

The Equality Tribunal

Annual Report 2010

**Presented in accordance with section 75(8) of
the Employment Equality Acts 1998 to 2008
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 - 2008
- Equal Status Acts 2000 -2008
- 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

The Equality Tribunal's mandate is to decide, or to mediate, claims of unlawful discrimination. Both our decisions and our mediated agreements are legally binding.

In 2010 the staff of the Tribunal delivered a significant increase in productivity. 2010 marked a turning point in that the number of cases closed exceeded the number of new cases received. This means that the backlog of cases awaiting decision reduced. I wish to record my appreciation to all the staff for this major achievement.

There was a 13 per cent increase in the number of cases we closed in 2010 compared with 2009 from 840 to 942. This increase was in large part due to a more than doubling of the number of decisions issued in employment equality cases from 125 to 266.

In 2010, there was also a welcome increase of 8 per cent in the number of mediation agreements issued. We were pleased to send 27% of our case referrals to mediation, which is an increase on previous years. In 2011 and the years beyond, we hope to further increase the rate of referrals to mediation. Our experience is that mediation is a positive process for complainants and respondents alike and one which the parties enter voluntarily. Mediators can use their skills to help bring resolution to the issues in a creative and flexible way and this will usually achieve a better outcome for both parties. Mediation is also a considerably quicker and more economical way for the parties to resolve a dispute and it can bring finality to the matter by way of a confidential and legally binding agreement. Over the years, the Tribunal has invested in considerable training and skills development for its mediators and we encourage users to avail of this service.

This Annual Report is my first report to the Minister on the activities and resources of the Tribunal, having been appointed Director in May 2010. I wish to take this opportunity to pay tribute to my predecessor, Ms Melanie Pine who as first Director, set up and lead the Tribunal for 11 years. The achievements of the Tribunal in 2010

and in previous years are in large measure due to her leadership and inspiration. I wish her the very best in her retirement.

Niall McCutcheon,

Director

December 2010.

Services of the Tribunal in 2010

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. Many cases have also involved a number of issues e.g. equal pay and equal treatment.

Referrals to the Tribunal 2009 and 2010

| Referrals | 2009 | 2010 | |
|-------------------------------------|------------|-------------|-------------|
| Employment Equality & Pensions Acts | 780 | 714 | -8% |
| Equal Status Acts | 126 | 107 | -15% |
| Overall referrals | 906 | *821 | -10% |

*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 10%
- Overall more than 1,000 individuals made complaints to the Tribunal in 2010
- Two (2) complaints were made in 2010 under the Pensions Acts (16 in 2009)

Outcomes 2009 and 2010

| Outcomes | 2009 | 2010 | |
|--|------------|------------|-------------|
| Employment Equality & Pensions Acts | 581 | 783 | % |
| • Decisions | 125 | 266 | +113% |
| • Mediated agreements | 64 | 64 | 0% |
| • Otherwise closed | 392 | 453 | +16% |
| Equal Status Acts | 259 | 160 | -39% |
| • Decisions | 87 | 56 | -36% |
| • Mediated agreements | 20 | 28 | +40% |
| • Otherwise closed | 152 | 76 | -50% |
| Overall outcomes | 840 | 943 | +12% |

- 52% increase in Decisions
- 9% increase in Mediation Agreements
- Overall 12 % increase in closures
- 4 Decisions issued in 2010 for complaints referred under the Pensions Acts

Employment Equality

Grounds for referral (EE and Pensions) 2009 and 2010

| Breakdown By Ground | 2009 | 2010 | |
|---------------------|------------|------------|------------|
| Age | 41 | 59 | +44% |
| Disability | 117 | 118 | +1% |
| Family Status | 8 | 15 | +88% |
| Gender | 95 | 43 | -54% |
| Marital Status | 2 | 2 | 0% |
| Race | 289 | 259 | -10% |
| Religion | 0 | 1 | +100% |
| Sexual Orientation | 6 | 3 | -50% |
| Traveller Community | 2 | 2 | 0% |
| Multiple Grounds * | 209 | 195 | -7% |
| No Grounds Listed | 11 | 17 | +55% |
| Total | 780 | 714 | -8% |

* 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
- 8% decrease in referrals
- 44% increase in age cases
- 54% decrease in gender cases
- A total of 925 individuals referred employment complaints to the Tribunal in 2010

Outcomes (EE and Pensions) for 2009 and 2010

| Employment Equality and Pensions Cases | 2009 | 2010 | |
|--|------------|------------|--------------|
| Decisions Issued | 125 | 266 | +113% |
| • For Complainant | 41 | 67 | |

| | | | |
|-----------------------------|------------|------------|-------------|
| • For Respondent | 81 | 193 | |
| • Preliminary | 2 | 6 | |
| • No Jurisdiction | 1 | 0 | |
| Mediation agreements | 64 | 64 | 0% |
| Other outcomes | 392 | 453 | +17% |
| • Inadmissible | 25 | 29 | |
| • Out of time | 42 | 26 | |
| • Dismissal | 48 | 53 | |
| • Withdrawn | 214 | 282 | |
| • Not pursued | 26 | 25 | |
| • Closed at mediation | 30 | 36 | |
| • Otherwise closed | 7 | 2 | |
| Total | 581 | 783 | +35% |

- Equality Officers found in favour of the complainant in approximately 25% of decisions.
- 64 Employment Equality cases reached agreement by the Mediation Service in 2010, and 36 further cases were closed at Mediation
- 4 Decisions issued in 2010 under the Pensions Acts.

Awards and Directions

- Amounts totalling €1,084,300 (excluding equal pay and pay arrears etc.) were awarded in compensation where discrimination was found.
- The average award was €17,775 compared to €12,350 in 2009.
- Awards ranged from €500 to €100,000.

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 Legal Review 2010.**

Equal Status

Grounds for referral (ES) 2009 and 2010

| Breakdown By Ground | 2009 | 2010 | |
|---------------------|------------|------------|-------------|
| Age | 8 | 3 | -63% |
| Disability | 32 | 25 | -22% |
| Family Status | 1 | 2 | +100% |
| Gender | 5 | 5 | 0% |
| Marital Status | 1 | 0 | -100% |
| Race | 20 | 24 | +20% |
| Religion | 4 | 0 | -400% |
| Sexual Orientation | 0 | 2 | +200% |
| Traveller Community | 20 | 22 | +10% |
| Multiple Grounds* | 31 | 22 | -29% |
| No Grounds Listed | 4 | 2 | -50% |
| Total | 126 | 107 | -15% |

**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.*

- 15% decrease in referrals in 2010
- Disability and Race were the most frequently cited grounds
- A total of 129 individuals referred complaints to the Tribunal in 2010

Outcomes (ES) for 2009 and 2010

| Equal Status Cases | 2009 | 2010 | |
|-----------------------------|-----------|-----------|-------------|
| Decisions Issued | 87 | 56 | -36% |
| • For Complainant | 24 | 13 | |
| • For Respondent | 63 | 43 | |
| • Preliminary | 0 | 0 | |
| • No Jurisdiction | 0 | 0 | |
| Mediation Agreements | 20 | 28 | +40% |

| | | | |
|-----------------------|------------|------------|-------------|
| Other outcomes | 152 | 76 | |
| • Inadmissible | 17 | 18 | |
| • Out of time | 20 | 15 | |
| • Dismissal | 47 | 5 | |
| • Withdrawn | 33 | 30 | |
| • Not pursued | 29 | 8 | |
| • Otherwise closed | 0 | 0 | |
| • Closed at mediation | 6 | 0 | |
| Total | 259 | 160 | -38% |

- Equality Officers found in favour of the complainant in approximately 23% of decisions.
- 28 Equal Status cases reached agreement by the Mediation Service in 2010

Awards and Directions

The maximum award under the Equal Status Acts is €6,348.69.

- Amounts totalling €19,150 were awarded in compensation where discrimination was found.
- The average award was €2,128 compared to €2,198 in 200.
- Awards ranged from €400 to €5,000.

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 Legal Review 2010.**

Mediation Service

Mediation Referrals 2010

- 220 cases were assigned to mediators in 2010 (an increase of 10% over 2009)
- This represents 27% of the total referrals for 2010, which is an increase on the 22% which were mediated in 2009.

Mediation Outcomes for 2009 and 2010

| Mediation Sessions | 2009 | 2010 | |
|--|------------|------------|-------------|
| Cases Resolved at Mediation | 84 | 92 | +8% |
| • Employment Equality & Pensions Acts | 64 | 64 | |
| • Equal Status Acts | 20 | 28 | |
| Cases not resolved at Mediation | 79 | 93 | +18% |
| • Employment Equality & Pensions Acts | 59 | 80 | |
| • Equal Status Acts | 20 | 13 | |
| Cases not resolved but subsequently not proceeding to investigation | 13 | 21 | +62% |
| • Employment Equality & Pensions Acts | 13 | 17 | |
| • Equal Status Acts | 6 | 4 | |
| Cases closed/withdrawn | 36 | 35 | +3% |
| • Employment Equality & Pensions Acts | 30 | 35 | |
| • Equal Status Acts | 6 | 0 | |
| Total | 199 | 220 | +10% |

- 50% of cases were resolved in 2011
- Overall 67% of cases were closed during the Mediation referral.

A detailed analysis of the operations of the Mediation Service can be found in the Tribunal's Mediation Review 2010 which also outlines sample outcomes.

Support Services in 2010

Financial Management

The Equality Tribunal is funded by the Exchequer, through the Department of Justice, Equality and Law Reform. Expenditure totalling € 2.63m was incurred by the Tribunal during 2010. This comprised € 2.15m in respect of pay and €0.48m 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 2010.

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 2010 there were no complaints 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 2010 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. In-house, commissioned or specialist training was given to staff during 2010 in Quasi-Judicial Training, Mediation Training, Management Skills and Personal Development.

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 €45,000 in 2010 which represents 3% of direct payroll costs. This excludes expenditure by our parent Department and generic civil service training.

Accessibility

In 2010 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 2010 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 2010 the Tribunal published the following documents on its website–

- ✓ Annual Report 2009
- ✓ Legal Review 2009
- ✓ Mediation Review 2009

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 2010 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 2 occasions during 2010 and discussed a wide variety of topics including the workload at the Tribunal, review of procedures and the recommendations of the Report of the Special Group on Public Service Numbers and Expenditure Programmes. The organisations represented at end 2010 on the Consultative Forum are listed in Appendix 3.

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.

Output Statement

The Tribunal's Output Statement for 2010 outlined a target commitment which related to the implementation of the Tribunal's Strategy Statement 2008-2010:

- **Target Commitment for 2010**
A further increase of at least 10% in closures in discrimination cases
- **Identified impacts of the target for 2010**
Speedier resolution of cases and increased customer satisfaction

The Tribunal well exceeded this commitment with a 52% increase in Decisions issued and an overall 14% increase in closures.

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 2010

| | € |
|--------------|------------------|
| Pay: | 2,154,000 |
| Non-pay: | 475,000 |
| TOTAL | 2,629,000 |

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

| | € |
|----------------------------|--------|
| Accommodation | 95,000 |
| Communications & Promotion | 6,000 |
| Design & Printing | 21,000 |
| Information Technology | 15,000 |
| Legal | 75,000 |
| Library | 30,000 |
| Office Equipment | 3,500 |
| Telephone & Postage | 80,000 |
| Training | 45,000 |

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 2010

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 2010)

| | | | |
|---|--|--|---|
| Director Niall McCutcheon | | | |
| Employment Equality | Equal Status | PortLaoise | Legal Management/ Secretariat |
| Head of Employment Equality Deirdre Sweeney | Head of Equal Status Elaine Cassidy | Head of Portlaoise Unit Fiona Lafferty | Legal Advisor Sile Larkin * |
| Equality Officers Stephen Bonnländer * Vivian Jackson * Orla Jones Orlaith Mannion * Conor Stokes * | Equality Officers Tara Coogan * Marian Duffy * Brian O'Byrne * 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 Barry Quinn |
| | | Acting Office Manager Frank Bergin Executive Officer Mary Daly | Executive Officer Tony Mulhaire |
| | | Support Officers Noel Kelly Stephen Laffan Doireann O'Neill | Support Officers Damien Byrne Roisin Cahill Amanda Cullen Susan Fetton Finín Ó'Murchú 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.*