

**The Office of the Director
of Equality Investigations**

*The accessible and impartial forum
to remedy unlawful discrimination*

STRATEGY STATEMENT
January 2001 - December 2003

DISCRIMINATION IS UNLAWFUL

ON THE FOLLOWING GROUNDS

- *gender*
- *marital status*
- *family status*
- *sexual orientation*
- *religion*
- *age*
- *disability*
- *race (including colour, nationality or national or ethnic origin*
- *membership of the Traveller community.*

IN THE FOLLOWING AREAS

- *all aspects of employment*
- *disposal of property*
- *provision of services and accommodation , and*
- *certain aspects of education*

STRATEGY STATEMENT 2001 - 2003

MISSION STATEMENT OF THE OFFICE OF THE DIRECTOR OF EQUALITY INVESTIGATIONS

1. OUR MISSION

We are an independent statutory office contributing to the achievement of equality by investigating or mediating complaints of unlawful discrimination. We operate in accordance with the principles of natural justice and our core values are impartiality and professionalism, accessibility and timeliness.

HOW DO WE ACHIEVE OUR MISSION ?

We offer a simple, straightforward mechanism to remedy discrimination. Our customers include people who feel they have experienced unlawful discrimination and people or businesses against whom a complaint is made. Equality Officers appointed by the Director have wide powers to investigate a complaint under the relevant legislation. Where the complaint is upheld, the Equality Officer can order compensation and/or a specified course of action. Our decisions are binding unless appealed. We also offer mediation where appropriate. Our services are accessible to all and are free of charge. Our customers are not required to be formally represented.

In accordance with the principles of natural justice, we are impartial and we give all sides the opportunity to be heard fairly. We hold hearings in private and we publish all decisions. Mediated settlements remain confidential.

We aim for the highest possible quality standards in our work. We operate in a way which is fully accessible, transparent and easily understood. We do our best to provide for people's special needs. We deal with complaints as quickly and effectively as possible. Our staff have professional training and experience. We are committed to delivering decisions which are balanced, robust and well-founded in law.

PREVENTING DISCRIMINATION

There is also a preventative aspect to our role. Our decisions provide a strong foundation of case law to assist in the elimination of unlawful discrimination. We have the power to direct that practices shown to be discriminatory should cease. We can review and suggest changes to any discriminatory elements in collective agreements. We make all decisions available to the widest possible audience to foster an awareness of what constitutes discrimination and to help prevent future discrimination.

1. A positive climate for equality

Irish society has changed dramatically over the last decade. Recent economic growth has had major impact in a wide range of areas. Ireland is now an increasingly diverse society developing a new focus on the rights and entitlements of those previously outside the mainstream. Our ability to recognise and provide for new areas of need has greatly increased. Changing social patterns and technologies have impacted on the organisation and needs of the labour market and a tight labour market has helped to drive measures to give support to particular groups to enter, remain and progress in the workforce. The growth in consumer spending has fuelled increased diversity in the range of goods and services available.

Successive Governments have recognised that equality goes far beyond the traditional areas of gender and this has also been a significant emphasis in the national partnership programmes of recent years. The concept of social inclusion, a term virtually unheard of ten years ago, has become a determinant of Government policy, and equality proofing on all of the nine grounds of unlawful discrimination is being developed. The principle of mainstreaming, especially on the grounds of gender, is being implemented. Significant State investment has been directed towards both the essential underpinning research and analysis and a wide range of practical initiatives to assist people with specific needs, particularly towards the promotion of family-friendly policies and policies to support people with disabilities, members of the Traveller community and people of different race, colour, nationality or ethnic or national origins.

Ireland currently enjoys a position in the vanguard of enforceable equality rights, through the Employment Equality Act, 1998, and the Equal Status Act, 2000, to be further enhanced by a Disabilities Bill in due course. European Union equality Directives will also have an impact in coming years. Overall the climate is very positive for the development of real equality and the Office of the Director of Equality Investigations is determined to play an appropriate part in achieving this.

2. Role of the Office of the Director of Equality Investigations

The Office was established on 18 October 1999 under Part VII of the Employment Equality Act, 1998. It is an integral part of the equality infrastructure which is designed to promote equality and eliminate discrimination.

Its principal statutory role is defined in Part VII of that Act as the investigation and mediation of complaints of discrimination in relation to employment. The role of the Office was extended by the Equal Status Act, 2000, to include the investigation and mediation of complaints of discrimination in relation to access to goods and services, disposal of property and certain aspects of education. This protection against discrimination applies to all nine grounds on which discrimination is prohibited by the legislation (see front cover).

The Office may also investigate complaints of discrimination on the grounds of gender and marital status under the Pensions Act 1990

In complaints of unlawful discrimination, the Office provides the primary avenue of first redress to a person who claims discrimination. Unlawful discrimination occurs where a person is treated less favourably than another person is, has been, or would be treated, under any of the nine grounds.

There are only two exceptions to this general rule.

- a) Complaints of discriminatory dismissal are heard by the Labour Court in the first instance.
- b) In **gender cases** only (including sexual harassment), the claimant may opt instead to go to the Circuit Court, in accordance with EU jurisprudence.

The Office is established on an independent statutory basis. The Director and individual Equality Officers and Equality Mediation Officers are independent in their function of investigating or mediating complaints. The Director reports annually to the Minister for Justice, Equality and Law Reform, and staffing and resources are provided through that Department.

Equality Officers have extensive powers to obtain information which they may require in order to carry out their functions. It is an offence to obstruct or impede an Equality Officer in the exercise of his or her powers or to fail to comply with a requirement of an Equality Officer.

The Office is happy to give advice on the procedures involved in making or defending a complaint. However, in order to ensure that we fulfil the requirement to be impartial, we cannot advise either party on the strength or weakness of any individual potential or actual complaint or on a defence against a complaint.

3. Environmental analysis

In its establishment, resources and statutory powers, the Office has significant strengths and opportunities. The legislation under which it operates is innovative in its extent but it draws on long experience of previous Irish equality legislation. Its staff are committed to the Office and the principles of equality. The planned resources for the Office are adequate to deal with a tripling of its caseload. It has developed specialist expertise in discrimination law through a wide range of skills training. Training has included deepening the knowledge of employment, administrative and consumer law, an in-depth study of the current and former equality legislation and cases decided under it and under European discrimination law, and personal and mediation skills. As well as specially commissioned or external training, the Office can deliver in-house legal training on an ongoing basis. Equality Officers enjoy statutory independence in their investigative functions. The powers of an Equality Officer in carrying out an investigation are strong and have an exhortatory effect, such that in the past they have rarely needed to be invoked. In terms of understanding and planning for customer needs, all staff are undertaking sensitivity training on the nine grounds.

There are exciting opportunities ahead for the Office. The external economic climate is favourable to greater equality; employers and the providers of business and services are broadly speaking in a position to make reasonable accommodation for diversity. Indeed, in the current competitive market for both labour and goods and services, it makes sound business sense to ensure as wide a pool for recruitment and marketing as possible. New working practices and new technologies are facilitating the accommodation of different needs in the workplace. The Government and Social Partners are firmly committed to equality principles, as clearly set out in the Programme for Prosperity and Fairness. There may be further developments in discrimination law, nationally or at European level.

As a new organisation, clearly located within the equality infrastructure, and operating under new, comprehensive legislation, the Office can play a significant role in promoting equality and preventing discrimination through both the direct and indirect effects of its Decisions. It has introduced revised, time-sensitive procedures. The introduction of its innovative mediation service as an alternative to its investigative powers offers wide-ranging opportunities to facilitate solutions to discriminatory situations which take the interests of both sides into account,

within the context of equality principles. This gives the Office the opportunity to deliver a wider professional service.

There are also undoubted challenges ahead. A significant downturn in the economy and labour market would impact negatively on the climate for the accommodation of diversity. Discrimination on gender grounds is still apparent despite 25 years of sex equality legislation. Increasing intolerance is giving rise to concern. Higher than expected levels of demand for the services of the Office, particularly for investigation of complaints, could lead to difficulties or delays in meeting demand.

The legislation is complex, covering a wide range of new areas of unlawful discrimination and may initially lead to an increased number of appeals from its decisions. The Office inherited a backlog of cases under the former equality legislation. The statutory mediation service is as yet under development and the level of demand for it among potential users is untested. The extent to which employment-related complaints of discrimination on gender grounds will transfer to the Circuit Court is unknown. A significant level of staff turnover, which is outside the control of the Office, would reduce the Office's ability to achieve its goals and provide a timely, professional service.

Nevertheless, on balance the Office is well placed to play its full role in the development and expansion of equality over the coming three years.

4. Interaction with Key Stakeholders

The Office of the Director interacts with a wide range of individuals and organisations, both in regard to its statutory role of investigation and mediation on complaints of discrimination and in its underlying purpose of helping to realise equality and prevent discrimination. The Office will deal with all stakeholders in a manner which is prompt, professional and courteous and which respects the dignity of the individual.

In the normal course of its investigative and mediation functions, the Office deals with a wide range of individual complainants and respondents and their representatives.

These include:

- Individual complainants, including employees, jobseekers, consumers and service users;
- Respondents, whether individuals or businesses in the public or private sector;
- Representatives of employees and/or the users of goods and services, including The Equality Authority, trade unions, consumer bodies, legal and other professionals;
- Representatives of employers and/or the providers of goods and services, including employer organisations trade bodies. legal and other professionals.

In a more general sense, the Office must also keep in touch with the following:

- The Labour Court to which Decisions of the Office may be appealed in relation to employment equality;
- The Circuit Court to which Decisions of the Office may be appealed in relation to equal status. The Office may also be required to advise the Court by way of reports on cases of employment discrimination on gender grounds which have been taken directly to the Circuit Court ;
- The High and Supreme Courts as sources of precedent case law;
- The European Court of Justice as a source of precedent case law;
- Universities, authors and publishers interested in discrimination issues.

In relation to its role in the realisation of equality and prevention of discrimination, the Office interacts with a wide range of organisations and bodies, including:

- The Department of Justice, Equality and Law Reform which administers the overall policy framework within which the Office operates;
- The Equality Authority;
- The National Disability Authority;
- Other Government Departments, Offices and statutory bodies;
- Organisations representing employers or providers of goods and services;
- Organisations representing employees or the users of goods and services;
- The media, both general and professional;
- Other national and international organisations, with a similar remit, especially those in Northern Ireland and Great Britain and the European Commission.

5. Goals and key objectives of the Office

We have four major goals.

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Our first goal is to contribute to the realisation of equality by expert and effective investigation of complaints of unlawful discrimination under the Employment Equality Act, 1998, and the Equal Status Act, 2000. Our Decisions will contribute to the development of a balanced and sustainable body of case law, establishing a high standard of protection against discrimination consistent with the relevant Irish and EU jurisprudence.

Impartiality: We will make decisions which are impartial and fully in accordance with the law, and which are reasoned, coherent and consistent.

- Professionalism: We will optimise the use of our internal resources to maintain a continuous emphasis on quality, concentrating on high standards in our skills and customer service, and in particular on maximising our expertise on all aspects of the relevant case law.
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- Timeliness: We will deal with investigations as expeditiously as possible. In particular we will streamline our procedures and we will emphasise the need for timeliness in all aspects of our work. Our Decisions will be issued to the parties involved as quickly as possible and will be published subsequently.
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- Accessibility: We will ensure that our documentation is provided and our procedures are carried out in as accessible a manner as possible, within the context of our quasi-judicial role, and that our Decisions are written in clear language.

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Our second main goal is to contribute to the realisation of equality by developing and operating an effective mediation service.

The Employment Equality Act, 1998, and the Equal Status Act, 2000, give us the innovative power to offer a mediation service. Mediation is an internationally recognised process in which an expert mediator facilitates communication between disputants to assist them in reaching a mutually acceptable agreement. The use of mediation in the context of legal rights is relatively unknown in Ireland. Mediation offers advantages to both individuals and businesses and will take account of the interests and relative positions of both parties. Mediation will aim to provide practical and durable solutions which contribute to future good relations between the parties and which promote greater equality. The terms of a mediated settlement may be enforced through the Circuit Court.

Our objective is to develop a service of excellence which is credible and accepted by both sides as a valuable alternative to an investigation. To achieve this, we will:

- train equality mediation officers to the level of accreditation by the Mediation Institute of Ireland (by end 2001);
- develop appropriate procedures and guidelines for the operation of the service which accord with the statutory requirements and encourage a high level of durable settlements;
- publicise the service.

Our third goal is to contribute to the realisation of equality by the prevention of future discrimination.

We will concentrate on making optimum use of our powers to award legally-binding redress which is tailored to the gravity of the incident and, where appropriate, to use our power to direct that a discriminatory practice be stopped. When a complaint of discrimination is upheld, we will award appropriate redress.

In situations where a complaint of discrimination is not upheld, we may nevertheless issue recommendations which would help to promote equality.

We will develop our communication strategy to publicise both our general service and our individual Decisions. Our communication objectives will include:

- ensuring that the individual has the knowledge and ability to enforce the right to protection against unlawful discrimination,
- informing potential users of the Office as the forum for redress under the legislation;
- contributing to an increased understanding of what constitutes unlawful discrimination, among the general public and in particular employers and providers of goods and services

gaining an enhanced understanding of the needs of our potential prime customer groups (complainants, respondents and their representatives).

We will use an appropriate mix of media and communication channels and in particular we will maintain an up to date web site.

We will develop and make available by May 2001 a coherent and comprehensive up-to-date database of relevant caselaw, including:

- Decisions of this Office,

- Recommendations from the former Equality Service of the Labour Relations Commission,
- Determinations of the Labour Court,
- Judgements from the Circuit, High and Supreme Courts and
- Decisions of the European Court of Justice.

The database will be an especially important resource for increasing awareness of equality and what constitutes discrimination. We will ensure that it is available and usable by the general public, representative organisations, the legal profession, policy-makers and other interested individuals or groups. The database will be kept up to date.

- The Office may commission comparative or analytical research to promote new thinking on remedying discrimination and to increase the effectiveness of our own investigation and mediation functions and our general operations.
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- We will contribute as necessary to the development of further or amending legislation in the equality field, national or international.

Our fourth goal is to support the work of the Office through providing a high quality working environment for staff and customers and through optimising staff performance and development.

- We will maintain a safe and accessible physical environment for both staff and customers.
- We will develop and maintain support services in a flexible and effective manner to meet customer needs

- We will publish a revised Customer Quality Service Plan by 1 April 2001, taking into account the developing Strategic Management Initiative.
- We will keep our internal procedures under regular review in line with the legislation and taking account of the principles of the Office and the Strategic Management Initiative .
- Services will be delivered in a way which takes account of value for money.
- Appropriate codes of practice will be developed and kept under regular review on
 - health and safety,
 - bullying, harassment, and sexual harassment, and
 - equal opportunities

Where relevant codes applicable to the wider civil service will be adopted.

- All staff will be encouraged and facilitated to undertake appropriate training in line with the needs of the Office and their personal development. A skills audit will be regularly undertaken and the Office training strategy will be reviewed regularly.
- The Performance Management & Development System which was introduced at end 2000 will be fully implemented.