; not simply outputs but, more significantly, outcomes about how people's lives are made better and how they are more included as a result of the strategy. There is insufficient data relating to disability. We want to make sure that there is efficient design and monitoring of the data so that we know what we are talking about. We want to identify explicit governance and delivery mechanisms, because this is about being held to account. So, we have to make sure that we do not simply set this in train for two years. Therefore, we need to revise a number of the strategic priorities so that they have a clearer focus and are not as grey or as vague as they perhaps might be.

We also want to ensure that the strategy somehow addresses the issues of multiple identity. Again, my friends who live with this say, "I am not only a person with disabilities. I am an older person, a young woman, a mum, a boy; I am someone." They are saying that the disability comes through life. So, this is about multiple identities. To simply say that it is about a disability strategy and not link it to, for example, the 10-year strategy for children and young people on the one hand or some of the other strategies such as welfare reform, would do a disservice to those who live with disabilities. So, this is about people who hold multiple identities.

We want a review process, which we suggest is set out to make sure that we deliver on what we are saying. On 17 October, you heard evidence from departmental officials. About 95 organisations and individuals responded, so we know that you are probably aware of all of this.

We said in our response that there was a need to reform disability legislation. We have talked about that before, including at a conference earlier this year. I ask my colleague Evelyn, who is the chief executive, to pick up on a few issues about the disability legislation side.

Mrs Collins: As our chair said, we have said to the Office of the First Minister and deputy First Minister (OFMDFM), both in the lead-up to the publication of the strategy and in our response to it, that an important cornerstone of improving the strategy, which aims to improve the lives, situation and experience of people with disabilities in Northern Ireland, is improving the legislative protections that they have under reformed disability discrimination legislation. Many of your members are new, but we gave evidence to the Committee in February when you were considering how to respond to the Programme for Government.

We have a two-page brief specifically on this. I just want to check that you have that in front of you. In that, we state that there is a clear need to simplify, strengthen and harmonise the legislation, and there is a list of things that we think are particularly problematic in respect of the legal position.

I am quite glad that OFMDFM, in its consultation on the disability strategy, asked people for their views on whether legislative reform was important. The form of the question was, "Would legislation support the implementation of the strategy?" Following the evidence that you received a few weeks ago from officials, we understand that although the consultation responses indicated support for disability legislative reform, there was not much detail or substance in them. As you heard Monica say earlier, organizations such as Disability Action have engaged very much in developing our proposals for reform and are very supportive. I want to spend a couple of minutes sharing the evidence in support of reforming the legislation.

I will not go over the history of the disability discrimination legislation, but it goes back to 1995, and its scope has been successively expanded since. So, initially, it just covered employment, but we have seen it extend through education, including further and higher education, and, most recently, transport. However, it was recognised from the off that it was a flawed piece of legislation. People such as Monica Wilson sat on the UK-wide disability rights task force in the late 90s and the early part of the past decade, which looked at how the legislation might be reformed. So, the need for reform is pressing.

The disability legislation in particular is very difficult to understand. It contains a wide range of inconsistencies. Due to the successive implementation of different parts of the legislation, there are different levels of protection from discrimination in different parts of the legislation. So, there is weaker protection for disabled pupils in schools compared with disabled students in institutes of further and higher education. There is also weaker protection for people with disabilities when they are accessing goods and services than there is when they are seeking to access employment.

The development of case law in the House of Lords has given rise to an issue around the concept of discrimination. That has led to a problematic definition in our view and that of the Westminster Government, which sought to change and ameliorate the effects of that House of Lords decision through the Equality Act 2010, which does not apply in Northern Ireland because, of course, the legislature here has responsibilities for equality legislation.

There are now real differences between the rights that people with disabilities have in Northern Ireland and those of disabled people in GB. That is certainly an issue that ought to exercise the Assembly, given the enactment of the 2010 Act in Britain. That, of course, impacts not only on people with disabilities but on employers and service providers who operate in both jurisdictions and who have to manage and understand different levels of awareness.

As Michael said, we also believe strongly that implementing change to the legislation will go a long way towards the Executive being able to demonstrate that they are complying fully with the UN convention. We do not mean wholesale change; we just mean that some changes to bring things in disability discrimination protection into line with GB would be enormously helpful.

As regards support for our recommendations, Michael mentioned that we had a major conference in June that was attended by the OFMDFM junior Ministers, stakeholders from across the disability sector, public servants, lawyers, and so on. There was widespread support at that conference for reform in this area. We did a small-scale online survey around that time, and 78% of those who responded agreed that the disability laws in Northern Ireland were in need of reform. In our equality awareness survey, about which we briefed the Committee on the day of its publication in June, 91% of the 1,100 people whom we asked supported equality laws generally and 77% agreed that there was a

need to bring the Northern Ireland equality laws into line with those in Great Britain. We see that there is significant concrete evidence of the need to reform and significant support for reform.

In conclusion, then, if you were planning to make any further comments to the Department in relation to its strategy, we would be keen that you would raise the issue of the importance of law reform.

The Chairperson: OK. Thank you both. Did your survey and your conference include as a discrete group opinion from service providers and employers?

Mrs Collins: The online survey did not. It was just of those who went on our website. We have not broken it down by service providers and employers. The general equality awareness survey picked up members of the public, who might be employers or service providers widely across Northern Ireland.

The Chairperson: All right, but you do not have that as a discrete pool of people. Do you accept that, without prejudice to the merits of your argument, red tape is an issue, particularly in the private sector?

Mrs Collins: Absolutely, although we are conscious of the importance of our work being relevant to the wide range of stakeholders in Northern Ireland. We have done not only the equality awareness survey of 1,100 people but an independent survey of 320 employers, through which we found very high rates of confidence in the commission to promote equality for everyone and support for the services that we provide to help them to understand the equality obligations. Similarly, in the past few months, in a third and more general survey of 402 stakeholders who were picked by an independent research company, we found that there was a very high level of engagement with and support for the work that the commission does to promote awareness of equality laws.

The Chairperson: Thank you. I do not mean to imply that human rights are red tape, but how it is perceived can be.

Michael, I will start with the review process. Is that at the end of the strategy in two or three years' time, in 2015, or is it an ongoing process?

Mr Wardlow: We feel that there is no use saying that the targets are there and then, suddenly, not having a measure by which you know whether you have hit them. My view is that it should be an ongoing thing. It is one of those things that is iterative, in the modern jargon. It is something that we should continue to look at.

My colleagues wrote the detailed response, but my experience of monitoring and evaluation is that you set it out at the top and you see during it, so you get midway. I am not now saying evaluation; that is a separate issue. This is about monitoring, review and evaluation coming together, which have to feed into the learning of the organisation, otherwise they are irrelevant. It is about a model that is well tested. This is best practice; it is not something new. It is something that government should have at the heart of evidence-based policymaking.

This is not about bringing someone in — heaven help us — simply as a consultant at the end, asking whether it worked. This is much more about a robust mechanism that is set up to make sure that we are delivering what we said. Value for money, and all those things, should be in it. Is that right?

Mrs Collins: Yes, absolutely. The previous witness, Monica, made a very cogent case for any strategy, but this one in particular, to have appropriate resources allocated to it; the development of an action plan with clear targets and a measurement framework set in place to measure progress against those targets; and a review at the end of that to see what adjustments need to be made going forward to ameliorate any difficulties that had not been addressed, and so on. In the section of our response on delivering an effective strategy, we set out some of those things very clearly as well.

The Chairperson: She was very clear. She came to the table saying that it took 10 years to get to this point.

Mr Wardlow: I will simply say that sometimes the law of unintended consequences applies. We may think that something will work because of wide participation in a survey, and then, suddenly, when we put it in, we realise that it does not work. Heaven help us if we keep it in there because we said at the top that it was going to be there. So this is something about having this in real time. So we realise that something needs tweaked or moved, when we hear back from people whose lives we are trying to

make more inclusive because of this. So it is about that reality. It cannot simply be up here somewhere, superintending it all. It has to be connected to real time, and it has to be responsive enough that it does not have to go through 27 committees to be changed. If we know that something that we are suggesting should work does not, for whatever reason, we need to ask why it is not working and do we have to wait two or three more years. So it has to deliver.

The Chairperson: Sixteen priorities, Michael. That is not the smallest number in the world. And yet you say that you do not believe that, overall, it fully touches the entire UN convention.

Mr Wardlow: I say very simply that we asked for one additional priority, which is around health and social care. That was not only linked in to the way that we model disability; there were other issues. Evelyn will be more across the actual details of this, but we were very clear that it does not deal with all the requirements that will be laid on the United Kingdom Government under the UN convention.

Is there anything else, specifically, that you have concerns about, Evelyn or Roisin?

Mrs Roisin Mallon (Equality Commission for Northern Ireland): Just to say that we mentioned disability law reform in the briefing. In the application of the Malcolm decision, our expert legal briefing and the Joint Committee on Human Rights have said that Northern Ireland is potentially in breach of its obligations under the UNCRPD and, the legal briefing said, the European employment framework directive. So there is a potential breach of the UNCRPD in the outworkings of the Malcolm decision.

The Chairperson: Right. Do we need to go over the Malcolm decision, members?

Mr Wardlow: Just to put it in context briefly.

The Chairperson: Shall I have a stab, so that you can shoot me down?

Mrs Mallon: Oh, great.

Mr Wardlow: Absolutely.

The Chairperson: Mr Malcolm has a house that is owned by Lewisham Borough Council in London. He has schizophrenia and he sublets his house, which is against the rules. He is then prosecuted and it goes through various levels, with judges overturning previous decisions. Mr Malcolm is arguing that he only sublets because of his schizophrenia, and so the council is discriminating against him on the grounds of his disability. It goes to the House of Lords, and the final decision goes against him. Yes?

Mrs Mallon: That is right, yes.

Mr Wardlow: Absolutely right.

The Chairperson: So what are the implications?

Mrs Mallon: Well, it is to do with the comparator that was used and disability-related discrimination. Mr Malcolm said that he was discriminated against for a reason related to his disability. It was a question of to whom his treatment should be compared. Should it be a non-disabled person or a person with disabilities? The Lords took a very restrictive approach in who the correct comparator should be, and said that if a non-disabled person had sublet, he would have been evicted as well. The Lords maintained that the comparator was a non-disabled person and, therefore, did not take into account Mr Malcolm's disability. Mr Malcolm argued that it was because he had the disability that he sublet. The Lords said no, if the comparator was a non-disabled person who sublets illegally, there is no difference in treatment. That really has undermined the whole concept of disability-related discrimination, in that you look at the factors that have led to it and how they are related to the person's disability. It really means that people in Northern Ireland can no longer rely on disability-related discrimination. Most of the claims that we get now relate to reasonable adjustments, as opposed to what was previously a cornerstone of disability discrimination law. As has happened in Great Britain, we are recommending that our legislation be changed so that it prohibits indirect discrimination and discrimination arising from disability. In a nutshell, in a very key area of the disability legislation, people in Great Britain now have greater protection against discrimination than disabled people here. As I say, the legal expert that we commissioned and the Joint Committee on

Human Rights have said that, by failing to change the law here to address what is now a gap in the legislation, we are potentially in breach of the UNCRPD.

Mrs Collins: I commend you on your understanding of the Malcolm decision.

The Chairperson: It was just a lucky guess.

Mrs Collins: In our detailed submission, we listed for OFMDFM about 12 articles of the convention that we think are not sufficiently covered in the disability strategy. They range from the right to life, liberty and security of the person through to health, as Michael said, international co-operation, and so on. We view the strategy as an opportunity for the Executive to demonstrate how they are fulfilling their obligations and have recommended that some of the issues in our response are looked at.

The Chairperson: Will that delay significantly the finalisation of the strategy?

Mrs Collins: It is a matter for OFMDFM whether it follows that and how long it takes to address it. I had the strong sense from the evidence given to you a couple of weeks ago that it is making progress. We have not heard the detail of its views on our response to the strategy.

The Chairperson: Can you give a comparator? You deal with all issues that relate to equality. Where do you think that disabilities fit in the great scheme of things, particularly in the engagement of OFMDFM?

Mr Wardlow: Are you asking about where we see this as a group of people discriminated against or about what we want redressed?

The Chairperson: I am asking about engagement with the Department on issues of equality.

Mr Wardlow: The level to which officials went to get the views of disabled people is commendable. I have been here for nine months. With another hat on, in other places, I have seen consultations that are less robust. This one genuinely attempted to listen to views. However, voice is not simply about hearing people. It is about ensuring that you understand what they are saying and the implications of that and then feed back why that has or has not been taken into consideration. Otherwise, they will not give you their voice again. It cannot simply be an exercise on a consultation; it has to be about engagement and participation. That is why I do not like the term "consultation" in that it is done to people.

I get the sense that there is a strong commitment from OFMDFM, and the junior Ministers coming out together to the conference sent a very strong message to over 100 people that this is a serious matter on the agenda. I am simply urging movement on it. We recognise that the issue is across all communities and is intergenerational. It is one of the few things that is. Disability does not know age and is not related to community background. You talked about early wins, and there are some early wins with the definitions under the medical versus the social, particularly with welfare reform.

The Chairperson: I take your point that we have the outputs but that those are relatively worthless without outcomes. Thank you for that. You will stay with us.