



Northern Ireland  
Assembly

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

# OFFICIAL REPORT (Hansard)

Equality and Good Relations Commission:  
OFMDFM Officials

26 March 2014

# NORTHERN IRELAND ASSEMBLY

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

Equality and Good Relations Commission: OFMDFM Officials

26 March 2014

**Members present for all or part of the proceedings:**

Mr Mike Nesbitt (Chairperson)  
Mr Chris Lyttle (Deputy Chairperson)  
Mr Alex Attwood  
Mr Leslie Cree  
Ms Megan Fearon  
Mr Alex Maskey  
Ms Bronwyn McGahan  
Mr Stephen Moutray  
Mr George Robinson  
Mr Jimmy Spratt

**Witnesses:**

|                   |  |
|-------------------|--|
| Mr Fergus Devitt  | Office of the First Minister and deputy First Minister |
| Ms Kerry Morrison | Office of the First Minister and deputy First Minister |
| Mr Peter Robinson | Office of the First Minister and deputy First Minister |

**The Chairperson:** We are joined by Peter Robinson, Kerry Morrison and Fergus Devitt. You are all very welcome. Fergus, the floor is yours.

**Mr Fergus Devitt (Office of the First Minister and deputy First Minister):** I will make a few introductory comments, and then we will be open to queries and questions. Thanks very much for the opportunity to brief the Committee today on the establishment of the equality and good relations commission.

As you know, the Together: Building a United Community (T:BUC) strategy for good relations was published in May 2013 and reflects the Executive's commitment to improving good relations and continuing the journey towards a more united, shared and reconciled society. It outlines how government will be challenged not only in monitoring public authorities' performance against the statutory duties outlined in section 75 of the Northern Ireland Act 1998, as at present, but in its duties in promoting good relations.

The strategy states that the best way to do that will be through an equality and good relations commission that will act as an independent, statutorily-based organisation that provides policy advice and a challenge to government. The commission will be underpinned by primary legislation, which will amend the remit, roles and responsibilities of the current Equality Commission, incorporating into its remit additional good relations roles and responsibilities as detailed in the strategy. Those roles and

responsibilities are advice and challenge to government; research and evaluation on good relations issues; scrutiny; scrutiny of and challenge to the District Council Good Relations Programme; and a regional advisory role to individuals and groups working on good relations issues.

In practice, those augmented functions will result in the equality and good relations commission fulfilling a range of statutory duties. The commission will be instrumental in monitoring the Executive's performance in how all policies and spending decisions are proofed for good relations impacts. To that end, an augmented impact assessment will be developed that assesses the extent to which policies and other interventions contribute to meeting the objectives of the overarching strategy.

The commission will also have a role in the wider delivery architecture of the strategy. It will have a scrutiny role to play in achieving the mainstreaming of good relations considerations into the revised arrangements put in place by the strategy. It will provide advice and guidance to district councils and will fulfil a role in developing and assessing the effectiveness of the overall district council programme.

The commission will act independently but will be represented on the ministerial panel to reflect its challenge and advice function. The commission will play a key role in ensuring that the ministerial panel has the most relevant information and research to inform its work and to monitor progress. The commission will additionally be tasked with monitoring the effectiveness and impact of the strategy and will be expected to draw on the wide range of data and research that exists. The good relations indicators, along with other information gained through good relations audits at a district council level, academic studies and other surveys commissioned by the Executive, will be supplemented by the equality and good relations commission developing a pool of information that is meaningful, relevant and measurable. The commission will also work to ensure that Departments and agencies are sharing information and data to help inform good relations policy. The sharing of that information is critical to measuring the effectiveness of the Executive's efforts to build a united community across all aspects of life.

It is intended that a Bill to establish the equality and good relations commission will be introduced during the 2014-15 financial year in order that that element of the strategy can be delivered during the current legislative mandate. It is also intended that a 12-week public consultation will commence during spring 2014, once Ministers have agreed a draft Bill and associated explanatory and financial memorandum. Based on the policy direction, officials have engaged with the Departmental Solicitor's Office and the Office of the Legislative Counsel. A draft Bill is currently being produced by the Office of the Legislative Counsel, based on the discussions to date, and it will be submitted to Ministers for agreement in the near future. When agreed, there will then be a public consultation.

In addition, a transition board has been established to oversee the successful implementation of the commission. It is chaired by Denis McMahon, and the chairs of the Community Relations Council (CRC) and the Equality Commission are members. One of the key issues that we will take forward is communication, particularly with staff in both organisations. We are happy to meet and brief the Committee when that would be helpful, particularly as part of the consultation phase. I am happy to take any queries or questions.

**The Chairperson:** Thank you very much. I will begin by exploring the timelines a little further. You are talking about a 12-week consultation process in the spring. Obviously, April comes around next week. Will it be completed by recess?

**Mr Devitt:** I suppose that depends on when it commences. If it does not start in advance sufficiently enough, there is scope to make it slightly longer. That has happened previously with other consultations that have to run over some of the summer period.

**The Chairperson:** So, that is fluid.

**Mr Devitt:** Well, it is a minimum of 12 weeks. If it needs to be slightly longer, I am sure that we could consider that.

**The Chairperson:** But the start date is still fluid.

**Mr Devitt:** The start date is still fluid because the draft Bill has to be agreed by Ministers. We are hopeful that that will be completed quite soon, and the consultation can start as soon as possible after that.

**The Chairperson:** Would you consider having the consultation open over the summer?

**Mr Devitt:** Again, it depends on the timing. That has happened with consultations previously, and the convention usually is that the consultation period is extended slightly.

**The Chairperson:** Can you tell me about consultation with key stakeholders to date that has helped to inform your thinking about the public consultation?

**Mr Devitt:** We have been working very closely with the Community Relations Council and the Equality Commission. Those are the two bodies that are mainly impacted by the legislation and the creation of the commission. As I mentioned, there is a transition board in place, and the chairs of both those organisations are represented on it. I know that they have been communicating with their staff. As part of the wider public consultation, that will provide an opportunity for other stakeholders who may have an interest in the legislation to give a comment. We are looking at it as the legislation, and there are also issues around the establishment of the commission, which may impact on staff. So, we are looking at it from both those angles.

**The Chairperson:** What are the main concerns of the CRC?

**Mr Devitt:** Both organisations are looking to ensure that the equality and good relations commission is set up in such a way that it is able to fulfil the remit that is set out in the overall strategy. The Community Relations Council has issues around staffing, for example, because some of the functions that it currently carries out are envisaged as transferring over potentially to the equality and good relations commission. So, there are issues there potentially around the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) that need to be taken into account.

**The Chairperson:** What about the Equality Commission?

**Mr Devitt:** The Equality Commission is looking at this from a perspective of its enhanced role. It will take on new functions, not just those transferring in from the CRC but functions that neither of those bodies carries out at the moment. So, its chief executive is taking forward work to look at operationalising — if I can use that word — what the actual commission might do, how that might be taken forward and what resources might be required to make sure that the commission is able to fulfil its remit.

**The Chairperson:** You have discussed so far, if I may characterise it as such, the logistics of the two organisations merging into a new organisation or the setting up of a new organisation. What about the concepts of equality and good relations? There is clearly a perception of, at least, a possibility of significant tension between the two concepts.

**Mr Devitt:** That is something that would potentially be addressed through the legislation. As you are aware, we are not able to get into the detail today of what may or may not be contained in the legislation because that still has not been considered by Ministers. I am sure that is something that stakeholders will have a view on in respect of how the legislation is framed.

**The Chairperson:** Earlier, Fergus, we were discussing information from the Department on the definitions of "good relations" used by the Executive and the UK Government. Will you comment on the fact that, here, we use the verb "promote", whereas the Equality Act from Westminster uses "foster"? Why the difference? Was there a conscious decision to use "promote" rather than "foster"?

**Mr Devitt:** I do not know the answer to that.

**The Chairperson:** It seems to me, as an observation — again, you may not wish to comment — that to promote something is an output rather than an outcome. I could go to the gates of Stormont to promote politics for eight hours with potentially no impact on people passing, but it is an output that I spent eight hours promoting politics. However, if the verb was to "advance", that would be outcome-based rather than output-based.

**Mr Devitt:** Those are issues that individuals, organisations and stakeholders may have a view on regarding what the legislation says. There may well be scrutiny of individual words such as that in how people might want to interpret them.

**The Chairperson:** But are these concepts being discussed at the moment by the board, the CRC or the Equality Commission?

**Mr Devitt:** They certainly have views. We are engaged in a process with them of gaining their thinking around what the legislation may contain. You will appreciate that there is sensitivity around how and when we engage with those organisations in line with giving Ministers the opportunity to help to shape the legislation to a certain point. We are hopeful of successful engagement with both those organisations in the very near future on those issues.

**The Chairperson:** A key area for the new commission will be funding. The Together: Building a United Community strategy sees a role in evaluating the impact of funding schemes, which will then inform future funding intentions. What more can you tell us about that work?

**Mr Devitt:** One of the commitments set out in the strategy was to commission and undertake a review of good relations funding. That work has started. It is being done in two phases by colleagues in the Strategic Investment Board (SIB). The first phase, which is coming to an end in the next few days, looks at desk research around funding to date and the evaluation of any programmes that our Department funds or other Departments fund, such as Peace III and IFI programmes and others. The second phase, which will take us into the summer, will look at recommendations for how good relations funding can be best administered in the future, including, potentially, structures for how that might best happen. It is not envisaged at this time that the equality and good relations commission will hand out funding, if I can put it like that.

**The Chairperson:** So, its role will be an overview and recommendations of —

**Mr Devitt:** Its role is scrutiny and challenge and policy advice.

**The Chairperson:** And the funding will come out of?

**Mr Devitt:** The funding review is looking at how funding can best be channelled in the future. At the moment, some of that is channelled through the Community Relations Council. Some of it is channelled through organisations such as the International Fund for Ireland and Peace funds. We, as a Department, give out significant funding through a variety of funding mechanisms. We are looking for recommendations as to how the overall funding available can best be used to implement the strategy.

**The Chairperson:** So, there is a possibility, at least, that the Department could become a more significant player in allocating funds directly?

**Mr Devitt:** The Department already allocates significant funds. For example, we give over £3 million a year to district councils. We have a central good relations fund, a north Belfast fund and a contested spaces fund. We are already there in the amount of money that we handle, and there is the money that we give to the Community Relations Council. All that funding is being considered in how best it can be used in the future.

**The Chairperson:** What about the cost of setting up the new commission?

**Mr Devitt:** As I mentioned, some of the functions that the commission will take on are existing functions currently carried out by the Community Relations Council. Inevitably, there will be new functions that neither of the organisations does at the moment. One of the areas of work that the chief executive of the Equality Commission has been asked to do is to look at the potential resourcing issue in the future in respect of any additional resources that might be needed to implement this.

**The Chairperson:** Do you have a ballpark figure in mind? Will it be a cost-neutral exercise? Will it cost the taxpayer?

**Mr Devitt:** I honestly do not know, Chair. It is too early to say.

**The Chairperson:** So, there is no strategic intent that it must be cost-neutral.

**Mr Devitt:** No. There is a recognition in the strategy that there are new things to be done that are not being done at present; for example, an enhanced equality assessment becoming an equality and good relations assessment or, in the scrutiny role, sitting on the ministerial panel to advise and challenge government and to advise on the district council programme. Those are all new functions, so you could imagine that there would potentially be an element of additional cost required. I just cannot give an estimate of what that might look like.

**The Chairperson:** I want to go back to evaluating the impact of funding, particularly on good relations. Soft outcomes and longitudinal studies will be required, will they not, because some of these outputs and outcomes are not that tangible and do not come about that quickly?

**Mr Devitt:** That is right, Chairperson. That is why we are also doing the work on the good relations indicators. They will be the mechanism through which the longitudinal work will be done to ensure that, over time, we can track the positive impacts, not just of the funding but of the strategy and policy intent as well.

**The Chairperson:** The Committee on the Administration of Justice (CAJ) has been quite active in briefing and lobbying and has, clearly, been in touch with you. How do you assess its concerns?

**Mr Devitt:** Clearly, at this point, it would be wrong of me to comment on anything that the CAJ is saying on what might be contained in the legislation. The CAJ, along with other stakeholders, will have its opportunity to comment on the draft legislation when it goes out for consultation.

**Mr Lyttle:** Thanks for your update. The Equality Commission for Northern Ireland already monitors public authority performance against the duty in section 75 of the Northern Ireland Act 1998 to promote the desirability of good relations. What additional powers do you foresee being granted to a renamed equality and good relations commission?

**Mr Devitt:** Part of the critical difference is that it will have a range of statutory functions that it does not have at the moment. Those will, potentially, be set out in the draft legislation. It will set out a range of issues that will be put into the overall remit of the equality and good relations commission. For example, it will enforce and investigate as appropriate where there is a failure to comply with section 75(2); a duty that it does not have at the moment. It will scrutinise and provide advice on action plans arising from the strategy; it will commission research; and it will challenge district councils. It will have a range of additional functions that it does not have at the moment.

**Mr Lyttle:** How do you assess its performance, so far, in monitoring public authority performance?

**Mr Devitt:** I am not sure that that is a question for me to answer.

**Mr Lyttle:** Why not?

**Mr Devitt:** Well, clearly, the Equality Commission has a role to carry out a series of functions. It is fairly well recognised that, for example, equality impact assessments are now a well-established mechanism to allow a challenge function if that is needed. Public authorities are aware that that is part of what they are required to do. The overall impact or assessment of the Equality Commission is for others to comment on, Chris.

**Mr Lyttle:** OK. In what way will an equality and good relations impact assessment differ from an equality impact assessment?

**Mr Devitt:** The chief executive will consider what that looks like, how it will be given to organisations to complete and how it will be challenged, monitored and measured. It is a bit early to say what might be contained in it, but, obviously, it will contain elements that are not there at the moment in an equality impact assessment.

**Mr Lyttle:** What sort of public authorities and policies do you see that applying to?

**Mr Devitt:** I imagine that it would apply to the same range of public authorities that are currently required to complete equality impact assessments.

**Mr Lyttle:** OK. You mentioned OFMDFM's current good relations fund for district councils, which amounts to around £3 million a year. How is the use of that fund evaluated and reported on?

**Mr Devitt:** A fairly recent evaluation of that has helped us to shape funding for 2014-15 and allowed us to tie it much more into the delivery of the strategy. Moving forward, we want to do that even more closely, to ensure that district councils are delivering on the Ministers' requirements for good relations and what is set out in the strategy. The commission will also have a role in advising on what good relations elements of councils' action plans might contain and in scrutinising those.

**Mr Lyttle:** Is that evaluation publicly available?

**Mr Devitt:** I can check for you.

**Mr Lyttle:** That would be helpful.

The Community Relations Council obviously has a long-standing role in research, challenge, scrutiny and funding the delivery of community relations work on the ground.

**Mr Devitt:** Yes.

**Mr Lyttle:** What role do you foresee the Community Relations Council playing, going forward?

**Mr Devitt:** Part of that will be for the board of the Community Relations Council to determine. As I mentioned earlier, under the strategy, certain functions are envisaged as transferring across to the equality and good relations commission. The functions that are left will be determined by the Community Relations Council board. It is certainly envisaged that the equality and good relations commission will have a remit and role around research and best practice.

**Mr Lyttle:** Sorry, Chair, I have a final question. What would you say to practitioners on the ground who argue that, if a body is to award funding effectively, it needs to be closely linked to that best practice and that research, in the way that the Community Relations Council was?

**Mr Devitt:** That is one viewpoint; however, there is, in theory, an issue about a funding body also providing a challenge and policy advice role. That is part of the rationale behind why the policy advice and challenge functions, and not funding, are moving to an equality and good relations commission.

**Mr Attwood:** There are not many questions that I can ask, because the presentation was basically a rehearsal of what is in T:BUC, which we knew already, save for the points that you made at the end about the issues of process around a transition board and the like. So, there are not many questions arising from the presentation.

I do not expect you to comment on this, because you are an official taking forward ministerial decisions; but I think that we are going in the wrong way. We will be opposing the proposed merger of the two organisations, and we will do so for a number of reasons. First, Denis McMahon gave evidence to the Committee, maybe two or three meetings ago, that when OFMDFM was working to help create the Victims and Survivors Service (VSS), he concentrated on financial governance. Yet, when the Victims' Commissioner made her report to OFMDFM, financial governance was one of the areas about which she was most critical. She made some quite strident remarks about what was not in place and the weaknesses of all that. So, Denis McMahon is chairing a transition board to bring about the merger of organisations, and this is not an issue about Denis, who I know to be a good official. The fact is that I do not have confidence in OFMDFM being able to do this right. The VSS demonstrates that OFMDFM did not get it right. Therefore, I have doubts about the capacity of OFMDFM to do this, given what we have concluded from what happened around the VSS.

Furthermore, I do not think that merging the organisations is the right thing to do. The reason being that, in my view, the Equality Commission has become more and more rudderless and lacks strategic direction. In my view, having a super-organisation runs the risk of compounding the problem of an institution that has a very powerful role but is not measuring up in that role. That is why I thought that your answer to the Deputy Chair's question was a bit strange when you said that it is for others to comment on how the Equality Commission is doing in one or other of its functions. I do not think that it is for others to comment; I think that it is for OFMDFM to comment, because you fund that body, and

you have legal responsibility in terms of accountability for it. So, I think that you should have a view about what it is or is not doing.

I think that OFMDFM should look at what we have learned from the management of the VSS and think again about whether there is the internal capacity to do this well. OFMDFM should learn from the VSS that, if you concentrate all resources in one place, you will not necessarily have the best outcome. That is the fundamental structural problem with this approach.

So, although I think that I know the answer to this, has there been any discussion in OFMDFM about resourcing the new body? What are the financial resources? I note what you said about keeping staff involved and informed, but has there been any discussion about what the financial profile of the new organisation might be, given that you said that you expected to sign off on the legislation quite soon in the near future. Can you be any more precise about that? Presumably, you had conversations with the Ministers in advance of this meeting. Do you think that that is coming in the next few weeks, or will it be more than that? In which case, how confident can you be, given the scale of legislation that is meant to come to the Floor of the Assembly over the next 18 months, that there is any realistic prospect of the Bill getting to the Floor and going through the Assembly in the next 18 months? All the evidence is that — this is not a criticism of this government; it is just an observation of every government — all legislation tends to be concentrated at the end, rather than the early years, of a mandate. That will be the experience of this Assembly, just as it was the experience of the last mandate.

Those are my three questions. Is there anything on resources? Are we now in the arena of wishful thinking when it comes to getting the Bill passed? Is there any conversation going on in OFMDFM about whether this is really the right thing to do?

**Mr Devitt:** There are a few queries and question in there, and I will try to address them all. If I miss some, let me know.

**Mr Attwood:** I think that there were only three.

**Mr Devitt:** First, the chairs of the Community Relations Council and the Equality Commission are on the transition board. So, I think that that should give some assurance on the involvement of those organisations in the work that is being taken forward. On a couple of occasions, you talked about the "proposed merger". I should make it clear that it is not a proposed merger. Some of the functions that the Community Relations Council currently carries out will transfer across. It is not envisaged as a merger.

The issue of resourcing has come up and been discussed at the transition board. As I mentioned to the Chair, it is too early to determine what exactly the resourcing requirements might be. However, we are aware that we are asking the Equality Commission to take on additional functions, not just the ones that it may take on from the Community Relations Council.

Our proposed timetable sees the legislation being completed within the legislative mandate.

**Mr Attwood:** That did not really the answer the question. What does "quite soon in the near future" mean? You must have some sense from your Ministers about what "quite soon in the near future" might mean?

**Mr Devitt:** In respect of the legislation?

**Mr Attwood:** Yes, the legislation being released and the consultation beginning. The Chair made a fair point about how this will all come crashing into the summer, and then you are running against time to get this through all its stages in the Assembly.

**Mr Devitt:** Our best estimate is that the legislation should be available for public consultation within a short number of weeks from here.

**Mr Attwood:** "A short number of weeks" could mean whatever you want it to. Remember, purdah is in four weeks, so you will lose May.



**Mr Devitt:** Yes. We are looking at the official guidance on public consultation in the pre-election period and how that might impact.

**The Chairperson:** What does that tell you?

**Mr Devitt:** It tells us that there is a possibility that we will be able to go out to consultation during that period. We are waiting for final clarification of that.

**Mr Attwood:** Does the VSS experience, which everyone concluded was not a very happy one and which I am sure you watched very closely, not lead you, your officials and everybody else to caution themselves against the partial merger of organisations? I call it a "partial merger" because transferring functions from one to the other is certainly a level of merger. Should the VSS experience not lead you to ask whether that is the right approach to this issue?"

Do you have any comment on the authority of the Equality Commission? As I said, I consider it to have become rudderless.

**Mr Devitt:** The chairs of the Community Relations Council and the Equality Commission are on the transition board. It is clear from the Together: Building a United Community strategy that the Ministers intend to create the equality and good relations commission. Having both chairs in at the start of the process should give reassurance on what the final commission will be able to do in fulfilling its remit.

**Mr Cree:** Alex has covered some of the points that I was going to address.

Is what is left of the Community Relations Council sustainable? Has thought been given to that?

**Mr Devitt:** Thought is certainly being given to that. It, in broad terms, has three roles: funding and development work; policy; and a challenge function to Government. It is envisaged that two of those will slide across to the equality and good relations commission, which would leave the funding, and potentially the funding/development work, not moving across. That links to the funding review that I mentioned to the Chair earlier and how good relations funding in its entirety will be taken forward. Certainly, the strategy acknowledges that there are potential implications for the Community Relations Council as a result of the creation of the equality and good relations commission.

**Mr Cree:** That sort of thing is probably better addressed sooner rather than later.

**Mr Devitt:** That is why the chair of the Community Relations Council is built into the process from the start.

**Mr Cree:** The sexual orientation strategy is to be put back. Is that right?

**Mr Devitt:** I do not have the detail of that. I understood that a pre-consultation exercise had already commenced on the sexual orientation strategy.

**Mr G Robinson:** Chair, all my questions have been answered.

**The Chairperson:** In conclusion, Fergus, two of the three functions that you described will transfer to the new commission. I am more convinced than ever that funding will rest with the Department unless you set up another body.

**Mr Devitt:** As I said, we already have our own funding streams and give out significant amounts. Some of the work of the Community Relations Council involves core funding, and some of it involves funding that allows a quick response to specific issues at particular points in time. One of the issues that we are looking at through a review of the funding of good relations is how we can get that balance between longer-term, more strategic funding interventions and the flexibility to provide short, sharp interventions, where required, at particular points in time or in specific locations. We are trying to work out how that can best be done.

You may say that the Government might be good at one of those, namely longer-term funding, but that it is not necessarily good at providing the flexibility to intervene quickly. The issue is trying to achieve that balance through any structures that might be set up in the future.

The strategy sets out the potential for funding to be given out on a thematic basis, which ties in with the themes in the strategy, such as our safe community, children and young people and our cultural expression. This review of funding will look at that.

**The Chairperson:** Finally, do you accept that, at times, good relations and equality can be mutually exclusive?

**Mr Devitt:** We expect people's views on that and on how the two sit together to come through in the public consultation on the legislation.

**The Chairperson:** Thank you very much, Kerry, Peter and Fergus.