

In response to issues raised by the CAJ over the McCreesh play park decision, the Equality Commission provided The Detail with the following answer:

In response to the individual examples queried, the Commission would point out that the findings of any investigation are specific to the facts and circumstances. While there may be broad points to be taken on board by others, it would be wrong to extrapolate specific findings and use them to determine the nature and type of decision that a different council could or should make.

That said, the Commission provides guidance on the importance of giving consideration to the needs of different groupings and potential chill factors, which seeks to assist both public authorities and employers in the development of good equality practices and policies.

Under the Section 75 duties all public authorities, including councils, have a responsibility to pay due regard to the need to promote equality of opportunity and regard to the desirability of promoting good relations when they are carrying out their functions and these duties are reflected in their equality scheme.

Each council's equality scheme sets out the arrangements it will use to ensure compliance with the duties. These duties must be exercised in substance, with rigour and an open mind. As part of this, any equality impact assessment for policies or proposed policies will reflect the make-up and needs of those groupings identified in the legislation in the council area and it may be that chill factors are identified through this.

An investigation by the Commission relating to the duties, like that into the naming of a play park in the Newry and Mourne Council area, considers the council's compliance with its own equality scheme.

An important aspect of the Section 75 duties is the right of an individual who has been directly affected by a policy to raise the matter with the public authority. If they are dissatisfied with the response they can then ask the Commission to investigate their complaint. The Commission can also conduct an investigation at its own discretion where it believes a public authority may have failed to comply with its Equality Scheme.

The Section 75 duties sit alongside the other statutory requirements on councils, such as the rights afforded to particular groups under the range of anti-discrimination legislation and the Council's responsibilities towards them. A public authority cannot make a decision which is unlawful by contravening rights protected by such legislation.