



Northern Ireland
Assembly

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

OFFICIAL REPORT (Hansard)

Equality Commission for Northern Ireland

19 November 2014

NORTHERN IRELAND ASSEMBLY

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

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Members present for all or part of the proceedings:

Mr Mike Nesbitt (Chairperson)
Mr Chris Lyttle (Deputy Chairperson)
Mr Alex Attwood
Ms Megan Fearon
Mrs Brenda Hale
Mr Alex Maskey
Ms Bronwyn McGahan
Mr Stephen Moutray
Mr Jimmy Spratt

Witnesses:

Mr Keith Brown	Equality Commission for Northern Ireland
Dr Evelyn Collins	Equality Commission for Northern Ireland
Mr Michael Wardlow	Equality Commission for Northern Ireland

The Chairperson (Mr Nesbitt): We welcome, from the Equality Commission, Michael Wardlow, the chief commissioner; Evelyn Collins, the chief executive; and Keith Brown, the head of corporate services. Thank you very much for making yourselves available at such short notice since the laying of the report. Michael, I offer you up to five minutes for your opening remarks.

Mr Michael Wardlow (Equality Commission for Northern Ireland): I am delighted with that and delighted to be here because it is a while since we were last here. We laid the accounts before the Assembly some time back, and I know that there has been some sort of delay in the annual report coming here. I think that everybody has copies of the report. Do they?

The Chairperson (Mr Nesbitt): They certainly had the facility to access it, yes.

Mr Wardlow: Brilliant. First, it is great to have this opportunity, and we would like to take the opportunity because we have some issues that we would like to raise as time goes on. I am happy to address whatever questions you may have as well.

I am two and a half years in. People ask me what the commission does, and, on one hand, there is always the issue that we promote equality of opportunity, but we also work towards elimination of discrimination. Being a creature of statute, we have particular responsibilities in relation to section 75 of the Northern Ireland Act as well as the whole range of equality duties. Like all bodies, we have strategic priorities, and those are to address key inequalities, extend equality practice in the

workplace, challenge discrimination and, internally, to look after the efficiency and effectiveness of the resources.

Some of the highlights for last year are that we worked towards encouraging action and providing policy input into some of the Executive strategies. You talked about the one on disability that is about to go for consultation. There was gender, disability, race and sexual orientation in the past year, and it has been great to get involved in that at an early stage.

We have also been involved, as part of our brief, in promoting reform of equality law. You probably know that we have now fallen behind the rest of the United Kingdom — Great Britain — on race and disability specifically, on age goods, facilities and services. We were with you last, I think, in April to talk about our concerns that, in this jurisdiction, we do not have the ability to have the legislation in place and so people still can be discriminated against on the grounds of their age. I know that you are looking at that.

We have also engaged with OFMDFM and the Community Relations Council (CRC). A year ago, Together: Building a United Community was launched. Under that, there was to be formation of a new equality and good relations commission, and we have been actively involved in that and look forward to the legislation when it comes through.

We also maintain oversight of the Fair Employment and Treatment (Northern Ireland) Order 1998 monitoring, and it takes up quite a big chunk, looking at the monitoring returns and working with the workforce. I will talk about that in a second. Our 2013-14 report is due to be published before Christmas. I am sure that a lot of you will be interested in that and keeping the track on that.

In the same vein, I had a quick look at some of the figures. Last year, as a direct result of us working with employers, there were 179 significant improvements in workplace practice. I know that it is a very specific figure but that is because of how we have to monitor it. That involved a significant input from and work with 88 employers. That came from 3,000-plus enquiries. There were 170 training events, and those reached almost 600 employing bodies and over 2,000 employees. That is a bit like when the swan swims in the water, the feet go underneath. A lot of this goes unknown unless you read it in our annual report. We have also done some brilliant work with DEL on science, technology, engineering and mathematics (STEM) and the STEM business group and on the big issue of the role of women and promoting women, particularly in the STEM industries and even in studying STEM subjects.

How do we address unlawful discrimination? Last year, we dealt with 3,300 enquiries. People phoned us up or contacted us through various sources, and it may interest you to know that 75% of those complaints were in our top three areas of discrimination. Last year, disability made up 41%. Next to that, gender was 24% and race was 13%. It may also interest you to know that about 11% was religion and politics, 9% was age and 2% was sexual orientation. We talk with those 3,300 and many of them get a resolution, or it is out of time or does not seem to be a discriminatory act, and about 330 come back to us. Of those 330, we offer support through our criteria and our assessment process to around 100. So, it is less than 10% of that 300. The 3,300 comes down to about 100.

Finally, you will see in the report that, despite the austerity we are all facing, we fulfilled 17 of our 19 objectives totally, and partly met another two. The bits that were not fulfilled are fulfilled in the current year, and one of those was research, for example. Looking in from the outside, as someone on the strategic governance side, there was a drop in grant aid of 10%. Despite that, Evelyn and her team were still able to deliver 17 of the 19 objectives and partly meet the other two. So, in governance terms, the commission has maintained very high levels of performance.

An audit and risk committee took place today just before we came here. When we look at the standards that are coming in from the internal and external auditor and the substantive level of authority and approvals that they pass on, it is my view that we are continuing to play that essential role in, on the one hand, promoting equality and, on the other, challenging discrimination, which I would argue is our core reason for being here. That is a very quick run-through, and I hope that we will be able to pick up some of those issues on the way through.

The Chairperson (Mr Nesbitt): Thank you, Michael. I want to ask you about a figure that you have not mentioned and one that you did. You mentioned 179 significant improvements in businesses.

Mr Wardlow: Evelyn will probably be able to fill that out. When we work with employers, maybe on a fair employment return or through a discrimination case, we engage with the employing bodies, and,

as a result, there were 179 cases where there has been substantive improvement in the workplace practice.

The Chairperson (Mr Nesbitt): Give us some examples of a substantive improvement.

Dr Evelyn Collins (Equality Commission for Northern Ireland): It could be where an employer has addressed a specific issue by, for example, perhaps introducing a sexual harassment policy and making sure that it is effective, or has changed the way in which it is addressing disability access for employees as a result of advice that they have taken from us. It could be having introduced changes to the way it does recruitment and selection to ensure that it is fully complying with equality law and so on. It is very concrete, practical things.

Mr Wardlow: And flexible working arrangements.

The Chairperson (Mr Nesbitt): Those would not necessarily arise because there had been a complaint, would they?

Dr Collins: No, not at all. Some do but some arise more generally.

Mr Wardlow: Of the 179, how many will have arisen because of a specific complaint?

Dr Collins: I will have to check that and come back to you.

Mr Wardlow: In the last year, 61 cases went through the process of our legal support. Not all of those would have had it. I do not imagine that, by any means, the majority of those would be because an action has been taken. They are more likely because of that ongoing engagement that we have.

Dr Collins: We have a very specific role when we settle cases. The majority of cases in which we assist individuals are settled out of court, and we seek to make sure that we make good use of public money by ensuring that some of the terms of those settlements include a commitment to work with us and to make changes to policies and practices. We have a very discrete piece of work on that. The changes and the volume of the work that we do directly with individual employers, either through training sessions, individual advice or, indeed, through networks that we run, actually leads to concrete changes in their workplace practices and service provision.

The Chairperson (Mr Nesbitt): I appreciate that. I am interested in how many of the 179 were because of a complaint. There is another set of numbers on section 75 complaints in the report. It says:

"During 2013/14, a total of 34 individuals contacted the Commission with queries regarding the obligations of public authorities under Section 75".

Of that number, only eight written complaints were initiated, and none of those eight were authorised for investigation. It goes on to say:

"During 2013/14 two investigations, arising from complaints in 2012/13, were completed; a breach of scheme was not established in either."

What does that tell us about section 75 and people's understanding of their rights under it?

Mr Wardlow: Let me pick up on the strategy, and Evelyn can pick up how that runs out. I sit on the statutory duty investigations committee, and we have duties whereby people can come to us when they think that there has been a breach or we can investigate it ourselves. We have those powers at paragraphs 10 and 11. When things come to us, people sometimes think that we have the magic bullets, and they think that there is a breach of equality, almost prima facie. But, when we interrogate and look at it, there is not. Things are sometimes unjust but they do not necessarily breach equality duties. There is a bit about people's understanding. You are absolutely right. The duties we have and the evidence on which we have to base our opinion are very strict. As a public body, we are open to judicial review. We need to be clear that, when we take those, we are very robust in that, and that is why the high level tends to result in few. Is there anything that you want to add on the practical detail level, Evelyn?

Dr Collins: When people raise complaints with us that an equality scheme in a public authority may have been breached, we give them advice because there are requirements in the legislation that they have to raise that with the public authority first; have to give the public authority a reasonable opportunity to respond; and the action has to have taken place in the last 12 months. There are criteria set out in the legislation. Some of those 34 will fall outside them. Some will contact the public authority and have their situation resolved by that contact after advice from us.

For the ones that came back to us and which we did not pursue, that will be because we did not think that an investigation would resolve the situation for them.

The Chairperson (Mr Nesbitt): When was the last time that you pursued a public authority under section 75?

Dr Collins: Under paragraph 11, which is our own-initiative investigations, we are in the course of one at the moment that is looking at whether the Department for Social Development has breached its scheme in respect of its approach to and development of its housing strategy.

We completed one and published it in April that was about Newry and Mourne District Council's naming of a play park. Again, that was our own initiative.

We completed one earlier in this financial year, which is the one referred to in the report as "ongoing". It is against the University of Ulster in the application of its duties in respect of restructuring. In that instance, we found that its scheme had not been breached. So, we have done a number of own-initiative investigations.

The Chairperson (Mr Nesbitt): Outside of own-initiative, when was the last time that a public servant or a member of the public came forward with one that you pursued?

Mr Wardlow: The one that was the year before, which was the University of Ulster one.

Dr Collins: No, that is a paragraph 11 one.

Mr Wardlow: Sorry, I misheard

Dr Collins: It was the year before, and we can provide you with details if that would be helpful.

The Chairperson (Mr Nesbitt): So, it was in 2011-12.

Dr Collins: No, 2012-13. We can let you have details of that.

The Chairperson (Mr Nesbitt): On page 15, under a heading of influencing key equality strategies and the Programme for Government, you indicate that:

"the commission is undertaking its own rolling review of policy positions, consolidating and updating where necessary."

Can you give some more detail about that, particularly about what you have changed in this rolling review?

Mr Wardlow: In 2007, before I was in the commission, we issued a list that identified what we believed were the key inequalities. We have been looking at and reviewing that with a view to updating it and providing some research. Evelyn, do you want to pick up the detail of where we sit with that at the minute?

Dr Collins: There are two separate things. One is updating the evidence base for our statement on key inequalities across a range of things. On the key equality strategies, we obviously looked at the Programme for Government. We have been feeding in and publishing policy positions, directing OFMDFM and other public authorities and Government Departments to where we think that the focus

should be on the key areas. On race, for example, we published our race equality policy priorities at the end of last year. We understand that that fed into OFMDFM's consideration of the strategy. It issued for consultation, and we then made our response to the consultation.

Similarly, on sexual orientation, we developed policy positions this time last year that informed both our response to OFMDFM's consultation and other responses. We have been monitoring very closely what OFMDFM and other Departments have been doing with the disability strategy. We have worked on the gender equality revision to the strategy. Our aim is to try to find evidence-based information and policy positions that feed into the public policy development process and enable priority to be given to areas where we think that priority needs to be given.

Mr Wardlow: I was simply linking across to item 1 on the opposite page. The two things are a bit tight because, on the one hand, we have addressed inequalities that we are rolling through, and, on the other, we are looking at the ongoing work on the Programme for Government.

The Chairperson (Mr Nesbitt): I would like to come back to some of those policy areas in a moment, but I know that Alex Maskey is under time pressure.

Mr Maskey: Thank you, Chair. Thank you for your presentation. You mentioned a figure of 3,000-plus, which could be narrowed down to about 10% or a bit under. How does that figure compare year on year? Is that a low point or a high point?

Mr Wardlow: I have been in the Commission for two-and-a-half years, and, in my experience, it remains roughly between 3,000 and 4,000. That seems to be where we are. It does not move very much from the top three. Disability is higher this year than it has been. It was around 37% or 38%, and it has gone up to 41%. Race and gender tend to move around within percentiles. The top three making up 75% of the total does not change very much either. When you bring it down, it tends to be about 10% of that top line figure and a third of whatever that 10% is. It seems to follow that way. We do not have a policy that says that that is what it is. We are not led that way. We are led by what we are charged to do with the criteria that is published. There has been no huge increase.

Mr Maskey: Thank you for that, Michael. You say that the disability figures have gone up. They appear to have been higher anyway. Has there been any analysis of that? Is that just because there is a greater awareness of people's rights? It is saying that the situation for people with disabilities is deteriorating. I do not know. I am just interested to hear if any analysis has been done. Maybe it is too early.

Dr Collins: There is a range of reasons why the disability figures are particularly high. One is that it is rather newer than fair employment legislation, sex discrimination legislation and other areas and there is still scope for case law to be established and so on. One of the other reasons is that disability itself is a very wide ground. You go from mental health disabilities through to a wide range of physical disabilities. The scope for employers or service providers not to understand their responsibilities and discriminate is quite wide. So, that is a second factor.

When you look at our awareness survey, you will see that people generally find it difficult to deal with mental health issues. That also comes through in our case work. Disability discrimination is a complex area of law and practice in employment and service provision, and that is showing in the high numbers.

Mr Wardlow: I will add two things. One is that when, as Evelyn said, law is new and embedding, people have an awareness of it; "Oh, I have that protection." The second thing, which Evelyn probably undersells, is that the commission staff have a huge link and relationship with the disability sector, if I could call it that. There is a huge amount of respect for the commission, and a lot of awareness raising has been done. The age sector is hugely influential, and remember that we also have an Older People's Commissioner. All this is working with the age element of disability.

Another thing is that, strangely, in our awareness or attitudes survey actually, 37% of people who were asked said that they would not like someone with mental ill health as an in-law. That was the same as the level for the lesbian, gay, bisexual and transgender (LGBT) community, and just under that for Travellers. So, something is going on with the persona and how people approach disability out there. According to the figures, one in four of us will suffer from mental ill health at some time in our life.

We are adamant that this is not about saying, "Let us go and find the bad people." It is about trying to get in early and say, for example, "How do we look at how you deal with sickness?" We find that work-related disability discrimination is very high. That is about reasonable adjustments, how people are dealt with in the workplace, flexible working, and understanding health and sickness requirements.

Another issue is special educational needs, where we have actually very few cases coming forward and would like more cases. We have limited powers under the special educational element. That is one area of disability that we actually do not have as many as we would like.

Mr Maskey: I thought that all in-laws were categorised — *[Laughter.]*

The Chairperson (Mr Nesbitt): Steady.

Mr Maskey: — with me being an in law.

Ms McGahan: I want to put a bit of focus on something that is a wee bit more topical: the temporary closure of community hospitals; for example, the A&E in Armagh. I do not need to go into the detail of that. What is your assessment of the fact that no screening processes or section 75 assessments have been carried out on those decisions?

Dr Collins: We have not done a formal assessment. Our advice to public authorities would be that, when they are taking policy decisions, they should be screening them for impact and then undertaking equality impact assessments to look at the policy impact there has been centrally and locally, as obviously there can be local issues as well.

Mr Wardlow: The other thing, Bronwyn, is that there is a bit of confusion about what constitutes a policy. I have discovered that in the last two years. Sometimes when you engage with public authorities, they say, "No, this is a strategy, and you cannot actually do an equality impact assessment (EQIA) on a strategy, because it is so vague. It then has to work its way down. It is only when you know the outcomes that you can assess that." Whatever you call a strategy, we are arguing that if it has an impact on people, you should be looking at the equality impact at the earliest possible stage. Whether you call it a strategy is irrelevant. Sometimes, we hear public bodies saying as a defence, "This is a strategy. We will come back to you when it becomes a policy." We are saying, "No, let us not worry about what we call it. At the core, the DNA of your decision-making should be, "Does this have an impact on protected groups?" In one sense, I am surprised that you raised that issue, because, obviously, we would absolutely be interested in the outworking of it.

Ms McGahan: For me, it is an inequality. Setting aside strategies, it is a decision so it is a policy.

Mr Wardlow: Absolutely.

Ms McGahan: My understanding is that no screening impact assessments have been carried out, and I would like to know if that is a breach.

Dr Collins: We will certainly look at that.

Mr Wardlow: Just so the Committee is clear, screening is a prior process, and you can screen in or out. So, sometimes it could be screened, but the screening says that it is not necessary to do so. Some people get really irritated and say, "How can you say that?" So, we are including both. I understand what you are saying.

Ms McGahan: To the best of my knowledge, there has not even been a screening process. Could you write to the Committee to update us?

Dr Collins: We will look into that and see what is going on.

Mr Wardlow: Absolutely.

Ms McGahan: Also, I would like an assessment of a scenario where a decision is made to close beds on a temporary basis without due consideration being given to the responses to a consultation that has taken place. Is there a breach of our equality duties there?

Mr Wardlow: I will undertake to look at that. It is important to note that consultations are not plebiscites: they are a tool in the toolbox. A consultation does need to be taken into consideration.

Ms McGahan: I am crystal clear that a section 75 assessment was carried out regarding one of the decisions announced recently. The decision was announced just as the consultation closed. Therefore, no due regard was taken of the submissions to that consultation, including one by the Commissioner for Older People. What is your assessment of that?

Dr Collins: We will look at that. It is absolutely clear that a public authority has to pay due regard to the need to promote equality of opportunity and regard to the desirability of promoting good relations. There are measures in place to make sure that they do that. The measure for investigation is around whether schemes have been breached. We will certainly look at that.

Mr Wardlow: Again, if that happens outside this Committee, please contact us. If some of your colleagues have similar concerns, please get in touch with us, because that is part of our advice service.

The Chairperson (Mr Nesbitt): I am interested in what Michael was saying about the strategy level. It is intangible and you cannot really get the engagement you are looking for with officials because you are, after all, a statutory body, and, in your own words, your statutory framework enables you to do a number of things, including influence policymakers. So, I would like to take a look at that, Michael.

Taking race as an example, as you have said, you refined your position paper, 'Race Equality Policy: Priorities and Recommendations.' You are saying, amongst other things, that you see that as being important in the consultation by OFMDFM on its revised racial equality strategy. Your paper has explicit policy areas as a focus for work:

"law reform; tackling hate crime; prejudicial attitudes and institutional racism; improving education for Travellers, BME and Newcomer communities; maximising employment opportunities; access to housing, Healthcare and Benefits."

There are seven categories. If the revised racial equality strategy does not cover all seven, would you consider that OFMDFM strategy to be deficient?

Mr Wardlow: I will ask Evelyn to deal with the detail of that, but before I do so I want to clarify something. I was not saying that we do not get the engagement with the officials: when we talk to officials or the civil servants involved, very often the dialogue is, "This is a strategy. We'll talk to you about what we're doing, but it's difficult or impossible to carry out an EQIA in the way you are asking us to." So, it is not that they are unwilling —

The Chairperson (Mr Nesbitt): It is not the engagement you are looking for at that point in the process.

Mr Wardlow: No. We would like the earliest possible consideration of that.

The Chairperson (Mr Nesbitt): Let me clarify: you get engagement, but it is not to your satisfaction when —

Mr Wardlow: We would like it as early as possible and as deep as possible. Evelyn, do you want to pick up on the position paper?

Dr Collins: I am pleased that you are familiar with the areas of policy that we have recommended be taken into account. We would be concerned if the broad areas that you have highlighted, which are in our submission, were not taken seriously and covered by policymakers generally, including OFMDFM. Those are the areas where there are real issues for people from black and minority ethnic backgrounds, and they need to be addressed. We have seen, time without number over the recent period, real difficulties with hate crime and prejudicial attitudes that absolutely need to be addressed. It is not just about addressing inequalities; it is about addressing the reputation of Northern Ireland and its future economic prospects. There is a range of reasons why the race equality strategy in particular as well as the other strategies need to be the best they can be to address those issues in the Northern Ireland context.

The Chairperson (Mr Nesbitt): You identify seven explicit policy areas for race. If, when the OFMDFM revision comes out, it has five or six of the seven, what are we to think?

Dr Collins: It depends. You could speculate away. If six are done really well and the Department says, "We will do number 7 next year" —

The Chairperson (Mr Nesbitt): Let us say that it does not mention number 7. This is your best analysis of the issues that need to be addressed. If all seven are included, you are in perfect harmony. If the Department come out with eight or nine, we might come back and say, "Where were you? Why didn't you see eight and nine?". On the other hand, if the Department does only four, do we say to it, "Why aren't you listening to the Equality Commission?".

Dr Collins: That would be great.

Mr Wardlow: If you are asking whether we have a silver bullet to go back and say, "Do this", the answer is no.

The Chairperson (Mr Nesbitt): It is about the quality of what you are saying, the influence you have and how you measure it.

Mr Wardlow: Absolutely. In a lot of cases, we have a level of engagement where people get it. You know the moment when someone gets it, because you can see it in their eyes. Not only do they get it but they start to advocate it. At a time of austerity, we all realise that people are looking at competing priorities. We are saying that this is a priority because of the rise in race hate and the growth of the incoming communities. Pete Shirlow spoke about this a few weeks ago, and, when you hear people ringing in saying, "I don't care what your stats say; I believe otherwise", you realise that there is a huge job of work to be done.

We are saying, "This is our best guess, based on the evidence that we have, that would make the best and most robust policy". I would love all seven to be in. If they are not there and you are able as a Committee to advocate on our behalf and invite us back, we would be delighted to come back. Six out of seven would be great. We have had good engagement on a number of these strategies, but it would be idealistic to think that everything that we ask for will be included, much as we would like it to be.

Our role is to make sure that we show people that we are advocating on their behalf for equality protections. We believe that that is the gold standard model.

The Chairperson (Mr Nesbitt): I am not sure I get why six out of seven would be great, Michael. I assume that you have done an honest analysis and that all seven are critical in that analysis.

Mr Wardlow: Absolutely. You talked about scenarios where number 7 is not mentioned or will be done next year, and that is a difficulty. I want all seven, but if six are there, are you saying that we can do something about it? We cannot. However, you can say that the Equality Commission has given you advice based on evidence. It is not done on a whim: we monitor Europe, we monitor locally, we listen to the stakeholders and we say, "This is what we believe you need". Anything less than that would, in our view, be deficient.

The Chairperson (Mr Nesbitt): In your view, the Department could take that document and say, "This is effectively the strategy".

Mr Wardlow: Certainly, the core components of it could be.

The Chairperson (Mr Nesbitt): You could say, "Put this into your own words, but these are the building blocks".

Mr Wardlow: On the evidence that we have and the expertise of the people we talk to, absolutely.

The Chairperson (Mr Nesbitt): OK. I appreciate that. I want to ask a wee bit about the internals and the budgets, but I invite Jimmy Spratt and Stephen Moutray to ask questions.

Mr Spratt: Thank you, Chair, and I thank the witnesses for the presentation. I will turn the spotlight back a bit on your organisation and your accounts.

You are an organisation that still has a serious religious imbalance, and you have totally failed to do anything about it. You have pathetically failed to do anything about it for years. For years, you have come to this table and made excuses, and I suspect that we will hear another excuse today.

You get a huge chunk of money — £6.2 million — from the public purse. You know that there is a debate about whether you spend that money as best you can, and that debate is pretty unified on one current high-profile case. About £4.5 million goes on your staff. We know how much the three of you earn. It is clear from the document that you are pretty well paid. You have 116 staff, which seems to be quite a high number. Can you give us a breakdown of the salary levels for each staffing area? I am not asking you to breach data protection, and I know that you would not do that. I am particularly interested that you tell the Committee about this. You have a legal department with a legal head who gives advice and all of the rest of it. Can you tell me how many lawyers are in that group and how much they are paid? How many staff are in the legal department? I notice a figure of another £350,000 for legal fees. I suspect that that goes out to barristers and all the rest of it outside your organisation. Perhaps you will clarify that for us today. I will stop there at the minute, Chair, and I follow up shortly with other questions.

Mr Wardlow: The questions are about the staff complement and the bandings of the staff, which are analogous to those in the Civil Service. Keith, will you say what you can?

Mr Spratt: The first issue was your religious imbalance, which you have pathetically failed to deal with. You discriminated against Protestants.

Mr Wardlow: I do not accept that we discriminate against Protestants.

Mr Spratt: You have done it for decades.

Mr Wardlow: I would like it on record that it is a fairly strong accusation that we discriminate against Protestants.

The Chairperson (Mr Nesbitt): This session is being recorded for Hansard.

Mr Wardlow: If there is evidence to that effect, I would like to see it.

Mr Spratt: You have failed to do anything about it, Mr Wardlow. Perhaps you could answer that.

Mr Wardlow: Our stats at the moment show that our staff are 36% Protestant, 63% Catholic and 1% undesignated. That is better than it was at the top of the year, which is because we are shedding staff and not growing. The last time we were here we said that we would do the things that lie within our control on affirmative action, promotion of jobs and setting aside the normal requirements in not being able to do religion-specific training. At the minute, in an organisation that is shedding staff rather than recruiting, we are dealing with, if you like, the residual component of the staff. Keith has the actual figures, which are 36%, 63% and 1%.

Mr Spratt: That is 0.1% better.

Mr Wardlow: It may be, yes, but it is not worse.

Mr Spratt: But it is not better, really, is it?

Mr Wardlow: When you are shedding staff rather than —

Mr Spratt: I suppose if you want to make a defence, it is better.

Mr Wardlow: No; I am stating a fact, not defending anything. I am simply saying that we do not discriminate against Protestants. We have not been actively recruiting. In fact, we have been cutting staff, and as a result of doing that, we now have a 1% improvement.

Mr Spratt: How many staff have you cut?

Mr Wardlow: Keith has the actual figures. We can give them to you now.

Mr Keith Brown (Equality Commission for Northern Ireland): Over the past five years, four people have joined the commission and 28 have left. The budget on staff over that period was about £5.4 million. It is now, as you say, £4.5 million. We had the highest staffing level from around 2009 to 2011, when we had 138 full-time equivalent staff. We are now down from 116 last year to 110 at the end of the annual report period, and I think we will be down to 102 full-time equivalent staff by the end of this year.

The commission is in the same position as other public bodies, but over the period of the last comprehensive spending review we have seen about a 10% reduction in budget. That equates to about a 24% reduction in staffing. In the context of trying to promote equality of opportunity, the fact that the commission has actually stayed still, and, in the year in question, has actually slightly increased, the Protestant composition is no mean achievement. That being said, there has been very little scope for change at all. If you look at the figures that Michael gave, you will see that we try to compare the rough catchment area with what we would expect. I think our advisory staff, or compliance staff, would ask where they would be if they had that window of equality that they would expect from another employer. It is certainly the case that the figures we have set for ourselves say that we should be between 45% to 50% Protestant, all things being equal. As Michael said, if you take out the other figures, we sit at 34%, so there is no doubt that we are below where we would like to be.

Mr Spratt: Keith, I accept what you say to a degree. I think that you told us that about 16 or 20 folk have left. What is their religious profile?

Mr Brown: Basically, it stands still. Four new people have joined the organisations: two Catholics and two Protestants. We have stayed more or less where we were.

Mr Spratt: That was not my question: I am asking about the ones who left.

Mr Brown: All I can say is that the figures that I have got for last year show that three Protestants and six Catholics left and that we stayed roughly where we were. I can get the figures and send them to you through the Chairman. It means that people are leaving roughly in the proportions that they are in the workforce, so the level is being maintained.

Mr Spratt: You are from corporate services, but I will ask you questions about Eileen Lavery's department. Can you give us a breakdown of the lawyers, solicitors and all the rest of it who work in that department?

Mr Brown: You are basically asking for the numbers. Again, these are not full-time equivalent figures, but, roughly —

Mr Spratt: I am looking for the numbers and the grades, Chair. If the witnesses cannot tell us today, they need to send that information to us.

Mr Brown: I am happy to do that. I can certainly give you the full details. The grades are the same as those in the Civil Service, so there is one principal officer —

Mr Spratt: That is not a question I am asking you, Keith; I do not want anything about the Civil Service grades.

The Chairperson (Mr Nesbitt): Keith, can you write to us with the bands and the numbers per band? Is that basically it, Jimmy?

Mr Spratt: And the salary scales of those bands.

Mr Wardlow: Yes, absolutely.

Mr Spratt: Can you tell us how many lawyers there are in your organisation at the legal services end?

Mr Brown: Technically speaking, it is not an essential requirement of most of the posts that the post holders be legally qualified. In effect, most of the staff are legally qualified.

Mr Spratt: Do you have any legally qualified people?

Mr Brown: All the staff who deal with the discrimination cases are legally qualified. Some are solicitors, and some have been barristers.

Mr Spratt: You told me a minute ago that you did not have any.

Mr Brown: It is not a requirement in the job description that they have to be, but, de facto, all of them are. The head of legal and the two senior legal officers, who are at deputy principal (DP) grade and who look after discrimination cases, have to be legally qualified. They do not have to be practising solicitors.

Mr Spratt: Right. Explain to us why you need to bring in outside legal people when you try to take people to court and spend £350,000 on that? Michael, you are nodding your head as though those are stupid questions.

Mr Wardlow: No, I am not. I am trying —

Mr Spratt: They are not stupid questions. They are questions that I want answers to.

Dr Collins: I will come in, because this is an important point. Most of the work that we do on legal cases is done in-house. The normal work that an external solicitor would do is done by our staff. Michael talked about the numbers, saying that there are over 3,300-odd applications for assistance. Our staff do the preliminary and introductory work on those individual complaints. If a case is to be heard in a tribunal or the County Court, we will use barristers to do the advocacy work. The money for legal fees, which you identified in the annual report, also pays for legal opinions, whereby through the approval process of legal funding, we get external barristers to give opinions on particular points in cases. So, it is a pot of money that we use for legal opinion and representation.

The majority of work on the 300-odd cases that come seeking assistance from us, and the third of those that we might support in any one year either to settlement or hearing, are done by our in-house people. We adopted that model early in the Equality Commission's life. We did a cost-benefit analysis of whether all our work should be done out-house or whether it was cheaper to do the preliminary and internal work in-house. It was calculated that it was cheaper to do it in-house.

Mr Wardlow: You said that I was nodding my head. The reason why was that I was confused by the question. You asked about the lawyers and barristers. We do a substantive amount of that work in-house. I was trying to get clarity on the stuff that you said we do outside. This pot of money is allocated through our legal funding committee. So that you know, it might be useful if I explain very simply what that process is. At our strategic level, part of the work is to challenge discrimination. Under that, we have the ability to fund legal cases. The criteria by which we accept those are printed on the website. Normally what happens is that the 3,500 that come to us and the 300 that come back have the legal and admin support of our staff. We then take forward, perhaps as legal cases, the 90 or 100 that return. For example, 61 of those cases were settled in the last year, and 50 of those were settled without redress to tribunal or court. Our lawyers and barristers will have been very much engaged with that.

It happens only when necessary. If it comes to the legal committee and we think that it may be a case that raises issues that we feel are important, we would then take advice of counsel. That is step one. It then goes out of house. If it goes beyond that to, for example, the County Court or beyond that again, there is an additional amount of legal fees. Each of those is taken as a staged approach. It is not as though there is a pot of money allocated to each case. So it goes through stage 1, stage 2 and on until or if it ends up in the tribunal or courts. That is why that amount of money is used to outsource. We went through the process to find that, rather than doing it all outside, that gave a cost benefit.

Mr Spratt: Maybe you could give us some more clarity on the money that you talked about. Is it the same amount of money each year? Does it vary? Can you tell us how much money you have used or

how many times you have used money from the public purse to test a point of law? In other words, how many times have you used it to get a court opinion, which you can do at any stage?

It seems grossly unfair that you are funding one side of the ongoing high-profile case and not the other. The public are not on your side on this issue, and the Churches are not on your side. Nobody is on your side. Tell us what that pot of money is and whether you have it on a yearly basis. Most of your £4.5 million budget is gone, so you are left with £1 million-odd. You have all the odds and bods of everything else to pay for, which you cannot really identify. The identifiable figure is about £350,000, Evelyn. Is that the figure each year? Once you get to a ceiling on that, is that you stuck so that you cannot move any further? How many legal opinions have you paid for in each of the last five years?

Dr Collins: I do not have that figure for you, but I can certainly look —

Mr Spratt: Certainly, that is another one that I would expect you to send to us.

Dr Collins: Programme expenditure has broadly been over £300,000 in the last few years.

Mr Spratt: It seems a bit strange that it is £300,000 every year.

Dr Collins: When we get our allocation notified by OFMDFM on an annual basis, which, as you rightly said is £6.2 million this year, there are commitments such as salaries budget, heat, rent and lighting to consider. About 10% of the overall costs are variable, and we divide that between programme spend, legal fees, promotional work, research and so on. Each year, the commissioners look from our corporate plan to the business plan to see where they want to prioritise the resources that are available to the commission. That is how that figure comes about.

Mr Spratt: Does that mean that you adopt only a certain number of cases or take a certain amount of stuff on and are maybe going to have to test —

Dr Collins: There are criteria that the legal funding commissioners use when they are looking at what cases they want to support. There are two ways of doing it. I am sure that Michael will want to come back in on some of the points that you raised as well. Each piece of anti-discrimination legislation has statutory criteria specified in it. For example, we are empowered to provide assistance to complainants where it raises a question of principle, where it would be unreasonable for the complainant to take the case unaided or for any other reason. In addition, we have agreed — this is very transparent, and it is in our policy for the provision of legal advice and assistance — a range of discretionary criteria. One of those is clarifying the law, but there are others.

Mr Spratt: Let us just look at the matter of principle for a second or two. I am sorry, Chair, but I think that some of this stuff has to be teased out. Can you clarify the matter of principle? Christians have principles: can you tell me how, in the present light, you are defending that or assisting people with Christian convictions?

Mr Wardlow: Chair, if I may, let me bring this back to what we actually do, because I am hearing the presumption that we are protecting one group against another. If people come believing that they have been subject to a discriminatory act, one of the commission's roles is to go through an assessment process to see whether the act was discriminatory. We check whether it is eligible for our legal funding through the criteria, and if it meets those criteria, it goes to a legal funding committee. When the legal funding committee meets it looks at the things that Evelyn mentioned and asks whether the matter raises an issue. However, I will not rehearse any of that.

Again, our policy is not to talk about the details of a case when a legal process is ongoing, so in general terms, whoever comes and from whatever background they come, if we believe that they have been affected by a discriminatory act and that we should support the case, we will take the legal opinion first of all. The legal opinion, which you talked about, will come back and say, "Yes, we believe that this is a strong case", or whatever. That is how we test it.

In the context of protecting people's rights, we have supported, for example, Christians who have come to us about Sunday observance. There is a lot of stuff going around in the press at the minute saying that we do not support Christians. I have been speaking publicly at a number of large Christian events in the last three weeks, and at each of them I have said that, if any people of faith have

experienced a discriminatory act, they should talk to us. There is somehow the idea that we go looking for things. In fact, we support individuals, and in this case there is an individual that we are supporting. It is not as though we are saying that one person's rights are more important than another's. We do not decide on what is discrimination. That is role of the courts or the tribunal. Therefore, if Christians or any people of faith feel that they have been discriminated against, absolutely, the doors are open, and we are on the record as having supported people. The most recent cases were on Sunday observance in a care home.

Mr Spratt: I will park it there.

The Chairperson (Mr Nesbitt): Can I just add to the point, if you do not mind?

Mr Spratt: Go ahead.

The Chairperson (Mr Nesbitt): Just on a matter of clarification, again going back to how you interpret your statutory duties, you say that the statutory framework entitles you to:

"use a combination of our powers to encourage and to enforce changes to policy, practices and procedures".

Does the case that Jimmy referred to fall under that category?

Mr Wardlaw: No, that is an area of our work that is challenging discrimination. Evelyn talked about changing policy. The court may decide one way or the other in this case, and as a result, the legislature may need to say that the law needs changed or not. Our role is not to bring cases to change law. That is not what it is about. We are currently supporting an individual who believes that they have been discriminated against. The court will decide whether it is a discriminatory act.

The Chairperson (Mr Nesbitt): Right. But you could see how people might look at that and say that you are trying to encourage and enforce a change in practice, in this instance because you believe that that is the right thing to do.

Mr Wardlaw: Let me just finish on one thing, then I will pass over. The difficulty is that the nature of our public body and our policy is that I have about 75 cases ongoing at the minute. You probably do not know any except one. That is because our policy is that, until and when a settlement is reached, we do not go public, for all sorts of reasons. In fact, in some cases, because of the nature of the fragility of the individual, we never publicise them. So, in this particular case it has gone public and has not been through what we said. That being the case, there are things that I would like to say in the public domain about what is happening at the minute. This is a great opportunity to put on record the actual situation that we find ourselves in.

The Chairperson (Mr Nesbitt): I think it is useful to distinguish between whether you look at something and say, "This could be interpreted as discriminatory, and therefore we will support you, the individual", or, "we look at this, and we as a commission think this is wrong, so we are going to use our powers to enforce a change".

Dr Collins: This particular case that we are supporting raises issues of public importance on the extent to which goods and service providers can refuse service on the grounds of sexual orientation, religious belief and political opinion. The court will make a determination of whether discrimination has occurred, and from that there will be learnings about whether it is for service providers or others. So, it is an important area. Can I come back on one thing that Mr Spratt said? I do not want to leave it unanswered.

The Chairperson (Mr Nesbitt): I am sorry that I interrupted you, but I thought it was important.

Dr Collins: I think that it is important that we are clear that the legislation that governs our work allows us and provides with a statutory duty to provide advice and assistance to all potential complainants or actual complainants, as well as a discretion, again guided by the legislation and our very explicit and transparent policy on discretionary factors, to provide advice and assistance and legal assistance to individuals who may have complaints under the legislation. It does not allow us to also support respondents to cases. To do so would be ultra vires in the context of our role as set out in the legislation. I just wanted to make that clear.

Mr Wardlow: This point has been made in the media: why can we not fund both sides? The short answer is that it is not within our vires or our statute to be able to do that, in the same way that we cannot fund groups.

Mr Spratt: Michael, I accept what you are saying. I know that you have been around some of the Churches in recent times, but you have not convinced them all that well. You have not convinced the public either, because the public believe that the action that you have taken in this particular case has been an abuse of public funds, verges on bullying and might even be described by some as persecution.

Mr Wardlow: I do not want to get into swapping opinions. However, we have followed the processes. We are a public body, and public opinion may or may not approve actions that we take. One of the things that I find empowering about a public body is that, while we listen to what the public say — of course we do — that is not what determines whether we believe a case is right or wrong. In this particular case, if we did not believe that a discriminatory act has taken place, no matter whom it was against — in this case it was Mr Lee — we would not be taking it forward.

There have been other high-profile cases in recent years on which there have been what I believe to be excellent decisions. Very recently, there was a case with a young woman who was fired because she was pregnant. That did not change the law, but it reminded people that you do not have to be in employment for a year to have maternity rights. That is the sort of thing that happens as a by-product of these cases.

I will say categorically that, coming out of this case, there is a debate to be had about Christian conscience — or whatever terms are being used in the public domain. We started that recently at the conference. At the moment, there is a law on religious and political opinion and goods, facilities and services, and very few cases are taken on it. The court will make a decision, and on the other side of the decision there will be issues for us all to take forward.

Mr Moutray: Thank you for your attendance. In your report, you refer to budgetary reductions, and I welcome the work that you have done on that. You pay around £550,000 in rent and rates a year for your Shaftesbury Square headquarters. Is there something that could be done there, when you are employing just over 100 people? Is a city centre headquarters like that necessary?

Mr Brown: Over two and a half years ago, we renegotiated the rent and rates on that property. Land and Property Services (LPS) did that, so it renegotiated the building on our behalf. We have a break clause after five years, which is a year and a half away.

Certainly, our sponsorship Department requires us to do a cost-benefit analysis of whether we should continue in that property, and we will do that. Over the past few years, we have tried to share the cost of the building. That has not meant moving out of Equality House, although if the financial situation continues as it is that is something that we will seriously have to look at. The bottom-line figure that you see in the annual report is what we pay in rent and rates etc.

In our additional income, we get £175,000 of that back from the Commissioner for Older People for Northern Ireland (COPNI) and the Northern Ireland Commissioner for Children and Young People (NICCY), who have moved into Equality House with us. We have spoken to our sponsorship team and said that, as our staffing reduces, if more floor space becomes available, we would welcome the possibility of sharing the building with other ALBs or other bodies.

Mr Moutray: OK. Thank you. You have car parking there. What is the extent of that? Do you receive income for its use?

Mr Brown: The car parking under the building comes as part of the rent and rates. We also purchase car parking spaces near the building. We charge everybody who uses those car parking spaces, so we cross-subsidise. Within the bounds of practicality, we try to get the full cost recovery for the car parking spaces that we purchase, but we also make a charge for the free parking under the building to set aside the overall car parking costs. Staff basically pay for their own car parking, which we provide.

Mr Moutray: Fair enough.

There is a table on page 45, appendix one, which is very useful. Jimmy asked for some figures earlier. Could we have a breakdown of the numbers employed in each of the departments?

Dr Collins: Yes. We have the numbers with us broken down by grade, but not by departments. We will certainly get you that.

Mr Moutray: If we could have that as well, we would appreciate it.

The absence levels in your organisation have come down slightly this year, but they are still above those of the Civil Service. What is the reason for that?

Dr Collins: There is a range of reasons, short-term and long-term. I will let Keith deal with that, too. The last time we looked at it, it was not so different. It is certainly higher than the NICS target, but it is not so different from the NICS actual figure, if that makes sense. I will let Keith say a bit more about that.

Mr Brown: The difficulty around that is a small amount of long-term absence. The main difference between us and the wider Civil Service is that a small number of individuals with long-term absence are likely to impact more on an organisation of our size than across the board.

Mr Wardlow: I will say, just for assurance, that Evelyn, her staff and Keith sit on a number of boards and take it extremely seriously, but in a way that is pastorally responsive to the staff as well, with flexible working and all sorts of things. I think it is a really good process we are in. It is a journey, and I hope that it will see a good result at the other end in a governance sense.

Mr Moutray: OK.

Evelyn, you sign off the annual report. I want to go back to what Jimmy said. The last paragraph states:

"Like other employers, the Commission is required to make a Fair Employment monitoring return."

You have made a 0.1% improvement this year, but I remember visiting your headquarters with colleagues when I was elected in 2003, and the position was the same then, apart from a percentage point or two. You have not made any progress. In fact, what you are really doing is making a laughing stock of yourselves. You are telling other employers how to balance their workforces etc, when your organisation has patently failed.

Dr Collins: As Keith and Michael said, it is an issue that we are very conscious of and concerned about. It is not an excuse, but the reality is that we have limited opportunity to change the composition of the workforce in our situation when we are not recruiting in any significant numbers. In fact, we are not recruiting at all. We are in a reducing situation, so far on a voluntary basis, so —

Mr Moutray: That was not the case over a decade ago.

Dr Collins: The figures have gone up and down over the decade. Some years it was better than others, but the general trajectory has been down. We have not been recruiting in significant numbers for a considerable number of years. We are in the fourth year of the current comprehensive spending review. We also had efficiency savings requirements in the previous three years.

In respect of the view of employers and others about the advice and provision of assistance that we give, actually, survey after survey shows that it is held in very high regard. It is not a barrier to those employers thinking that our advice and assistance is of high quality, expert and independent. Again, we could send you some figures about the stakeholder survey and the employer survey. I know that, when we were here in 2012 talking about composition with you, we had just received the findings of the equality awareness survey, where issues like independence and the ability to promote equality overall were questions that we asked. We analysed it, and it was quite clear that there was no difference by community background, which was one of the issues that you raised with us before. We are certainly happy to provide data on stakeholder and employer satisfaction levels with our work.

Mr Moutray: Yes, but, over the years, I have been told when we met you that affirmative action was being taken. I remember in 2007, I think, you had a strategy to move forward, but the position is largely the same.

Mr Wardlow: From a governance perspective, absolutely. I am not saying that it is not an issue. So, I think —

Mr Moutray: It has failed to date.

Mr Wardlow: If you are talking about failure in terms of changing the numbers, that is one way, but, at the minute, with just over 100 staff, one person is 1%. We have recruited four at 50:50, so we cannot have figures at one side quoting a percentage. Our last recruitment was 50:50. It was only four people. I see that as a positive thing. On the other side, when you are reducing staff, it is impossible to say that one tradition or the other should go. You would not expect that to happen. I am being flippant about that, but that is the reality of it. If we were looking at another organisation that was in exactly the same position as us, we would be saying to it that it should continue its affirmative action. It should continue to go into the schools and do all the stuff it is doing. We would not somehow expect that organisation, in a declining situation and an austere time, to be able to redress a historical imbalance. I do not think that we are suggesting a different application to a similar organisation.

Mr Moutray: OK.

Evelyn, you mentioned Northern Ireland's reputation in relation to race hate, and I totally agree with you on that. Over the past month or so, the reputation of Northern Ireland has been made a laughing stock across the United Kingdom by your organisation and the action it has taken on one high-profile case. I come from a small family business background. I know what it is like to get up at 5.00 am to work to prepare a business and to work with all the public authority bodies you have to work with, such as Trading Standards, the Food Standards Agency, Her Majesty's Customs and Excise, VAT officers and many more. I also know of the issues with employees, who are maybe sick, and all those issues and that you have to go home at 9.00 pm or 10.00 pm, sit down with your books and work your way through them to see whether you have made a profit. We have a high-profile situation — a David and Goliath situation — with your organisation at the moment. The Churches are against you on it, the media is generally against you and the vast majority of people in Northern Ireland are against you. What does that do to the reputation of your organisation? While you all sit down this Christmas and enjoy it, there are families out there who are wondering what way they are going to face over the next number of months. They do not have an endless budget or resource for legal advice. They will wonder how they will get the money together for legal advice or whether the issue will sink their businesses.

Mr Wardlow: Again, I am limited in what I can say. Out the other side of whatever happens, I think that there will be a possibility of engaging and maybe putting some facts into the public domain.

The first thing is that equality legislation does not discriminate against large or small bodies. If you trade in this place, you are subject to the equality laws. Some small businesses find that difficult. We had the case of the young woman who was fired because she was pregnant, and a successful case was brought. There were some issues in the press about that being against small business that employ women, yet there was no call to set aside small businesses in that case.

Secondly, I accept that this will not be an easy Christmas for a lot of people. I also accept that, for some people out there, this has been built up as a David and Goliath situation, with us having endless money. The fact of the matter is that an individual came to us and said that they believed that they had been discriminated against by someone who trades in this place and is subject to the equality laws that pervade in this place. There is a debate, as I said, about how we deal with conscience and other things somewhere else, but, at the moment, a civil bill has been issued and a judge will make a determination on whether there was discrimination in that case.

We have not chosen to do that to raise a profile or to affect our reputation either way. I recognise that there is a huge outcry against it and, as I said to the Chair earlier, there is a difficulty with us being able to go into the public domain and explain the circumstances of a specific case.

The Chairperson (Mr Nesbitt): Stephen, I do not want to break your flow, but would you mind if I came in? Michael, you said that there is an issue of conscience that could be explored in another

place and at another time. That suggests to me that you are not comfortable in applying that law. Are you saying that you are only obeying orders?

Mr Wardlow: No, no. Absolutely —

The Chairperson (Mr Nesbitt): You are saying —

Mr Wardlow: Sorry, when you say "you", are you asking about me as an individual or the commission?

The Chairperson (Mr Nesbitt): You as an individual. You said that there was a matter of conscience. Were you speaking as you or as the Chief Commissioner?

Mr Wardlow: I am here as the Chief Commissioner, but it is not about —

The Chairperson (Mr Nesbitt): Are you saying that there is a matter of conscience with that piece?

Mr Wardlow: I am saying that it has raised a matter of conscience.

The Chairperson (Mr Nesbitt): That can be dealt with at another time in another place.

Mr Wardlow: Let me explain, because I know that this goes on the public record. We have a situation in which there is equality legislation, and we have supported an individual who believes that, under that equality legislation, he is protected and has been discriminated against. A civil bill has been issued, and we are supporting Mr Lee to get a determination. As the result of public debate, issues of David and Goliath and conscience have been raised.

As Michael Wardlow and as the commissioner, I do not believe that the law, as it stands, is unfair to Christians. It does not discriminate against Christians and non-Christians. People of faith can come to talk to us if they feel that they have been discriminated against. In fact, recent court decisions have attempted to look more at where that interface happens. In Europe and Great Britain, the courts have dealt with how, if you like, Christian beliefs come up against the law, and the Christian conscience, if I can use that term, seems to have been unsuccessful.

We are dealing with a case in which a man believes that he has been discriminated against. Issues of whether the law is right or wrong are for another place. As a result of the case, people may want to raise issues about limitations and conscience, but we would say that, when you look at exceptions to equality laws, they should be narrowly constructed and objectively justified. For example, churches in Britain are exempt from having to carry out same-sex marriages. There are ways of doing it. This case is not about that. This case is about an act of alleged discrimination.

The Chairperson (Mr Nesbitt): That potentially has large implications, including for statutory and legal review.

Mr Wardlow: That is quite possible.

Mr Moutray: It has large implications for many small business owners across the Province. Over the past month, I have been contacted by small business owners who are afraid to contact your organisation in case they find themselves in court.

Quite honestly, you are using thousands and tens of thousands of pounds of taxpayers' money to use a sledgehammer to crack a nut. There are small business people out there and the consequences for them could be enormous. I hope that you consider that over the Christmas period. Your organisation's reputation has gone down the tubes.

This is not even a Northern Ireland case. Two pages in the 'Daily Mail' were allocated to the case last week. I will not say anything more than that. If it is a David and Goliath situation, I hope that David comes out on top at the end of the day. You should be ashamed of yourselves.

Mrs Hale: Good afternoon, folks. You will not be surprised that my question comes on the back of what Jimmy and Stephen said, and on what Mike said about the conscience clause. The deputy

president of the Supreme Court, Baroness Hale, said that a conscience clause should be considered to protect those, such as Christians, who have deeply held beliefs. Given your vision of fairness and equality for all — Jimmy also raised the costs and said that the case could end up costing an awful lot of public money — would it have been more prudent to seek senior counsel's advice? Was consideration given to simply seeking a declaration from the court on the current interpretation of the law, rather than creating a them-and-us scenario?

Mr Wardlow: Let me explain how our legal funding works. I know that it sounds like a broken record, but I need to restate what we do. There is information out there that people are picking up and that is being passed on. Mr Lee came to talk to us, and we believed there may have been a discriminatory act. At that point, it goes to a legal funding committee. If it believes that there is merit in it, it will ask for counsel's opinion, which it did. The press said that we want for senior counsel's opinion afterwards. We went for counsel's opinion —

Mrs Hale: First?

Mr Wardlow: As we do. That is how we work. The legal funding committee comprised of commissioners believed that it was a case that we should get legal opinion on. We did that, and it was a positive legal opinion. On that basis, we took it to the next stage to see whether we can get a resolution.

Public money was mentioned. Of the 61 cases that were settled last year, we were able to work with the people we supported, and there was a 93.5% success rate. Of the 61 cases, 58 were successful and 50 were settled without recourse to the tribunals or court system. Our staff work with people to try to get to negotiated and conciliated solutions. Sometimes that does not happen for all sorts of reasons, and we end up in a tribunal or court. Therefore, our governance arrangements are sound and, because we take a staged approach, I do not think that there is a waste of public money.

Mrs Hale: Do you agree with Baroness Hale that a conscience clause should be considered to protect those with deeply held beliefs? It is not just the Christian community. That would also protect the Muslim community.

Mr Wardlow: It is interesting that you have said that. Our situation at the minute is that I do not want to confuse the conscience debate with this particular case. What we have said is that, if and when the legislature wants to look at it — not just on this law but on other laws — we have advice that we would like to give you, because I am following the debate just as you are. Our advice would be that, when you are looking at exemptions from equality legislation, they should be limited, specific and justified objectively. I welcome the fact that we say that the conscience clause — or whatever we are going to call it — would apply not just to people of faith but to people who do not have faith.

The Chairperson (Mr Nesbitt): That is very interesting, Michael.

Mr Lyttle: Thanks for your attendance today. I welcome the work that you have been doing in the last year around unlawful discrimination in a wide range of areas. You mentioned disability, gender, race, religious, political, and sexual orientation. I am reassured to know that, despite ongoing prejudice in our society, people are working hard to address that.

A lot of the questions that I would have asked have been covered in some shape or form. However, in relation to the Ashers case, which has generated huge public interest, and without prejudice or discussing the individual details of the case with you, there is obviously a real, perceived and, at times, inflamed fear in relation to Christians being treated unfairly, but there has been very little discussion in any great detail of the actual statutory duty or law that is applicable to that situation. Will you concisely set out the statutory duty that requires or leads you to follow that process and the UK and Northern Irish law that you believe applies to the situation?

Mr Wardlow: What I can say on the first issue is that the civil Bill that has been published put that into the public domain. It states that we believe that there has been a discriminatory act in two areas. One is the Fair Employment and Treatment (Northern Ireland) Order 1998 (FETO) in religious and political opinion and the second is the sexual orientation regulations. They are in the Northern Ireland

jurisdiction, and we believe that there has been a discriminatory act under those. I am not sure of the application in GB; they are Northern Ireland-specific.

Mr Lyttle: I have it in front of me, which rarely happens in these types of situations. It is article 28(1) of the Fair Employment and Treatment (Northern Ireland) Order 1998. Will you read into the record what the law is in that regard? Is it helpful if I do it? I just happen to have it in front of me.

Mr Wardlow: Go ahead, absolutely.

Mr Lyttle: The Fair Employment and Treatment Order states:

"It is unlawful for any person concerned with the provision ... of goods ... or services to the public ... to discriminate against a person who seeks to obtain or use those goods"

on the grounds of political opinion and religious belief. That is the law that applies in this situation.

Mr Wardlow: Yes, that is the element that covers political and religious opinion.

Mr Lyttle: It goes on to give examples of facilities and services, one of which is the services of any business.

Mr Wardlow: Yes.

Mr Lyttle: Can you give us an idea of the process that you are required to follow if that type of law is activated?

Mr Wardlow: The process is no different from any other process. Let us take it away from the specific case. Let us say someone from a BME background came in and believed that they had some issue against them. It could be because they are male, because they are BME, because of their age or because of their sexual orientation. In fact, it could be for a whole range of reasons. We have young women Travellers coming in, and sometimes you wonder whether they have been discriminated against because they are Travellers, because they are female or because they are young. You need to try to determine whether there has been a transgression of some of the equality legislation and, if so, where that falls, because otherwise you cannot pursue the action.

In this case, Chris, we believe that those are the areas. When someone comes in and we get a legal opinion that says, "We believe, on the following grounds, that the law has in fact been broken and that, therefore, there is a strong case", we then take that back to our funding committee. The next course of action would either be to try to get conciliation or negotiation, or it may end up, as those 11 cases did last year, at a tribunal or County Court.

Mr Lyttle: I acknowledge the fact that, on occasion, there is real and genuine concern in relation to unfair treatment of Christians. That law has existed since 1998, is that correct?

Mr Wardlow: As amended.

Dr Collins: As amended. Protection against religious and political discrimination has been in place since 1976.

Mr Lyttle: The particular law that applies to this situation has existed since 1998.

Dr Collins: In 1998, it was amended to include goods and services.

Mr Lyttle: OK.

Mr Wardlow: I will say, Chris, that it applies to people of any sexual orientation or any of the other protected groups. If anyone had walked in off the street and said that they felt that they had been discriminated against because of political or religious opinion, that would have been the law that would have been applied for under GFS.

Mr Lyttle: Have there been many cases of the law being applied in this manner?

Mr Wardlow: We have had quite a few on GFS but not on political or religious opinion.

Dr Collins: Nor indeed on sexual orientation. It is governed by similar provisions in the 2006 sexual orientation regulations that you read out in respect of goods and services under FETO.

Mr Wardlow: It is interesting that there is an increasing number of claimants coming to us in respect of goods, facilities and services. We are still looking at goods, facilities and services in respect of age, and that has not yet been resolved. This is another perspective. It is interesting that there is more coming. I am not quite sure why.

Mr Lyttle: OK. Quite often, as a result of a lack of cases, people are unaware of law that exists —

Mr Wardlow: That is right.

Mr Lyttle: — and the length of time that it has existed for. I realise that it is a live case that is progressing, but are there any early takeaway messages on the importance of communication in this type of case?

Mr Wardlow: I am just being perfectly honest and personal, because that is how I am. It would have been much better had there not been the media pick-up on this that there has been; that is just my personal reflection on it. We are in a difficult position. As you rightly said, Chris, it is not sub judice because it is not criminal, but our policy is not to talk about the specifics of the case. It would be good to be able to engage and explain some stuff, but we cannot do that. At the end of this, I hope we can do much of that.

What I have been trying to do over the last number of weeks, particularly with faith groups, is to open up this discussion and say to people of faith, "If you feel that you have been discriminated against, come and talk to us". This is not for only one group, whether it is people with a disability or people of a different sexual orientation. This is open to all. People should be able to walk into wherever and be treated like other people.

Mr Lyttle: Is there a task and a job to do to communicate the religious freedoms that exist and are afforded, given the level of concern that seems to exist in relation to the treatment of Christians?

Mr Wardlow: I have been at a number of seminars, including one recently with the Attorney General. Because of recent court cases, particularly in Strasbourg, it is being raised in lots of places about how we can have a sensible discussion about limitations, rights and responsibilities, and competing rights and responsibilities. Our colleagues in the Human Rights Commission are engaged in that as well. What I was saying earlier, Chris, was that, for the legislature, there is a need for a discussion to be had around this. If you remember, we had teachers' exemption under education. In Britain, we have the exemption that is available for Churches under same-sex marriage. So, it is not that they do not happen. The problem is how wide these things can be. I go back to our advice, which is that, if and when it happens, they should be small in their limitation and we should be objective and legitimate in what we are trying to achieve at the other end.

Mr Lyttle: Of course, the freedom to manifest one's religion has limitations under the European Convention on Human Rights.

Mr Wardlow: It is not unfettered, particularly when you have a state or states that are perceived to be neutral in terms of how European law works.

The Chairperson (Mr Nesbitt): Two members have indicated that they would like to come back in.

Mr Spratt: It is just for points of clarification.

The Chairperson (Mr Nesbitt): I am not saying no, but, whether it is clarification or novel, I do not want to go over old ground.

Mr Spratt: It is just two points of clarification. Keith, I think that you talked in your presentation or in an answer to Stephen about staff reducing further. Does that mean that you are in discussions to reduce staff and reduce your budget?

Dr Collins: We have been asked by the Department — sorry, I will let Keith answer.

Mr Brown: For the past four years, we have been advised by our sponsorship team that we should be planning for a 15% reduction next year. I think that that is common among many of the ALBs in OFMDFM. That level of budget reduction would have serious ramifications for staffing levels.

Mr Spratt: OK.

Just a final point, Michael. In your presentation, you said that you sit on a number of boards. Will you identify, for the record, the number of boards that you sit on?

Mr Wardlow: I am on record for it —

Mr Spratt: I knew that you probably would be.

Mr Wardlow: I am member of the Probation Board — I am in my last year of a six-year term — and I am a member of the senate of Queen's University.

Mr Spratt: Do you get any salary for those?

Mr Wardlow: For Queen's, no. For the Probation Board, I think that it is £4,900. By the way, I am not full-time in this post either. Just in case people are thinking something else, I will say that for the record.

Mr Spratt: It is a very well-paid part-time post.

The Chairperson (Mr Nesbitt): OK, folks. Bronwyn.

Ms McGahan: Thank you, Chair. You will be glad to hear that it is just a comment. Reference was made to your organisation being a joke in how it addresses its own equality issues. I think that it is a complete and utter joke that we cannot get agreement on a bill of rights for the North of Ireland that would provide a binding obligation to protect rights and so that rights are not simply a legislative requirement. Let us be clear that, when we refer to principles of respect, that means being free from discrimination. I believe that you play a very important role as a watchdog to protect people's rights. Finally, I believe that, given your limited budget, it is worth considering being more strategic in how you address inequalities.

Mr Wardlow: OK. Thank you for that.

The Chairperson (Mr Nesbitt): Keith, Evelyn and Michael, thank you very much for coming in. I think that that has clarified a lot of issues. I note the fact that you are not necessarily recommending but at least thinking of the fact that, on the far side of this, we may be looking at exemptions and that you have very definite views about what those should be if the legislature should decide to consider that.