

The Equality Tribunal

Annual Report 2011

**Presented, in accordance with section 75(8) of
the Employment Equality Acts 1998 to 2011,
to the Minister for Justice, Equality and Defence,
Mr. Alan Shatter, T.D.**

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Our Mission

To contribute to a fairer society through providing a fair, accessible and impartial forum to remedy unlawful discrimination

Our Mandate

The Employment Equality Act 1998, which established the Equality Tribunal, provides a statutory framework whereby we mediate and/or investigate claims of unlawful discrimination in accordance with the provisions of the Act. Various legislative changes have occurred since our establishment and we now have a unique responsibility for mediating and investigating complaints of unlawful discrimination under the following legislation:

- Employment Equality Acts 1998 - 2011
- Equal Status Acts 2000 -2011
- Pensions Acts 1990-2008.

Our Values

Since its establishment, the Tribunal has sought to reflect a series of core values that support the implementation of its Mission Statement and underpin the manner in which the Tribunal would like to see its services operate. We will continue to be guided by the fundamental service principles set out in our first two Statements. These include:

For Service

Professionalism
Impartiality
Accessibility
Timeliness

For Staff

Optimum training and development
Collaborative working

For Government

Cost effectiveness and value for money
Impartial resolution of discrimination disputes

Director's Report

2011 was an eventful year for the Equality Tribunal.

In March 2011, the Equality Tribunal transferred from the aegis of the Department of Community, Equality and Gaeltacht Affairs to that of the Department of Justice and Equality. I wish to record my sincere thanks to the staff of the Department of Community, Equality and Gaeltacht Affairs for their support for the work of the Tribunal.

On 2 August 2011 the Civil Law (Miscellaneous Provisions) Act 2011 was enacted. Part 6 of the Act amended the Employment Equality Acts and the Equal Status Acts. The changes to equality legislation are largely technical in nature. The changes include amendments to improve the efficiency and user-friendliness of the Equality Tribunal in handling complaints, as follows:-

- An extension of the deadline, from 28 days to 42 days, for application for resumption of an investigation of a complaint in situations where mediation has failed
- Provision for investigations of complaints on the basis of written submissions only, where appropriate and where the parties do not object
- Provision for the Equality Tribunal to state a case to the High Court and thereby avoid further litigation by way of appeal
- Adjustment to the maximum amount which may be awarded by the Tribunal in Employment Equality cases to 2 years' remuneration or €40,000 whichever is the greater.

On 15 August 2011 the Minister for Jobs, Enterprise and Innovation, Mr Richard Bruton T.D. launched a consultation process on Reform of the State's Employment Rights and Industrial Relations Structures and Procedures. The Equality Tribunal consulted with staff at all levels and with the interests represented on the Tribunal's Consultative Forum. The Equality Tribunal submitted its response to the Minister for Jobs, Enterprise and Innovation on 16 September 2011. The Tribunal has participated

positively in the implementation process through the Director's membership of the Implementation Group and the secondment of staff to the Implementation Office.

The significant increase in productivity achieved in 2010 was maintained in 2011 in spite of a significant reduction in the staff resources available for mediation and investigation. Combined with a reduction in the number of new cases referred, the number of cases on hands at the end of 2011 was 16 per cent lower than at the end of 2010. The average time a case takes, from referral to closure, fell from 21 months in 2010 to less than 18 months in 2011.

Niall McCutcheon,

Director

April 2012.

Services of the Tribunal in 2011

Note: All statistical information contained in tables and charts in this chapter is given as grouped cases rather than individual claims. Each case therefore may have more than one complainant and/or respondent. Many cases have also involved a number of claims e.g. equal pay, dismissal, harassment.

Complaints throughput in 2011

Complaints	Employment Equality & Pensions	Equal Status	Total
On hand 31/12/2010	1450	192	1642
Referrals made in 2011	517	154	671
Complaints closed in 2011	788	152	940
On hand 31/12/2011	1179	194	1373

- 19% reduction in the number of Employment complaints on hand at the end of 2011 compared to 2010
- Overall reduction of 16% in the total number of complaints on hand at the end of 2011

Referrals to the Tribunal 2010 and 2011

Referrals	2010	2011	
Employment Equality & Pensions Acts	714	517	-28%
Equal Status Acts	107	154	+44%
Overall referrals	*821	671	-18%

*Note that approximately 100 fewer cases are now recorded by the Tribunal due to a consolidation of case files in early January 2011.

- Referrals decreased by 18%
- Almost 1,000 individuals made complaints to the Tribunal in 2011
- Four (4) complaints were made in 2011 under the Pensions Acts (2 in 2010)

Outcomes 2010 and 2011

Outcomes	2010	2011	
Employment Equality & Pensions Acts	783	788	+1%
• Decisions	266	267	+0.4%
• Mediated agreements	64	53	-17%

• Otherwise closed	453	468	+3%
Equal Status Acts	160	152	-5%
• Decisions	56	67	+17%
• Mediated agreements	28	16	-42%
• Otherwise closed	76	69	-9%
Overall outcomes	943	940	-0.3%

- 4% increase in Decisions
- 7 Decisions issued in 2011 for complaints referred under the Pensions Acts

Employment Equality

Grounds for referral (EE and Pensions) 2010 and 2011

Breakdown By Ground	2010	2011	
Age	59	42	-29%
Disability	118	88	-25%
Family Status	15	23	+53%
Gender	43	64	+49%
Marital Status	2	1	-50%
Race	259	137	-47%
Religion	1	1	0%
Sexual Orientation	3	1	-67%
Traveller Community	2	1	-50%
Multiple Grounds *	195	145	-26%
No Grounds Listed	17	14	-18%
Total	714	517	-28%

* Where a claim is made under more than one ground it is not counted in each of the grounds on which the claim is based but only in the "Multiple Grounds" category.

- Race continued to be the most frequently cited ground, although this category reduced sharply.
- 28% decrease in EE referrals
- 25% decrease in disability cases
- 49% increase in gender cases
- A total of 796 individuals referred employment complaints to the Tribunal in 2011

Outcomes (EE and Pensions) for 2010 and 2011

Employment Equality and Pensions Cases	2010	2011	
Decisions Issued	266	267	+0.4%
• For Complainant	67	54	
• For Respondent	193	208	
• Preliminary	6	0	
• No Jurisdiction	0	5	
Mediation agreements	64	53	-17%
Other outcomes	453	468	+3%
• Inadmissible	29	28	
• Out of time	26	15	
• Dismissal	53	47	
• Withdrawn	282	325	
• Not pursued	25	32	
• Closed at mediation	36	21	
• Otherwise closed	2	0	
Total	783	788	+1%

- Equality Officers found in favour of the complainant in approximately 20% of decisions.
- 53 Employment Equality cases reached agreement by the Mediation Service in 2011, and 22 further cases were closed at Mediation
- 7 Decisions issued in 2011 under the Pensions Acts.
- In 2011 the average time taken for a Decision to be issued from the date that a hearing was held was 60 days for an Employment complaint and 54 days for a Pensions complaint.

Awards and Directions

- Amounts totalling €883,498 (excluding equal pay and pay arrears etc.) were awarded in compensation where discrimination was found.
- The average award was €12,993 compared to €17,775 in 2010.
- Awards ranged from €500 to €54,500.
- In a number of cases Equality Officers used their power to direct action that would help to prevent future discrimination.

An overview of outcomes and redress in all decided cases can be found in the Tribunal's forthcoming Legal Review 2011.

Equal Status

Grounds for referral (ES) 2010 and 2011

Breakdown By Ground	2010	2011	
Age	3	6	+100%
Disability	25	36	+44%
Family Status	2	4	+100%
Gender	5	6	+20%
Marital Status	0	3	+300%
Race	24	26	+8%
Religion	0	4	+400%
Sexual Orientation	2	3	+50%
Traveller Community	22	31	+41%
Multiple Grounds*	22	32	+45%
No Grounds Listed	2	3	+50%
Total	107	154	+31%

**Where a claim is made under more than one ground it is not counted in each of the grounds on which the claim is based but only in the "Multiple Grounds" category.*

- 31% increase in referrals in 2011
- Disability, Traveller Community and Race were the most frequently cited grounds
- A total of 196 individuals referred complaints to the Tribunal in 2011

Outcomes (ES) for 2010 and 2011

Equal Status Cases	2010	2011	
Decisions Issued	56	67	+20%
• For Complainant	13	23	
• For Respondent	43	39	
• Preliminary	0	0	
• No Jurisdiction	0	5	

Mediation Agreements	28	16	-43%
Other outcomes	76	69	-9%
• Inadmissible	18	34	
• Out of time	15	7	
• Dismissal	5	4	
• Withdrawn	30	19	
• Not pursued	8	2	
• Closed at mediation	0	3	
Total	160	152	-5%

- Equality Officers found in favour of the complainant in approximately 34% of decisions.
- 16 Equal Status cases reached agreement by the Mediation Service in 2011
- In 2011 the average time taken for a Decision to be issued from the date that a hearing was held was 50 days for an Equal Status complaint

Awards and Directions

The maximum award under the Equal Status Acts is €6,349.

- Amounts totalling €83,242 were awarded in compensation where discrimination was found.
- The average award was €2,522 compared to €2,128 in 2010.
- Awards ranged from €400 to €6,349 per person.

In a number of cases Equality Officers used their power to direct action that would help to prevent future discrimination. **An overview of outcomes and redress in all decided cases will be found in the Tribunal's forthcoming Legal Review 2011.**

Mediation Service

Mediation Activity 2011

- 206 Mediation outcomes were recorded in 2011
- This represents 31% of the total referrals for 2011, which is an increase on the 27% which were recorded in 2010.

Mediation Outcomes for 2010 and 2011

Mediation Sessions	2010	2011	
Cases closed by way of Mediation agreements	92	69	-25%
• Employment Equality & Pensions Acts	64	53	
• Equal Status Acts	28	16	
Cases closed during Mediation process	35	26	-26%
• Employment Equality & Pensions Acts	35	22	
• Equal Status Acts	0	4	
Cases closed as a result of Mediation cases not proceeding to investigation	21	33	+57%
• Employment Equality & Pensions Acts	17	30	
• Equal Status Acts	4	3	
Cases not resolved at Mediation and returned to investigation	72	78	+8%
• Employment Equality & Pensions Acts	63	67	
• Equal Status Acts	9	11	
Total	220	206	-6%

- 38% of cases concluded with signed Mediation Agreements in 2011 (*33% overall).
- A further 13% were closed during the Mediation process.
- Additionally 16% of non-resolved claims were not pursued to investigation after the Mediation session.
- **Overall 62% of cases referred to Mediation were closed as a result of the Mediation process.**

* The Tribunal has in the past measured the agreement percentage as a direct comparison with all non-resolutions (38%). If the agreements are measured in terms of overall mediation outcomes the rate is 33%.

A detailed analysis of the operations of the Mediation Service will be found in the Tribunal's forthcoming Mediation Review 2011 which will also outline sample outcomes.

Support Services in 2011

Financial Management

The Equality Tribunal is funded by the Exchequer, through the Department of Justice, Equality and Law Reform. Expenditure totalling € 2.52m was incurred by the Tribunal during 2011. This comprised € 2.09m in respect of pay and €0.43m in respect of non-pay. As well as arranging its own tenders the Tribunal also availed of drawdown from our parent Department in such areas as training, office supplies and equipment. Expenditure is monitored constantly and is reviewed on a monthly basis by an internal Budget Committee, chaired by the Director.

For details see Appendix 1: Financial Report for 2011.

Customer Service

The Tribunal's Customer Service Charter outlines our commitment to providing a quality customer service, based on the principles of quality customer service for the Public Service and the Civil Service Code of Standards and Behaviour endorsed by the Government. The Tribunal considers that it met the commitments undertaken in the Customer Service Charter. The Tribunal continued to operate its complaints procedures. In 2011 there was one complaint to the Tribunal's Customer Services Manager under the formal complaints procedure.

Training and Development

The Equality Tribunal continued its training programme, designed to facilitate pooling the expertise and enhancing the quasi-judicial, analytical and legal skills of Equality Officers. During 2011 internal workshops were held on different aspects of equality law and on related areas of Irish and European Community law.

The Tribunal is very supportive of individuals seeking to gain relevant additional academic qualifications. In addition to pursuing or completing formal qualifications, Tribunal Equality Officers also pursued a continuing programme of in-house training.

Support staff underwent wide-ranging training to enable them deliver a professional administrative service to internal and external customers. With the range of enquiries

that the Tribunal deal with on a daily basis it is essential that support staff have a good general knowledge of the working of the Acts and are aware of the issues and concerns that encompass the equality area as well as having a professional approach to administration, communication and customer service matters. Training for support staff therefore includes an introduction to the legislation, Customer Service Skills, Communication Skills as well as necessary IT Skills, Health and Safety and Awareness Training.

Our parent Department continued to provide support to the Tribunal's staff in generic Civil Service training and development identified through the operation of PMDS.

Direct training expenditure alone amounted to €27,000 in 2011 which represents 1.3% of direct payroll costs. This excludes expenditure by our parent Department and generic civil service training.

Accessibility

In 2011 the Equality Tribunal continued to ensure optimum accessibility in the office premises at Clonmel Street, Dublin 2. The Tribunal's services are free of charge. Parties to a dispute do not need to be legally represented to avail of the services.

The Tribunal provides modern and accessible offices and meeting rooms that fully meet with occupational, health and safety standards. The Tribunal has a range of technology, which improves accessibility and assists in delivering quality service and facilities to our staff and customers, including documents in Braille and audio format, full wheelchair access and sign language and other language interpretation when sought, and hearing rooms which are air-conditioned and equipped with "deaftech" for hearing-impaired clients. For customers outside Dublin, during 2011 Equality Officers and Mediators travelled to hearings in numerous different locations to suit complainants and respondents. Due to budgetary restraints, the Tribunal consolidated its external hearings at a smaller number of locations.

The Tribunal maintains an accessible, informative and updated website at www.equalitytribunal.ie.

Publications

During 2011 the Tribunal published the following documents on its website–

- ✓ Annual Report 2010
- ✓ Legal Review 2010
- ✓ Mediation Review 2010

Copies of information leaflets are available in large print, Braille or audio tape on request and in Irish, French, Russian, Polish and Chinese at reception, by post and on the website.

All publications can be downloaded from the Tribunal's website

www.equalitytribunal.ie.

Communications

As required by the legislation, the Tribunal published all Decisions issued during the year, both in the media and on the website.

The Director, the Legal Advisor and the Heads of Unit made presentations on the functions and case law of the Tribunal to a number of organisations within Ireland and international forums during 2011 on the Tribunal's case law and functions.

Consultative Forum

The Consultative Forum comprises representatives from the Tribunal's prime customer groups. Its primary focus is to give interested parties a mechanism whereby their views can make a real contribution to the procedures for examining claims of unlawful discrimination. It provides a forum for discussion and resolution of issues relating to accessibility and customer service. It also provides valuable feedback on the operations of the Tribunal and the effectiveness of our customer service. The quasi-judicial functions of the office are excluded from discussion, due to the statutorily independent role of the Director and the Equality Officers. The Forum met on one occasions during 2011 and discussed a wide variety of topics including the

workload at the Tribunal, the Tribunals upgraded website and corporate video and the proposals of the Employers Rights/Industrial Relations Reform Group. The organisations represented at end 2011 on the Consultative Forum are listed in Appendix 3.

Website

In October 2011 the Tribunal launched its new and upgraded website as well as a corporate video which is available for viewing on the website. The Tribunal's website www.equalitytribunal.ie continues to be used as an important resource for both Tribunal staff and customers alike. The website contains information on employment equality, equal status and mediation procedures. Its information leaflets are available in English, Irish, Polish, Russian and French. The decision database contains all decisions of the Tribunal and the search function allows users to identify specific decisions under a variety of search criteria. The website also contains equality legislation. The Tribunal uploads decisions to the website on the third Monday of every month following issue of the decision to the parties.

Performance Management and Development System (PMDS)

Role profile forms and reviews of performance were completed for all staff as part of PMDS during the year. The system provides clarity of staff roles and responsibilities and the management of performance in a structured way. It also provides a valuable forum for identifying training requirements.

Appendix 1: Financial Report for 2011

	€
Pay:	2,086,000
Non-pay:	433,000
TOTAL	2,519,000

The main areas of non-pay expenditure were as follows:

	€
Accommodation	92,000
Communications & Promotion	15,000
Information Technology	92,000
Legal	81,000
Library	21,000
Office Equipment	18,000
Telephone & Postage	55,000
Training	27,000

Expenditure on casework which required hearings to be conducted in locations outside the Equality Tribunal's headquarters gave rise to expenditure of €16,000.

Energy usage and Recycling

In accordance with Government Decision S180/20/10/0269 on Energy Efficiency in Public Sector Buildings, the Equality Tribunal takes steps to reduce energy usage,

including participating in the ESB's Winter Demand Reduction Incentive and recycling arrangements for paper and glass, printer and copier toner cartridges.

Prompt payments

The Equality Tribunal continued to comply with the Prompt Payment of Accounts Act 1997 as amended by the European Communities (Late Payment in Commercial Transactions) Regulations 2002.

Appendix 2: Consultative Forum as at end 2011

Bar Council

Equality Authority

Incorporated Law Society

Irish Business and Employers' Confederation

Irish Congress of Trade Unions

Irish Insurance Federation

Irish Traveller Movement

National Gay and Lesbian Federation

National Women's Council of Ireland

People with Disabilities in Ireland Ltd

Appendix 3: Organisation Chart of the Equality Tribunal

(as at 31 December 2011)

Director Niall McCutcheon			
Employment Equality	Equal Status	PortLaoise	Legal Management/ Secretariat
Head of Employment Equality Deirdre Sweeney	Head of Equal Status Elaine Cassidy		Legal Advisor Sile Larkin *
Equality Officers Stephen Bonnländer * Vivian Jackson * Orla Jones Orlaith Mannion * Conor Stokes *	Equality Officers Tara Coogan * Marian Duffy * Gary O'Doherty *	Equality Officers James Kelly * Hugh Lonsdale * Enda Murphy * Valerie Murtagh *	Registrar Secretariat Manager Catherine Jestin * Brenda Ward *
		ICT Manager Martin Kehoe	Deputy Registrar/ Secretariat Unit Manager Marcus Maginnis
		Acting Office Manager Frank Bergin Executive Officer Mary Daly	Executive Officer Tony Mulhaire
		Support Officers Noel Kelly Stephen Laffan	Support Officers Damien Byrne Roisin Cahill Amanda Cullen Susan Fetton Liam O'Connell Legal Unit Support Officer Deirdre McCormack
		Services Officers John Fitzgerald Joe Pettigrew	

- * *These staff members have dual roles. Fourteen people also act as Equality Mediation Officers (mediators) and the Legal advisor also acts as Head of Secretariat.*

- ** *All Equality Officers investigate both Employment and Equal Status Cases.*