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Employment Equality Agency  
**Annual Report 1998**



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## **Employment Equality Agency**

# **Annual Report**

**For The Period  
January 1998 to December 1998**

### **To the Minister for Justice, Equality and Law Reform**

Pursuant to Section 50 of the Employment Equality Act, 1977,  
the Employment Equality Agency presents its Report for the period  
1st January, 1998 to 31st December, 1998

### **Chuig an Aire Dlí agus Cirt, Comhionannais agus Athchoirithe Dlí**

De Bhun Mireann 50 den Acht um Chhionannais Fostaíochta 1977,  
déanann an Ghiomhaireacht um Chhionannais Fostaíochta a tuarascail don treimshe  
1ú Eanáir, 1998 go 31ú Nollaig, 1998, a thairiscint.

**eea**

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August 1999

Mr. John O'Donoghue T.D.  
Minister for Justice, Equality and Law Reform  
72-76 St Stephen's Green  
Dublin 2

Dear Minister,

In accordance with Section 50 of the Employment Equality Act, 1977, I have pleasure in presenting to you the Employment Equality Agency's report of its activities for the period 1 January 1998 to 31 December 1998. This Report presents a general overview of 1998 activities, developments and issues. I hope that it will serve as a useful resource to researchers, activists and policy makers in the sphere of equal opportunities.

I wish to record my thanks to the Board and staff for all their hard work during the year and for their continuing commitment to achieving the Agency's goal of a more equal society. I especially value the support and assistance given by you and your officials of the Department of Justice, Equality and Law Reform.

Yours sincerely



Kate Hayes  
Chair  
Employment Equality Agency

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# From the Chair

1998 was the 21st year of the Employment Equality Agency and a time to reflect on past achievements and to continue our work for equality between women and men in employment. EEA has played a leadership role in the pursuit of gender equality both nationally and internationally. For more than two decades, EEA has been working towards the full and equal involvement of all people, regardless of sex, in the workplace. Entering the 21st century, EEA, as the Equality Authority will remain committed to creating with our partners, a workplace where inequality is finally overcome.

EEA had a very difficult year of uncertainty in 1998. Firstly with the fall of the Employment Equality and Equal Status Bills previously in the Supreme Court, it was almost impossible to "second guess" our future. This combined with the loss of crucial senior staff meant that EEA was operating on a 70% staff level for most of the year. Despite that I note that there was no noticeable reduction in our service to the public and our clients, as existing staff pulled out all the stops to ensure stability and service during this uncertain time.

In fact EEA had its busiest year to date in 1998 with our total enquiries up 30% on the previous year, to our highest ever total of 6010. The geographical spread is also interesting in that it reflects an even better balance than last

year with enquiries from outside the Dublin region now totalling 48% of the overall – up from 45% in 1997. These increases are undoubtedly due to the heightened debate and interest that surrounds the new legislation and the increasing awareness amongst employees that discrimination, harassment and unfair treatment need not be endured in the Irish workplace, because there is protection available through EEA.

Once again maternity related enquiries increased with 2,362 received in 1998 as compared to 2,296 in 1997. Family issues continued to be a priority and EEA has been asked, and has agreed, to provide a Parental Leave information service, once resources become available.

EEA senior staff were to the forefront of the work carried out by Deloitte and Touche in developing the plan for the new Equality Authority, culminating in a substantial Report being sent to the Board and to the Department of Justice, Equality and Law Reform.

EEA successfully completed a NOW project in partnership with IPD, First Active and Microsoft.

1998 saw a significant development in the local authority sector following an initiative by Environment Minister Noel Dempsey, in that all local authorities in Ireland now have a designated officer with



◆ Kate Hayes, Chair, EEA

responsibility for equality. This is most welcome in light of the pioneering work EEA undertook with Dublin Corporation and IMPACT in our NOVA project in 1996.

EEA remained committed to advancing the business case for Irish employers by commissioning research on *Women in the Labour Force* and on maternity in the Irish workplace.

EEA was represented on key Government committees on Childcare, Gender Equality Monitoring (Dept of Justice, Equality and Law Reform), Women's Access to Labour Market Opportunities (Dept of Social, Community and Family Affairs), on Equality in the Semi-State Sector (Dept of Public Enterprise), and on the Advisory Committee on Equal Opportunities in the European Union.

## New Legislation

On the 18 June 1998, our own future became more focussed when President Mary McAleese



signed the Employment Equality Act into law. The Act details nine areas of discrimination, including seven new categories, and gives employees, job applicants and those in vocational training a much wider protection from discrimination. The nine categories of discrimination are gender, marital status, family status, sexual orientation, religious belief, age, disability, race and membership of the traveller community. Employers will now have to ensure that their practices do not discriminate in relation to recruitment, conditions of employment, grading, training or promotion. Other significant elements of the Act are the provisions relating to sexual harassment and harassment, where both are defined in Irish law for the first time. Everyone has a right to expect to be treated with basic consideration and respect in their place of work, and for the first time this is enshrined in Irish Law.

No organisation can afford to ignore either the short-term or the long-term human and financial cost of sexual harassment and/or general harassment within the workplace. The Employment Equality Act 1998 will set the standard to ensure a productive and harassment free workplace.

As can be gleaned from EEA's annual enquiries, there is a substantial amount of queries that remain outside the scope of the 1977 Act. In drafting and implementing new legislation, the Government is responding to a genuine need with the demand for improved means of redress and

developing a framework for equality on a broad front. In December 1998, legislation was passed that required employers to provide unpaid parental leave for up to fourteen weeks (Parental Leave Act 1998) and Force Majeure Leave (5 days over three years) another vehicle to resolve the increasing challenge of balancing work and family life.

I would like to pay tribute to Minister John O Donoghue for his speedy guidance of this much needed reforming legislation through the Oireachtas, and for the support it received from all political parties in both Houses.

## Family and Work

Today the struggle to meet both work and family responsibilities is of real concern to both women and men. Time pressures on working families are becoming more acute and finding time for both work and family responsibilities is much more challenging. We know that flexibility to meet family needs and fair treatment in the workplace must go hand in hand to assure the success of women, men, families and our nation as a whole. With more women at work (40% of our total workforce) the family lives of Irish people have changed - our workplaces, our public policies and our popular culture are still playing catch-up.

I welcome the initiatives of the Minister for Justice, Equality and Law Reform and his Department in seeking to facilitate women and men who have childcare

responsibilities while accessing training, education and employment. I commend the work of the Expert Working Group on Childcare for their commitment and hard work in developing proposals for a national childcare strategy, which is an integral part in achieving and sustaining gender equality in a developed society. It is vital that the key recommendations of that Report are implemented and resourced swiftly. We are overdue in our need to create an infrastructure that would create a good quality, safe and affordable childcare service, thereby eliminating the constraints that prevent the full participation of workers, particularly women, in employment.

## Good Friday Agreement

This historic agreement sets out the agenda and challenges for the next century. The proposed Equality Commission in Northern Ireland will be formed by amalgamating the EOCNI, The Fair Employment Commission, the Commission for Racial Equality for Northern Ireland and Northern Ireland Disability Council. With the establishment of the Equality Authority Designate our commitment to equality is being strengthened and it is expected that the Authority will be formally set up in September next. Equality representatives from Ireland, Northern Ireland, Scotland, England and Wales will meet under the auspices of the Council of the Isles, following on our long-standing practice of meeting on a tri-partite basis with



our colleagues in Northern Ireland and the U.K.

## Moving On

Both Carmel Foley EEA CEO and Mary Honan, EEA Legal Adviser parted company with EEA in 1998. Having worked with Carmel Foley over the previous five years, I was greatly impressed with her energy and commitment in advancing the equality agenda so successfully in very demanding times. As EEA Chair we worked in close co-operation and she was held in high esteem by my colleagues on the Board throughout her tenure at the helm of EEA. I was not surprised to see her elevated to a senior office in the State sector and I am particularly pleased to congratulate Carmel on her appointment as the first female Director of Consumer Affairs in Ireland.

Mary Honan has been to the forefront of the legal service provided by EEA for seven years. Her knowledge and skill in successfully assessing and presenting cases, and in attaining settlements, were greatly appreciated by our clients and by the Board. Mary's input into submissions on all aspects of new legislation, the drawing up of Codes of Practice and EU developments was invaluable during her term with us and I would like to wish Mary every success in her new career at the Bar.

At the unanimous request of the Board, it has been my privilege to act as Executive Chair of EEA on the departure of Carmel Foley.

## Current Developments

As 1998 is the last full year of operation for EEA, I would like to take this opportunity to update you on current developments. I was delighted as Executive Chair to contribute to an exciting agenda of research and activities in the first part of 1999, which saw EEA publish valuable Irish case studies including...

- ◆ New Mothers at Work by Dr Jo Murphy Lawless
- ◆ Women In The Labour Force by Dr Frances Ruane and Julie Sutherland and

We heightened our involvement in the equality debate by ...

- ◆ Hosting our first ever conference on Diversity in Dublin Castle in conjunction with the European Business Network for Social Cohesion;
- ◆ Co-sponsoring a seminar in Trinity College with the Irish Society for Labour Law;
- ◆ Participating in the IPA conference on Bullying and Harassment in the Workplace;
- ◆ Participating in the Department of Justice, Equality and Law reform seminar on Family Friendly Initiatives;
- ◆ Participating in the FAS exhibition, and by addressing regional gatherings of human resource personnel and trainers.

## Equality Authority

As a result of the 1998 legislation and the new Equal Status Bill, EEA is about to enter a key stage in Ireland's employment equality

history. The Equality Authority will be a statutory body tasked with the pioneering role of implementing new legislation, and will have a broader remit and cater for more diverse groups than EEA. I was very honoured and pleased when the Minister appointed me as Chair Designate of the new Authority. I hope to bring the benefits of my twelve years experience in various capacities in EEA to the new body, ensuring a continuity of service and commitment to the new wider equality agenda.

Time and again, I have stressed the task that remains to be done to achieve gender equality. Two decades of hard work have resulted in significant strides towards gender equality, but more needs to be done. That work will continue under new structures and I envisage the Equality Authority building on achievements to date. The advances in gender equality can be transferred to the new areas of responsibility, so that all categories can progress towards equality of treatment and opportunity.

International Women's Day 1999 saw the appointment of an Equality Authority Designate, which includes some members of the out-going EEA Board. To those colleagues whose dedicated service will conclude with EEA in September next, I pay a sincere and warm tribute for their invaluable advice, support and hard work in the cause of equality over many years. To those who join new colleagues on the Equality Authority Designate, I welcome them into a very exciting





◆ Pictured at announcement of the Board of the new Equality Authority Designate were Authority Members (standing l-r): Ms Ann-Arthur O'Brien, Ms Marie Moynihan (IBEC), Ms Mary Wallace, T.D., Minister of State at the Department of Justice, Equality and Law Reform, Ms Carol Fawcitt, Ms Noreen Byrne, and Mr Thomas McCann. Seated were (l-r): Mr Leonard Hurley, Vice-Chair, Mr Shane Broderick, Mr John O'Donoghue, T.D., Minister for Justice, Equality and Law Reform, Ms Kate Hayes, Chair and Mr Ultan Courtney, (IBEC).

period for the national equality agenda and wish them success in their challenging roles as the first Board members of this long awaited State body.

June 1999 saw the appointment of the first Chief Executive Officer of the new Authority. In Niall Crowley, I believe we have found a tremendous new resource, whose enthusiasm expertise and skill will serve us well as we enter the somewhat uncharted territories of the new Authority and its remit. Niall has already begun his task with vigour and on behalf of the Board I wish him well in his endeavours.

As Executive Chair, I have become more aware of the 'behind the scenes' work by EEA

staff that often goes publicly unrecognised. EEA staff have coped extremely well with the many challenges that face an organisation in transition. I would like to thank them not only for continuing to provide an excellent service to EEA's clientele, but also for their work in planning and developing the new Equality Authority.

I would also like to thank the Minister for Justice, Equality and Law Reform and his staff for their efforts in pushing forward the equality agenda, and in making the new Equality Authority a reality. I look forward to the implementation of the Employment Equality Act 1998 and to the passing into law of the proposed Equal Status Bill.

With the expertise that exists in EEA and the new Chief Executive, Board and staff of the Authority, I am confident in this final full year of EEA activities, that the future of the equality agenda in the gender related and other new categories is secure. I know it will be pursued and developed with a new vigour ensuring more equality of opportunity and treatment in the workplace and in the provision of goods, facilities and services in the new millennium.

*Kate Hayes*

Kate Hayes

Chair EEA

August 1999

# Ráiteas an Chathaoirligh

Ba é 1998 an 21ú bliain a raibh an Ghníomhaireacht um Chomhionannas Fostaíochta ann. Bliain ab ea í le machnamh a dhéanamh ar a bhfuil curtha i gcrích againn agus le leanacht de bheith ag saothrú ar son comhionannais idir mná agus fir i gcúrsaí fostaíochta. Tá an Ghníomhaireacht le fada ar thús cadhnaíochta maidir le comhionannas inscne go náisiúnta agus go hidirnáisiúnta. Le breis agus fiche bliain anuas, tá an Ghníomhaireacht ag féachaint le rannpháirtíocht iomlán, chomhionann a bhaint amach sa láthair oibre do gach duine, beag beann ar an inscne atá acu. Agus sinn ar tháirseach an 21ú céad, leanfaidh an Ghníomhaireacht, mar Áisíneacht Chomhionannais, i gcomhar lenár gcomhpháirtithe, de bheith ag abhcóidíocht ar mhaithe le láthair oibre nach bhfuil neamhionann níos mó.

Bhí go leor éiginnteachta ag an nGníomhaireacht le linn 1998. Ar dtús, nuair a rialaigh an Chúirt Uachtarach go raibh an Bille um Chomhionannas Fostaíochta agus an Bille um Stádas Comhionann mibhunreachtúil, bhí sé geall le bheith dodhéanta ar dtodhchaí a thuar. Chomh maith leis seo, d'imigh roinnt den fhoireann shinsearach ón nGníomhaireacht, rud a d'fhág nach raibh ach 70% den fhoireann iomlán againn don chuid is mó den bhliain. Ina ainneoin seo, tugaim faoi deara nár deineadh aon laghdú suntasach ar an tsairbhís a

thugaimid don phobal agus dár gcliaint, mar gur oibrigh an fhoireann a bhí againn go dian dícheallach chun seirbhís agus seasmhacht a chinntiú le linn na tréimhse míshocair seo.

Mar a tharla, ba é 1998 an bhliain ba ghnóthaí riamh ag an nGníomhaireacht um Chomhionannas Fostaíochta. Dhein 6,010 duine fiosrú linn, méadú 20% ar an mbliain roimhe. Ó thaobh na tíreolaíochta de, tháinig 48% de na fiosruithe ó lasmuigh de réigiún Bhaile Átha Cliath, méadú ó 45% le linn 1997. Is cinnte gurb í an díospóireacht a deineadh faoin reachtaíocht nua agus an spéis a cuireadh inti a ba chúis leis an méadú seo. Chomh maith leis seo, is léir go bhfuil fostaíthe níos mó ar a n-airdeall nach gá glacadh le leatrom, ciapadh agus leithcheal sa láthair oibre, mar go bhfuil cosaint le fáil tríd an nGníomhaireacht.

Mhéadaigh fiosruithe maidir le saoire mháithreachais arís eile go 2,362 in 1998 i gcomparáid le 2,296 in 1997. Tugadh tús áite i gcónaí do chúrsaí teaghlaigh. Iarradh ar an nGníomhaireacht seirbhís eolais faoi Shaoire Tuismitheoirí a chur ar bun; déanfar amhlaidh nuair a chuirfear na hacmhainní ar fáil.

Bhí foireann shinsearach na Gníomhaireachta ar thús cadhnaíochta maidir leis an obair a dhein Deloitte & Touche i bhforbairt an phlean don Udarás



♦ Kate Hayes, Cathaoirleach, GCE.

Comhionannais nua. Mar thoradh air seo cuireadh Tuarascáil shubstainteach faoi bhráid an Bhoird agus chuig an Roinn Dli, Cirt, Comhionannais agus Athchóirithe Dli.

I gcomhpháirtíocht le IPD, First Active agus Microsoft, d'éirigh leis an nGníomhaireacht togra NOW a chur i gcrích go héifeachtach.

De bharr thionscnamh an Aire Comhshaoil, Noel Dempsey, le linn 1998, deineadh dul chun cinn suntasach in earnáil na n-údarás áitiúil, sa mhéid is go bhfuil oifigeach tiomnaíthe do chúrsaí comhionannais ag gach údarás áitiúil in Éirinn anois. Cuirimid fáilte mhór roimh an dul chun cinn seo i bhfianaise na hoibre ceannródaíoch a dheineamar i gcomhar le Bórdas Átha Cliath agus le IMPACT inár dtogra NOVA in 1996.

Lean an Ghníomhaireacht ar aghaidh ag cur chás fhostóirí na hÉireann chun cinn, cás atá ag brath go mór ar chúinsí gnó. Rinneamar, mar shampla, thaighde a choimisiúnaí maidir le Mná sa Láthair Oibre agus faoi mháithreachas sa láthair oibre in Éirinn.



Bhí ionadaíocht ag an nGníomhaireacht ar choisti tábhachtacha Rialtais faoi Chúram Leanaí, Monatóireacht ar Chomhionannas Inscne (Roinn Dlí, Cirt, Comhionannais agus Athchóirithe Dlí), Rochtain Ban ar Dheiseanna sa Mhargadh Saothair (Roinn Gnóthaí Sóisialta, Pobail agus Teaghlaigh) faoi Neamhionannas san Earnáil Leathstáit (Roinn Fiontair Phoiblí) agus ar an gCoiste Comhairleach faoi Dheiseanna Comhionannas san Aontas Eorpach.

## Reachtaíocht Nua

Cinntíodh ár dtodhchaí ar 18 Meitheamh 1998 nuair a shinigh an tUachtarán Máire Mhic Giolla Íosa an tAcht um Chomhionannas Fostaíochta agus dhein dlí de. Sonraíonn an tAcht naoi réimse leatrom, ar a n-áirítear seacht rannóg nua, agus tugann sé cosaint i bhfad níos leithne ar an leatrom d'fhostaithe, do dhaoine a chuir isteach ar phoist agus dóibh siúd atá páirteach i dtraenáil ghairme. Ar na naoi rannóg leatrom tá: stádas pósta, stádas teaghlaigh, claonadh gnéis, creideamh, aois, éagumas agus ballraíocht den lucht siúil. Caithfidh fostóirí a chinntiú as seo amach nach diarlóidh leatrom de bharr a gcleachtas maidir le hearcú, coinneallacha fostaíochta, grádáil, traenáil ná ardú céime. Ar na forálacha tábhachtacha eile san Acht, tá forálacha maidir le ciapadh gnéis agus ciapadh, an chéad uair riamh i ndlí na hÉireann ar sainmhíniú iad. Tá de chéad ag gach duine a bheith ag siúl go gcaithfear leo le tuiscint agus le meas ina láthair oibre, agus den chéad uair, tá seo cumhdaithe i ndlí na hÉireann.

Ní féidir le heagras ar bith neamhaird a dhéanamh, sa ghearrthréimhse ná sa mheánthréimhse, den chostas ard daonna agus airgeadais a leanann ciapadh gnéis agus/nó ciapadh ginearálta sa láthair oibre. Leagfaidh an tAcht um Chomhionannas Fostaíochta 1998 síos caighdeán chun láthair oibre atá saor ó chiapadh a chinntiú.

Mar a léiríonn na fiosruithe a deineadh leis an nGníomhaireacht, tá roinnt mhaith acu nach dtagann faoi scáth Achta 1977. Trí reachtaíocht nua a dhréachtadh agus a chur i bhfeidhm, tá an Rialtas ag freagairt do riachtanas firinneach agus d'éileamh ar mhodhanna feabhsaithe cúitimh, chomh maith le frama don chomhionannas a fhorbairt ar bhonn forleathan. I Nollaig 1998, ritheadh reachtaíocht a chuir iachall ar fhóistoirí saoire neamhíochta tuismitheoirí a sholáthar ar feadh suas le ceithre seachtaine déag (Acht um Shaoire Tuismitheoirí 1998) agus Saoire Force Majeure (5 lá thar thrí bliana), ar modh eile i chun dul i ngleic leis an dúshlán chun comhionannas a aimsiú idir saol na hoibre agus saol an teaghlaigh.

Ba mhaith liom tréaslú leis an Aire John O'Donoghue as an reachtaíocht leasaithe seo a threorú go tapaídh tríd an Oireachtas, agus leis na páirtithe polaitiúla ar fad in dhá Theach an Oireachtais as tacú léi.

## Teaghlach agus Obair

Is údar mór imní d'fhir agus do mhná araon é dualgais oibre agus theaghlaigh araon a

chomhlíonadh. Is ag dul i méid atá an brú ama ar thuismitheoirí atá ag obair agus is dúshlán mór é an t-am a aimsiú do dhualgais oibre agus theaghlaigh araon. Tuigimid go gcaithfear an tsolúbacht chun dualgais theaghlaigh a chomhlíonadh a chur ar aonchéim le cothrom na féinne sa láthair oibre d'fhonn a chinntiú go mbeidh rath ar mhná, ar fhir, ar theaghlaigh agus ar an náisiún ina iomláine. De bharr go bhfuil níos mó ban ag obair (40% den earnáil saothair ina hiomláine), tá athrú imithe ar shaoil an teaghlaigh in Éirinn - tá ár láithreacha oibre, ár bpolasaithe poiblí agus ár gcultúr coiteann fós ag iarraidh breith air seo.

Cuirim fáilte roimh thionscnaimh an Aire Dlí, Cirt, Comhionannais agus Athchóirithe Dlí agus a Roinne a dhéanann iarracht freastal ar fhir agus ar mhná a bhfuil dualgais orthu maidir le cúram leanaí agus iad i mbun traenála, oideachais nó fostaíochta. Tréaslaim a chuid oibre leis an nGrúpa Saineolaithe ar Chúram Leanaí as an gcoimhlint agus an dianshaothar atá léirithe acu in iarracht straitéis náisiúnta cúraim leanaí a fhorbairt, ar cuid lárnach i de chomhionannas inscne a bhaint amach sa phobal. Tá sé rithabhachtach go gcuirfear moltaí tábhachtacha sa Tuarascáil sin i bhfeidhm go tapaídh agus go gcuirfear áiseanna ar fáil dóibh. Tá sé thar am againn bonneagar a thógáil chun go gcruthófar seirbhís cúraim leanaí atá sábháilte, ar ardchaighdeán agus a bhfuil sé d'acmhainn ag daoine íoc aisti. Tríd seo, cuirfear ar ceal na srianta a choscann oibrithe,



mná go háirithe, ó rannpháirtíocht iomlán sa bhfostaíocht.

## Comhaontú Aoine an Chéasta

Leagann an comhaontú stairiúil seo amach an clár oibre agus na dúshláin don chéad atá le teacht. Cuirfear le chéile an Coimisiún Comhionannais atá beartaithe do Thuaisceart Éireann trí chónascadh a dhéanamh ar EOCNI, The Fair Employment Commission, The Commission for Racial Equality for Northern Ireland agus an Northern Ireland Disability Council. Le bunú an Údaráis Cheaptha Chomhionannais, táthar ag neartú ár gcoimhlint don chomhionannas agus táthar ag súil go mbunófar an tÚdarás go foirmeálta i Meán Fómhair na bliana seo chugainn. Faoi scáth Chomhairle na nOileán, buailfidh ionadaithe ó Éirinn, ó Thuaisceart Éireann, ó Albain, ó Shasana agus ón mBreatain Bheag le chéile; tá cruinnithe á dtionól againn le fada an lá lenár gcomhghleacaithe ó Thuaisceart Éireann agus ón mBreatain.

D'fhág Carmel Foley, Príomhoifigeach Feidhmeach agus Mary Honan, Comhairleoir Dlí araon an Ghníomhaireacht in 1998. Ó bheith ag obair go dlúth le Carmel Foley le cúig bliana anuas, tá meas as cuimse agam ar an bhfuinneamh agus ar an gcoimhlint a léirigh sí maidir le cúrsaí comhionannais a chur chun cinn go héifeachtach le linn tréimhsí deacra. Mar Chathaoirleach na Gníomhaíochta, d'oibríomar go dlúth i gcomhar le chéile agus bhí ardmheas ag mo chomhghleacaithe ar an mBord uirthi le linn a tréimhse mar cheann na Gníomhaireachta. Ní

haon ábhar iontais dom, mar sin, a fheiceáil gur tugadh post sinsearach san earnáil Stáit di agus tá sásamh nach beag orm a ceapachán mar Stiúrthóir na nGnóthaí Tomhaltóra a thréaslú le Carmel, an chéad bhean riamh a raibh an post sin aici.

Bhí Mary Honan ar thús cadhnaíochta sa tseirbhís dlí a sholáthraigh an Ghníomhaireacht um Chomhionannas Fostaíochta le seacht mbliana anuas. Bhí ár gcliaint agus an Bord araon fíorbhuíoch di as a cuid eolais agus a cuid scileanna maidir le cásonna a mheas agus a chur i láthair go héifeachtach, agus maidir le réitigh a aimsiú. Ghlac Mary páirt in aighneachtaí faoi gach gné de reachtaíocht nua, i ndrúchtadh Cód Cleachtas agus i gcúrsaí an Aontais Eorpaigh, obair a raibh an-tábhacht ag baint léi. Ba mhaith liom gach rath a ghuí uirthi ina post nua mar abhcóide.

Ar imeacht Carmel Foley, ba mhór an onóir dom glacadh le post Chathaoirleach Feidhmeach na Gníomhaireachta, nuair a d'iarr mo chomhghleacaithe ar an mBord orm, d'aonghuth, dul ina bhun.

## Dul Chun Cinn is Déanaí

Toisc gurb i 1998 an bhliain iomlán dheireanach a mbeidh an Ghníomhaireacht um Chomhionannas Fostaíochta ag feidhmiú, ba mhaith liom an deis seo a thapú chun sibh a chur ar an eolas maidir leis an dul chun cinn is déanaí. Bhí áthas orm mar Chathaoirleach Feidhmeach cur le clár bríomhar taighde agus gníomhaíochtaí sa chéad chuid de 1999, nuair a d'fhoilsigh an

Ghníomhaireacht cás-staidéir luachmhara Éireannacha, ar a n-áirítear:

- ♦ New Mothers at Work leis an Dr. Joe Murphy Lawless
- ♦ Women In The Labour Force leis an Dr. Frances Ruane agus Julie Sutherland.

Chuireamar lenár rannpháirtíocht sa díospóireacht faoi chomhionannas chomh maith trí na rudaí seo a leanas a chur i gcúroch:

- ♦ Comhdháil faoin Éagsúlacht a thionól i gCaisleán Bhaile Átha Cliath, an chéad cheann riamh dá leithéid, i gcomhar leis an nGréasán Gnólaigh Eorpacha don Chomhtháthú Sóisialta
- ♦ Comhúraíocht a dhéanamh ar sheimineár ag Coláiste na Tríonóide i gcomhar le Cumann na hÉireann um Dhlí an tSaothair
- ♦ Páirt a ghlacadh i gcomhdháil a d'eagraigh an Institiúid um Riarachán Poiblí faoi Mhaistíneacht agus ciapadh sa láthair oibre
- ♦ Páirt a ghlacadh i seimineár a d'eagraigh an Roinn Dlí, Cirt, Comhionannais agus Athchóirithe Dlí ar thionscnaimh atá fábharach do theaghlaigh
- ♦ Páirt a ghlacadh i dtaispeántas de chuid FÁS, agus trí aithisc a thabhairt ag imeachtaí do phearsanra agus do thraenálaíthe acmhainní daonna.

## Údarás Comhionannais

De bharr reachtaíocht 1998 agus an Bhille nua um Stódas Comhionann, tá an

Ghniomhaireacht um Chomhionannas Fostaíochta ar tháirseach céime nua i stair an chomhionannais fhostaíochta in Éirinn. Foras statúideach a bheidh san Údarás

Comhionannais a mbeidh sé de dhualgas air reachtaíocht nua a chur i bhfeidhm. Chomh maith leis seo, cuirfear lena chuid údarais agus freastlóidh sé ar ghrúpaí níos éagsúla ná mar a dheim an Ghniomhaireacht. Ba mhór an onóir dom é nuair a cheap an tAire mé mar Chathaoirleach ceaptha an Údarais nua. Tá súil agam tarraingt as an tairí dhá bhliain déag atá agam sa Ghniomhaireacht chun leanúnachas seirbhíse agus coimhlint don chlár nua leathan comhionannais a chinntiú.

Tá labhartha agam, arís agus arís eile, ar a bhfuil le déanamh chun comhionannas inscne a chur i gcrích. De bharr dianshaothair le fiche bliain anuas, tógadh céimeanna suntasacha i dtreo comhionannais inscne, ach tá a thuilleadh fós le déanamh. Leanfar leis an obair seo faoi struchtúir nua agus táim ag súil leis go dtógfaidh an tÚdarás Comhionannais ar a bhfuil baint amach go dtí seo. Beifear ábalta an dul chun cinn maidir le comhionannas inscne a aistriú chuig an tÚdarás nua, ionas gur féidir dul chun cinn a dhéanamh i ngach réimse i dtreo comhionannais dea-ide agus deiseanna.

Ar Lá Idirnáisiúnta na mBan in 1999, ceapadh Údarás Ceaptha Comhionannais, ar a n-áirítear cuid de bhaill Bhord na Gníomhaireachta. Ba mhaith liom buíochas ó chroí a ghabháil leis na comhghleacaithe sin, a dtiocfaidh a gcuid seirbhíse leis

an nGníomhaireacht chun críche i Meán Fómhair, as a gcuid comhairle, tacaíochta agus diansaothair maidir le cúis an chomhionannais le blianta beaga anuas. Iad siúd atá ag teacht isteach san Údarás

Comhionannais ceaptha, ba mhaith liom fáilte a chur rompu ag tús na tréimhse bríomhaire seo den chlár náisiúnta comhionannais. Guim gach rath orthu ina gcuid oibre.

In Iúil 1999, ceapadh Niall Crowley mar chéad Phríomhoifigeach Feidhmeach an Údarais nua. Creidim go bhfuil dul chun cinn dochreidte sa bhfeidhm, agus gur chun ár leasa a bheidh a chuid diagraise, tairí agus scileanna, go háirithe agus sinn ag plé leis an éiginnteacht a bhaineann leis an Údarás nua. Cheana féin, tá Niall imithe go fonnmar i mbun oibre agus ar son ar Bhoird ba mhaith liom gach rath a ghuí air.

Mar Chathaoirleach Feidhmeach, tá breis tuisceana agam anois ar an obair chiúin a dhéanann foireann na Gníomhaireacht nach n-aithnítear go poiblí go minic. Dhéileáil foireann na Gníomhaireacht go han-mhaith leis na dúshláin a bhíonn raimh eagrais atá á athrú. Ba mhaith liom buíochas a ghabháil leo, ní hamháin as leanacht de bheith ag soláthar seirbhíse den chéad scoth dár gcliaint, ach as a gcuid oibre i bpleanáil agus i bhforbairt an Údarais nua Comhionannais chomh maith.

Ba mhaith liom buíochas a ghabháil chomh maith leis an Aire Dlí, Cirt, Comhionannais agus Athchóirithe Dlí agus lena fhoireann as clár an chomhionannais a bhrú chun cinn, agus as an Údarás nua

Comhionannais a thabhairt ar an saol. Táim ag tnúth go mór le cur i bhfeidhm an Achta um Chomhionannas Fostaíochta 1998 agus le hachtú an Bhille um Stádas Comhionann atá beartaithe.

De bharr na tairí atá ag an nGníomhaireacht agus ag Príomhfheidhmeannach nua, Bard nua agus foireann nua an Údarais, tá muinín agam sa bhliain dheireanach seo a mbeidh an Ghniomhaireacht ann, go bhfuil clár an chomhionannais maidir le hinscne agus le gnéithe eile, slán sóbháilte. Tá a fhios agam go mbrúfar chun cinn agus go bhforbrófar é le fonn nua, rud a chinnteoidh breis comhionannais deise agus dea-ide sa láthair oibre chomh maith le hearraí, áiseanna agus seirbhísi a sholáthar sa mhíleaois nua.

*Kate Hayes*

Kate Hayes

Cathaoirleach,  
An Ghniomhaireacht do  
Chomhionannas Fostaíochta

Lúnasa 1999



# The Board of EEA

**1st January - 31 December, 1998**

Kate Hayes (Chair)	Appointed by Minister for Justice, Equality & Law Reform
Leonard Hurley (Vice-Chair)	Nominated by the Minister for Justice, Equality & Law Reform
Gerry Hickey	
Ann Marie Gill	
Ullan Courtney	Nominated by Irish Business and Employers Confederation
Marie Moynihan	
Rosaleen Glackin	Irish Congress of Trade Unions
Nairin Greene	
Carol Fawsitt	Nominated by the National Women's Council of Ireland
Kathleen O'Sullivan	
Anne Taylor	

Total number of meetings - 7.

## EEA Functions

- ◆ Working to eliminate discrimination in employment and vocational training which is based on sex or marital status.
- ◆ Promoting equal opportunity between men and women in employment and vocational training.
- ◆ Reviewing the Anti-Discrimination (Pay) Act, 1974 and the Employment Equality Act, 1977.
- ◆ Providing an information service on the provisions of the Maternity Protection Act, 1994 and the Adoptive Leave Act, 1995.



# Administration

## Staff at the end of 1998

### Chief Executive

Carmel Foley to November '98

### Public Office

Gerry Guidon  
Ann Lawler  
Mary Clarke  
Carol Leonard

### Policy and Administration

Barbara Cashen (job-share)  
Catherine Jestin

### Legal Section

Mary Honan to October '98  
Marian Duffy  
Valerie Murtagh to March '98  
Patricia Donnelly from March '98 - August '98  
Therese Crossan (job-share)  
Mary Maher (job-share)

### Information and Promotion

Brian Merriman (job-share)  
Patrick O'Leary  
Conall O'Connor

## Public hours

### Mon - Thurs:

9.30 am - 5.30 pm

### Friday:

9.30 am - 5.15 pm

The office closes for lunch from 1 pm to 2.15 pm

An answering machine is available for enquiries outside these hours.

A reference library is available for consultation by prior appointment.

**EEA is located at 36 Upper Mount St, Dublin 2**

**Telephone: (01) 6624577**

**Fax: (01) 6625139**

**E-Mail Address: [info@equality.ie](mailto:info@equality.ie)**

**Web Site: <http://www.equality.ie>**

## Equal Opportunities

The staff of EEA are civil servants of the Department of Justice, Equality and Law Reform. EEA operates an equal opportunities policy in relation to its staff, within the civil service regulations.

## Safety and Health

EEA has drawn up a Health and Safety Statement in respect of its premises and work practices. This has been circulated to all staff and is the subject of regular review.

## Funding

EEA is funded by the Department of Justice, Equality and Law Reform. EEA's funding for 1998 was £546,000.



♦ Gerry Guidon, Finance



♦ EEA Administration Team (l-r): Carol Leonard, Ann Lawler and Mary Clarke.

# Enquiries to EEA in 1998

	1997	1998
Maternity/Adoptive Leave Enquiries	2296	2362
Pregnancy Discrimination	231	255
Sexual Harassment	266	298
Flexible Working Arrangements	174	180
Equal Opportunities	113	146
Recruitment and Selection	89	210
Equal Pay/ Pensions	81	96
General Working Conditions	89	95
Job Advertising	36	27
Promotion	38	64
Equal Opportunities General	30	35
Re-instatement	6	5
Training Work Experience	20	26
Redundancy/Dismissal	30	44
Parental Leave	31	439
New Legislation	385	601
EEA Functions	257	403
EEA Publications	341	460
Students Research	30	66
Enquiries Outside EEA Scope	83	198
<b>TOTAL</b>	<b>4626</b>	<b>6010</b>

	1997	1998
Dublin	2414	3125
Leinster	662	841
Munster	745	962
Connaught	220	301
Ulster (Part)	112	180
Outside Jurisdiction	40	54
Location not stated	433	547
<b>Total</b>	<b>4626</b>	<b>6010</b>





# Legal Report

EEA provides advice and assistance to anyone who experiences discriminatory treatment in relation to employment or vocational training. EEA provides a service which ranges from clarifying an individual's situation with regard to the Employment Equality Act, 1977 and/or the Anti Discrimination (pay) Act, 1974, to representation in a legal case before an equality officer of the Labour Relations Commission (LRC) or before the Labour Court. Advice is also provided under the Acts to trade unions, employers and the legal profession.

## Advice

Enquirers who contact EEA with regard to alleged discrimination are advised of their position under the relevant legislation. The procedures to pursue a complaint of alleged discrimination are outlined and advice given on the type of information and evidence required for the presentation of a case. Complainants are also advised of the procedure for seeking further assistance/representation from EEA and are given the various leaflets on the Acts published by EEA to assist them in that respect. Representation is a matter for decision by EEA Board which makes its decisions on the basis of strategic priorities. Complainants are encouraged to take their complaints with the support and assistance of their trade union where appropriate. Given its scarce resources, EEA, regrettably, cannot offer representation to all

those who request it. Cases can of course be taken without EEA representation.

## Assistance

EEA assistance has prioritised on certain areas of discrimination in recent years; these include sexual harassment, pregnancy discrimination, the treatment of part-time and other atypical workers, discrimination in promotion, and discrimination in non-traditional areas of employment.

When a person applies for assistance, EEA may at its discretion, agree to provide this in any or all of the following forms;

- (i) investigation and identification of relevant facts/issues; assessment of the complaint, including legal advice.
- (ii) Preparation and issuing of a letter of complaint to the party alleged to be responsible for the discrimination.
- (iii) Resolution of complaint. In some cases, it is possible to resolve the difficulty without pursuing the complaint through the legal process.
- (iv) Advice/assistance with referral of complaint to the equality officer of the Labour Relations Commission, and in the case of dismissal, by the Court itself. An equality officer's recommendation



♦ Mary Honan, Legal Adviser, EEA.

may be appealed to the Labour Court within 42 days of the recommendation.

- (v) Preparation of written submissions.
- (vi) Representation of complainant at hearing(s) of case.
- (vii) advice/assistance with appeal to Labour Court or High Court on a point of law.

## Advertising

One of the provisions of the Employment Equality Act, 1977, (Section 8) prohibits recruitment advertising which can reasonably be interpreted as expressing a preference for applicants of one sex rather than the other or one marital status rather than another. EEA has the function under the legislation of referring alleged discriminatory advertising to the Labour Court. During 1998 EEA monitored all national newspapers on a daily basis and local papers on a regular basis.



The number of discriminatory advertisements recorded by EEA in recent years has dropped to negligible levels, presumably as a result of greater awareness. No referrals to the Labour Court have been necessary since 1992, as in all cases, discriminatory advertisements were re-advertised as soon as they were brought to the attention of the publisher.

## Legislation

EEA has a statutory function to review the Anti-Discrimination (Pay) Act 1974 and the Employment Equality Act, 1977 and to propose amendments if necessary. Consequently, during 1998 EEA made various submissions to the Minister for Justice, Equality and Law Reform on the Employment Equality Bill 1997 which was appropriately amended and republished following the striking down of the 1996 Bill by the Supreme Court on grounds of the unconstitutionality of certain provisions. This will extend protective employment legislation in Ireland to prohibit discrimination on grounds of family status, sexual orientation, religion, age, disability, race, and membership of the traveller community. The 1997 Bill which is now known as the Employment Equality Act, 1998 was passed by the Oireachtas in June 1998 and signed by the President. The Minister for Justice Equality and Law Reform aims to have the provisions of the Act in force by September 1999. Further legislation is planned which will extend legislative protection to areas outside employment and vocational training, such as education and the provision of goods, facilities and services.

## Casework Report

During 1998, advice was provided to trade unions, employers, the legal profession, and individuals, on the Anti-Discrimination (Pay) Act, 1974 and the Employment Equality Act, 1977. A total of 570 casework queries were received, of which 39 were non-relevant in terms of either the 1974 or 1977 Acts; there were 531 relevant queries. All of the relevant queries resulted in follow-up action. This may involve correspondence, telephone contact, personal interviews/meetings, counsel's opinion, and the provision of advice. Representation was sought in 28 cases during 1998; EEA Board approval was given in respect of 17 of these.

The largest category of complaint received in 1998, as in recent years, was sexual harassment: 136 complaints related to this problem. Also high was the number of complaints received about pregnancy discrimination (102), flexible working conditions (57), and working conditions (55). Other complaints related primarily to equal pay/pensions and access to employment.

## Settlements

18 complaints were resolved or settled during the year. The largest category of these (8) related to flexible work arrangements/job-sharing; other complaints settled involved for example, pregnancy, sexual harassment, discriminatory interview and dismissal discrimination. Most complaints were resolved to the satisfaction of the complainant by a variety of actions which did not involve compensation, for example: an



♦ Marian Duffy, Senior Casework Officer

apology and the termination of the offending treatment; the introduction of a sexual harassment policy; improved working conditions; provision of job-sharing.

## Equality Decisions in 1998

A total of 75 equality decisions were issued by equality officers and the Labour Court during 1998; of these 35 related to pay discrimination and 40 to alleged discriminatory treatment. Twenty-eight per cent (21) of the 75 decisions issued were successful or partially successful for the claimant: of 45 equality officer recommendations, 20% (9) were successful or partially successful for the claimant; of the 30 decisions of the Labour Court 37% (11) were in favour of the claimant.

Most of the 40 decisions under the employment Equality Act, 1977, related to promotion, access to employment, conditions of employment, job-sharing issues and sexual harassment.

Brief summaries of equality decisions issued by the Labour



court and the Labour relations Commission are contained in Appendices 1 and 2 of this report.

## European Court of Justice

There were a number of significant judgements of the European Court of Justice (ECJ) in 1998 which related to employment discrimination. These included:

### Pregnancy discrimination

*Brown v Rentokil* [C-394/96]: In August 1990 Mary Brown, who was employed in the UK by Rentokil Ltd., informed her employer that she was pregnant. Subsequently she experienced difficulties with her pregnancy and had to take sick leave. Rentokil's contracts of employment provided that where employees were absent on sick leave for more than 26 weeks continuously they would be dismissed. On 9 November 1990 Ms Brown was advised by her employer that she had been on sick leave for 13 weeks and that the 26-week period would expire on 8 February 1991; she was also advised that her employment would terminate on that date if, following an independent medical examination, she had not returned to work. She did not return to work and was dismissed. Her child was born on 22 March 1991.

Ms Brown referred a complaint under the Sex Discrimination Act, 1975 alleging that her dismissal was pregnancy-related and therefore discriminatory. The case was unsuccessful before an industrial tribunal and appealed by Ms Brown to the Employment Appeal Tribunal, the Court of Session and ultimately the House

of Lords which referred certain questions to the European Court of Justice for a preliminary ruling. These are summarised below:

1. (a) Is it contrary to the Equal Treatment Directive to dismiss a female employee at any time during her pregnancy as a result of absence through illness arising from that pregnancy?
- (b) Does it make any difference if there is a contractual provision stipulating that employees, irrespective of gender, will be dismissed after a certain number of weeks of continued absence?
2. (a) Is it contrary to the Equal Treatment Directive to dismiss a female employee as a result of absence through illness from pregnancy if she does not qualify for maternity leave under national law and is dismissed during what would have been the maternity leave period?
- (b) Does it make any difference if there is a contractual provision stipulating that employees, irrespective of gender, will be dismissed after a certain number of weeks of continued absence?

In response to 1(a) the European Court of Justice ruled that the Directive precluded dismissal of a woman 'at any time during her pregnancy for absences due to incapacity for work caused by illness resulting from that pregnancy'. In its judgement the Court stated that:

'...dismissal of a woman during pregnancy cannot be based on her inability, as a result of her condition, to perform the duties which she was contractually bound to carry out. If such an interpretation were adopted, the protection afforded by Community law to a woman during pregnancy would be available only to pregnant women who were able to comply with the conditions of their employment contracts, with the result that the provisions of Directive 76/207 would be rendered ineffective...'

The Court expressly overruled its earlier judgement, given on 29 May 1997, in *Larsson* [C-400/95] in which it held that it was not sex discrimination *per se* to dismiss a woman because of absence resulting from a pregnancy-related illness. In *Larsson* the Court stated that the Directive did not preclude taking into account absences from the beginning of a woman's pregnancy when assessing absence as a ground for dismissal under national law, provided such absences were outside the period of statutory maternity leave.

In *Brown v Rentokil* the Court stated that:

'...contrary to the Court's ruling in [*Larsson*] ... where a woman is absent from illness resulting from pregnancy or childbirth, and that illness arose during pregnancy and persisted during and after maternity leave, her absence not only during maternity leave but also during the period extending from the start of her pregnancy to the start of her maternity leave cannot be taken into account for computation of the

period justifying her dismissal under national law.'

A woman is therefore protected against dismissal from the beginning of pregnancy to the end of maternity leave. The Court stated however that as to absence after maternity leave, this may be taken into account under the same conditions as a man's absence, of the same duration, through incapacity for work.

In response to the second part of the first question the Court stated that the position of a pregnant worker was not affected by any such contractual provision as:

'the situation of a pregnant worker who is unfit for work as a result of disorders associated with her pregnancy cannot be considered to be the same as that of a male worker who is ill and absent through incapacity for work for the same length of time.'

Given the Court's response to the first question it was unnecessary to consider the second question.

### Job-Sharing discrimination

Hill and Stapleton v Revenue Commissioners and Department of Finance C-243/95 concerns two clerical assistants who were job-sharing in the Revenue Commissioners and lost an increment on their salary scale when returned to full-time employment. The Department of Finance regulations provided that pay increments would be paid annually but on return to full-time work an adjustment on the incremental scale took place to take account of the fact that each year job-sharing is reckonable as six months full-time service and both claimants were put on a lower point of the incremental scale.



♦ Valerie Murtagh, Casework Officer.

The claimants assisted by the Civil and Public Service Union referred a complaint of indirect discrimination to the equality service under the Employment Equality Act, 1977 and a recommendation was issued in their favour. The Revenue Commissioners and the Department of Finance appealed to the Labour Court, which referred a number of questions to the European Court of Justice. The questions referred, asked if indirect discrimination arose where more females than males spend part of their working lives job-sharing and on return to full time work are given credit for incremental progression on the basis of actual time worked. In other words is the principle of equal pay as defined in Council Directive 75/117/EEC contravened in the circumstances where a job-sharer who returns to full-time work is placed on a lower point on the incremental scale than a comparator who continuously works full time, as the criteria for defining service is calculated by reference to time worked on the job.

The European Court ruled that placing job-sharers on a lower

point on the scale when they return to full-time work, contravenes Article 119 of the Treaty of Rome and the Equal Pay Directive. The Court concluded the rules of the job-sharing scheme as applied were indirectly discriminatory against women. Having established that 98% of all clerical assistants in the civil service who job-share are women the ECJ went on to state:

'In these circumstances, a provision which, without objective justification, adversely affects the legal position of those workers coming within the category of jobsharers, has discriminatory effects based on sex.'

In relation to the loss of an increment on return to full-time employment the Court stated:

'Within the category of full-time workers, therefore, there is unequal treatment, as regards pay, of employees who previously jobshared, and who regress in relation to the position which they already occupied on the pay scale.'

In relation to objective justification the Court stated it was a matter



for the national courts but the Court did state:

'So far as the justification based on economic grounds is concerned, it should be noted that an employer cannot justify discrimination arising from a jobsharing scheme solely on the ground that avoidance of such discrimination would involve increased costs.....

The Court went on to state that the onus was on the respondents to justify before the Labour Court that the rules applying to the job-sharing scheme on return to full-time employment were objectively justified on grounds unrelated to any discrimination on the grounds of sex.

### **Protection of former employees against victimisation**

In *Coote v Granada Hospitality Ltd* C-185/97 the European Court of Justice found that discrimination had occurred after Ms Coote left employment when her former employer refused to give her a reference. Ms Coote was employed by the company from December 1992 to September 1993. In 1993 she brought a claim of sex discrimination against the company alleging dismissal because of pregnancy. The claim was subsequently settled. Ms Coote sought employment through two employment agencies but she attributed her difficulties in finding employment to the failure of her former employer to give her a reference. She brought a claim of victimisation by Granada to the industrial tribunal but the tribunal dismissed the claim on the grounds it had no jurisdiction as the employment relationship had ended when the alleged victimisation took place. On appeal to the EAT the Tribunal

referred a number of questions to the ECJ for a preliminary ruling. It asked the Court if the Equal Treatment Directive 76/207/EEC could be interpreted as prohibiting further alleged discriminatory acts by the respondents after the employment ended because she had previously pursued a sex discrimination case against him.

The ECJ in its judgement ruled that the Equal Treatment Directive applied beyond the end of the employment contract and that Member States should introduce into national legislation necessary measures to ensure judicial protection for workers against post employment victimisation. The Court stated:

'The principle of effective judicial control laid down in Article 6 of the Directive would be deprived of an essential part of its effectiveness if the protection which it provides did not cover measures which,.....an employer might take as a reaction to legal proceedings brought by an employee with the aim of enforcing compliance with the principle of equal treatment. Fear of such measures, where no legal remedy is available against them, might deter workers who considered themselves the victims of discrimination from pursuing their claims by judicial process, and would consequently be liable to seriously jeopardise implementation of the aim pursued by the Directive.'

The Court went on to say that Article 7 did not limit the protection of workers against retaliatory measures by employers solely to cases of dismissal.

### **Sexual Orientation**

In the case of *Grant v South-West Trains Ltd* C-249/96 the ECJ has ruled that the refusal by the employer of a travel pass to the claimants female partner was not discrimination prohibited by Article 119 of the Treaty or Directive 75/117. Ms Grant claimed her female partner was entitled to a travel pass as the company provided travel concessions for spouses and common law spouses. Her request was turned down on the basis she was not of the opposite sex. She appealed the decision to the Industrial Tribunal which referred a number of questions to the European Court of Justice. It was argued on her behalf that travel concessions was pay within the meaning of Article 119, that she was discriminated against on the basis of her sex and that the difference in treatment based on her sexual orientation constituted discrimination on the grounds of sex. The Court stated that the condition imposed by the employer to avail of travel concessions was applied in the same way to both male and female workers and therefore could not be regarded as constituting direct sex based discrimination. The Court considered that the previous ECJ judgement in *P v S*, concerning a dismissal of a worker following a sex change which the Court ruled was discrimination on the grounds of sex within the meaning of Directive 76/207 was based on sex as it concerned gender reassignment. It went on to state that European Community Law did not regard stable relationships between two persons of the same sex as equivalent to marriage or a stable relationship between persons of the opposite sex.

# Maternity/Adoptive Leave Information

Since 1995, EEA has had responsibility for providing an information service on the Maternity Protection Act 1994 and Adoptive Leave Act, 1995. This service received 2,362 enquiries in 1998 of these 2,312 concern maternity and related matters and 50 concern Adoptive Leave. Enquiries to the service during 1998 have highlighted cases where employees received less favourable treatment on grounds of pregnancy and this led to complaints being lodged under the Employment Equality Act, 1977. The following table breaks down the enquiries to the maternity information service by category:

	1997	1998
Requests for literature/general enquiries	1,094	1,088
Leave Entitlements	189	227
Health and Safety Leave	188	101
Return to work after leave	161	136
Natal care visits/classes	129	187
Public Holidays/Annual leave	117	159
Paternity Leave	71	50
Notification	62	42
Additional Maternity Leave	51	64
Redundancy	45	27
Time off to breastfeed	22	33
Leave to which fathers are entitled	18	5
Social Welfare	10	18
Foreign Adoptions/Placement Certificates	9	7
Other	130	218
<b>Total</b>	<b>2,296</b>	<b>2,362</b>

The number of maternity/adoptive leave enquiries in 1998 once again proved to be the busiest service provided by EEA. EEA received 50% more enquiries relating to "time off to breastfeed" than it did in 1997. Employees who wish to continue with the breast feeding process after their maternity leave, will be entitled to take leave under the Parental Leave Act, 1998. The Parental Leave Act, 1998 came into operation on 3rd December, 1998 and employees can avail of 14 weeks' unpaid leave under the Act.



"Other" enquiries received by the maternity information service and relevant to the Maternity Act related to:

- (i) whether the employer has to pay an employee while on maternity leave
- (ii) calculation of bonus payments
- (iii) entitlements to company car/car allowance
- (iv) notice to an employer when an employee wants to resign after maternity leave
- (v) maternity leave in other countries
- (vi) lactation breaks
- (vii) time off for fostering/IVF treatment and other miscellaneous enquiries.

The enquiries to the maternity information service can be broken down sectorally as follows:

Commerce	296
Professional Service	202
Public Administration & Defence	157
Personal Service	146
Manufacturing Industry	118
Insurance, Finance & Business Service	54
Transport, Communication & Storage	26
Building Construction	5
Other or not Stated	1,358
<b>Total</b>	<b>2,362</b>

# Information and Promotion



♦ Brian Merriman, Assistant CEO, EEA.

In 1998, EEA worked with partners across government and the wider private sector to ensure equality issues and concerns were reflected in legislation, policies, programmes and services. Action areas included:

- ♦ The provision of submissions to the Minister for Justice, Equality and Law Reform on the drafting of the Employment Equality Act, 1998.
- ♦ Working with employers in developing equal opportunity initiatives, monitoring and encouraging developments.
- ♦ EON/LIONRA - forging strong links with equality networks.
- ♦ The provision of comprehensive legal information and representation in legal proceedings.

- ♦ The provision of information in connection with maternity and adoptive leave entitlements.
- ♦ Equality News - highlighting issues and initiatives of interest to equality seeking organisations.
- ♦ Publications - EEA has continued to disseminate a wide range of up-to-date publications which are freely available to a national audience.
- ♦ Media - Close contact is maintained with the media, where EEA can offer both national and international perspectives on equality issues.
- ♦ Input of EEA into the Expert Working Group on Childcare and Working Group on Women's Access to Labour Market Opportunities.
- ♦ Presentations and conference organisation have continued to be a major part of the activities of staff of EEA throughout 1998.
- ♦ EEA views are represented at EU Advisory Committee and other EU meetings.

EEA enhanced its web site on the internet (<http://www.equality.ie>) throughout the period of the report. The web site includes general information about EEA, many of its publications, details of programmes, linkages to sites of other equality seeking organisations and an easy method to send a message to EEA. EEA strives to make its web site accessible to as many users as

possible, for example, by using mainly text on the site and by using graphics that do not take a long time to download.

## Enquiry Service

EEA maintains an enquiry service. Members of the public can make enquiries by telephone, in writing or in person. Person's aggrieved by discrimination or their representatives seeking redress, can lodge a complaint in writing (via EEA questionnaire) to EEA, which will investigate the complaint and endeavour by conciliation, to effect a settlement of the matter between the parties concerned. Where there has not been a settlement of the matter, the complainant may apply to EEA for assistance in respect of proceedings before the Labour Court. EEA's total enquiries rose to 6,000 in 1998 a 30% increase over the previous year. 52% came from the greater Dublin area and 48% from the rest of the country. (see table on page 14 for details).

From the 1998 Enquiry statistics, sexual harassment as in previous years, was a large category of enquiry to EEA. The increased attention given to harassment in recent years has resulted in specific definitions in Irish Law for the first time. Under the 1998 Employment Equality Act sexual harassment is defined to include 'all unwelcome and sexually, or otherwise on the gender ground,



offensive, humiliating or intimidating actions involving acts of physical intimacy, spoken words, gestures, or the production, display or circulation of written material or pictures, or requests for sexual favours'. It is outlawed in the workplace and in the course of employment, whether by an employer, another employee, clients, customers, or business contacts of an employer.

The Act also outlaws harassment relating to the new discriminatory categories in addition to the existing grounds of sex or marital status - the new categories will also cover age, religion, race, sexual orientation, family status, disability or membership of the traveller community. Harassment is defined as 'any act or conduct which is unwelcome and offensive, humiliating or intimidating on a discriminatory ground including spoken words, gestures, or the production, display or circulation of written material or pictures'. EEA welcomes this development, as a significant proportion (113) of enquiries outside EEA scope in 1998 relate to harassment/bullying situations.

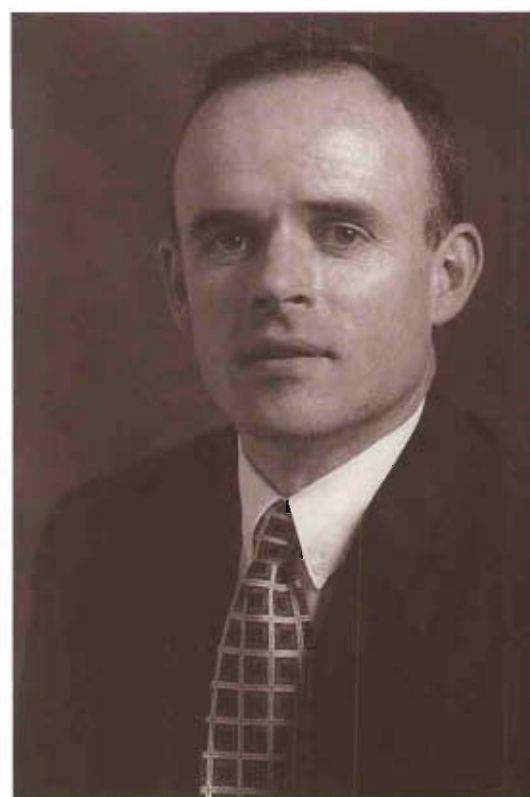
While harassment/bullying is not within the remit of the Employment Equality Act, 1977, EEA's experience to date in dealing with harassment is to advise employers, employees and trade unions of the relevance of the *Code of Practice Measures to protect the Dignity of Women and Men at Work*. The victims of sexual harassment or bullying are deemed to be working in the same environment, i.e. a hostile environment and the

procedures in resolving same would be identified in the Code. Under the new legislation, it is important to note that the bullying must be specific to the category of worker, in order that the complainant can seek legal redress. Further protection may be obtained from health and safety legislation and in this regard, EEA was pleased to be associated with the 1998 publication by the Health & Safety Authority of their leaflet on Bullying at Work.

While public awareness of the concept of equal opportunities has improved over the years, individual incidences of discrimination and discriminatory attitudes still abound. Figures in relation to pregnancy discrimination continue to be high, reflecting the process of changing work culture as a long-term endeavour. There was strong interest in the area of flexible working arrangements, in particular job-sharing - combining work and family responsibilities and the benefits to employers of employing job-sharers, including the retention of skilled and experienced members of staff. Significantly, there was keen interest during the year in both the Parental Leave Act (implementation date 3 December, 1998) and the Employment Equality Act, 1998 (implementation date 1 September, 1999) which establishes a new framework of equal opportunities in this country.

## **Publications**

The field of equal opportunities is changing rapidly. Organisations need to keep abreast of these



♦ Patrick O'Leary, Information Officer.

changes. EEA provides a full range of publications:

**Employment Equality Agency**  
Information leaflet on EEA.

**Employment Equality Act**  
Guidance leaflet on the provisions of the Employment Equality Act, 1977.

**Equal Pay for Men and Women**  
Guidance leaflet on the provisions of the Anti-Discrimination (Pay) Act, 1974.



**Guidance on Recruitment and Interview Procedures**  
Useful guide for employers in recruitment.

### Enforcing your rights under Employment Equality Legislation

Identifies discrimination and sets out the steps for taking a case.

### Sexual Harassment and Dignity at Work

Offers advice to employers and employees about preventing sexual harassment in the workplace.



### Maternity Protection Act, 1994

Guidance leaflet on the provisions of the Maternity Protection Act, 1994.

### Pregnancy and Work

Further information on maternity rights.

### Positive Action in Employment

Gives practical guidance on equal opportunity policies, practices and procedures in employment.

### Equal Opportunity in Vocational Training

Outlines the scope of the legislation relating to students, trainees and apprentices.

### Annual Report

Report of EEA's yearly activities.

### Equality News

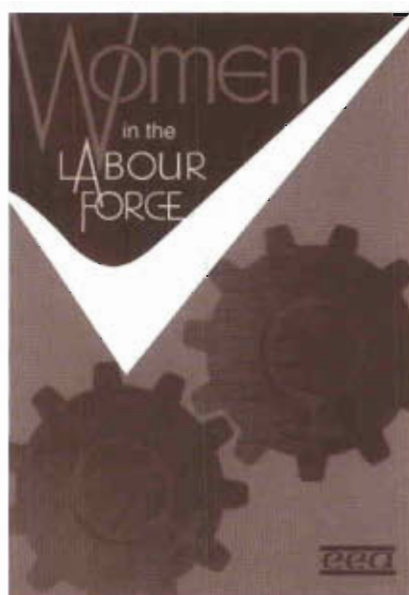
16 page quarterly magazine.

### Equality at Work

Model policy of equal opportunities.

### Women in the Labour Force

A compendium of statistics on the labour force, earnings, employment and associated



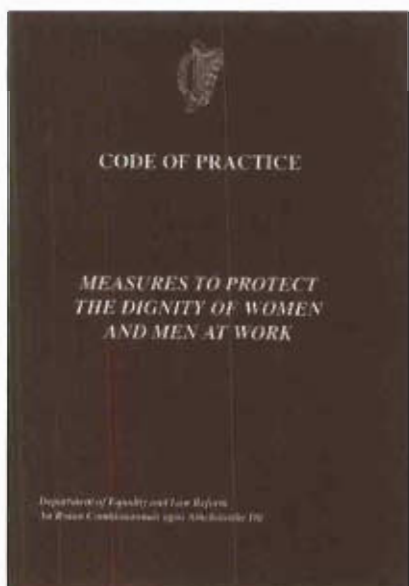
elements such as education, training and childcare.

### New Mothers at Work

Research findings which broaden the debate surrounding maternity in the Irish workplace.

### Sexual Harassment – Code of Practice on Measures to Protect the Dignity of Women and Men at Work

A step by step guide to drafting and implementing a policy.



### Quality through Equality in Dublin Corporation

Equality audit of a public sector organisation.

### Quality through Equality in Superquinn

Equality audit of a private sector organisation.

### Survey and Audit of Equality Practices in the Irish Dairy Industry

Equality audit of the Irish Dairy Industry.

### Introducing Family Friendly Initiatives in the Workplace

A digest of flexible working arrangements.

### Pathways to Employment for Women returning to Paid Work

Examines women's unemployment vis-à-vis the Live Register and the Labour Force Survey, plus access to employment and training schemes.

For further information about or to order any of the above publications, please contact the Information Section of EEA.

### Library Service

EEA's library service aims to enhance the quality and availability of information, information materials and research on equality of opportunity and equal treatment in the workplace. The library provides collections consisting of books, newspaper cuttings, magazines, pamphlets and videos on a diverse range of topics, including sexual harassment, positive action, rights of pregnant and part-time workers, equal pay, sex discrimination, education, training, childcare and



labour court decisions. All items are catalogued via a Lotus Notes database.

### **Library Consultation By Appointment Only**

**01/6624577**

**Monday to Thursday  
9.30am to 5.30pm**

**Friday  
9.30am to 5.15pm**

The Librarian is available Tuesday and Thursday afternoon to provide further assistance.

## **Equality News**

The purpose of this newsletter is to focus attention on equal opportunity issues and to clarify policy guidance. Each issue provides its readers with the latest news on equality legislation, EEA activities and equality issues in Ireland and abroad, particularly focusing on EU developments. Equality News reaches an audience of more than 6,000 people each quarter - equal opportunity officers, academics, human resource managers, personnel officers, training officers and those involved in women studies and social policy. We welcome comments and articles for inclusion in Equality News and making it a useful source for readers and those working actively for equality in the workplace.

## **Networks**

The Equal Opportunity Network is a forum made up of members of the public sector, financial

institutions and large employers in the private sector. As a participant, EEA is able to strengthen its links with equality practitioners in these sectors and provide them with the relevant information and material, so as to enhance and promote equality of opportunity in their organisations. Regular contact is maintained and views are exchanged on discriminatory practices, equality projects, policies on sexual harassment and equality of opportunity legislation and best practice. During 1998, EEA in association with the VHI revived LONRA, the network of equal opportunity officers in state sponsored bodies.

Representatives include key players from important sectors such as training, industrial development, services, educational and financial semi-state services. Information and advice is exchanged amongst the members on matters of mutual interest.



♦ Brian Galvin Librarian

## **Opportunities '98**

EEA information stand and material was on display at the FÁS Opportunities '98 exhibition from 4-6 February 1998. The exhibition is designed to cater for job-seekers, returning emigrants



♦ EEA information stand on display at FÁS Opportunities '98.



♦ Mr Brian Merriman, Assistant CEO EEA, pictured with Ms Mary Wallace, TD, Minister of State at the Department of Justice, Equality and Law Reform (centre) and EEA members.

and people looking for information on training and educational opportunities. It offered one stop shop access to a range of exciting job options and information on the new world of work. EEA, Department of Social, Community and Family Affairs and the Department of Enterprise, Trade and Employment amongst others, informed attendants as to their entitlements, rights and obligations under legislation. FAS estimate that over 80,000 people attended the three day period. Queries to EEA stand related to sexual harassment, bullying, age discrimination, questions asked at interviews, maternity and pregnancy at work and the provisions under new equality legislation.

## New Model Equal Opportunities Policy

An equal opportunities policy aims to eliminate discrimination, both direct and indirect, against any job applicant, actual or potential, or employee on the grounds of

sex or marital status. At a minimum an equal opportunities policy should ensure that the standards required by the Anti-Discrimination (Pay) Act 1974 and the Employment Equality Act, 1977 are met. The provision of equal opportunities in the workplace is a legal issue - an equal opportunities programme aims to implement and complement the equality legislation and will include any lawful measure contributing to the elimination of inequalities in practice. Furthermore, an equal opportunities programme also needs conscious efforts to overcome the effects of indirect discrimination, past and present.

*Equality at Work* provides clear guidelines for employers on how to initiate and implement policies, how to avoid discrimination and gain tangible benefits. It looks at such diverse areas as positive action, sexual harassment, flexibility, pregnancy, adoption, and employment, as well as more general issues of equal opportunity. *Equality at Work* is a practical working document which

will be a useful resource to employers introducing or re-assessing their equal opportunity policies. It is designed to be user friendly and accessible and is available free of charge from EEA.

## NOW Project

The Institute of Personnel and Development in association with EEA, organised a workshop entitled 'Harnessing Diversity for a Competitive Advantage' where the results of the NOW Project were disseminated. Two high profile leading Irish organisations, Microsoft European Product Development Centre and First Active were invited to participate in the Project. The participating organisations were selected with the intention of providing a national example of best employment practices for other organisations to follow. Focus for both companies during the programme included:

- ♦ Review of equal opportunity and harassment policies
- ♦ Provision of a series of diversity awareness workshops for managers
- ♦ Review of work/life balance initiatives
- ♦ Establishment of a steering group to oversee progress

Mr Hugh Fisher, one of the project consultants summarised the business case for diversity. It enables organisations to:

- ♦ Recruit from the widest possible pool of potential employees
- ♦ Meet the challenge of skill shortages



- ◆ Retain skilled and experienced employees
- ◆ Create a positive work environment, resulting in a more highly-motivated workforce
- ◆ Recognise the diversity of customers and their needs.

In summary, the theme and purpose of this NOW Project, indicated that the success of a business will largely depend on management catering for the needs and enhancing the contributions of its employees.

## Gender Equality Monitoring Committee

The Gender Equality Monitoring Committee's brief is to examine gender equality in the light of the recommendations of the Second Commission on the Status of Women and the strategic actions agreed at the UN Fourth World Conference on Women, to make recommendations to accelerate implementation of the above Reports and to draw up reports for submission to the Minister for Justice, Equality and Law Reform on progress made. EEA along with Government departments and agencies, women's organisations and the social partners are represented on the Committee, which is chaired by the Department of Justice, Equality & Law Reform. Publication of the Third Progress Report of the Gender Equality Monitoring Committee on the Implementation of the Recommendations of the Second Commission on the Status of Women is expected in mid-

1999. It was further decided by the Committee, that the Department of Justice, Equality and Law Reform would initiate a research project to review progress, to recommend future action and to develop mechanisms to monitor progress in achieving gender equality in Ireland.

## Expert Working Group on Childcare

The Expert Working Group on childcare was established by the Government under a commitment in Partnership 2000 in July 1997. Membership, including EEA, spans all aspects of childcare - relevant government departments, statutory bodies, non-governmental organisations, parents and individuals with expertise and interest in the area of childcare. During 1998, the Group addressed a diverse range of issues including the needs of children, the problem of childcare supply, affordability of childcare, regulations and standards, the number of childminders in the informal economy and the particular problems faced by urban disadvantaged and rural areas. The objective of the Group is to issue recommendations for a national childcare strategy, including measures aimed at stimulating childcare supply and supporting demand for childcare, as well as local planning and national co-ordination mechanisms to develop the childcare sector. The report of the Working Group is expected in early 1999.



◆ John Fitzgerald, City Manager, launching Dublin Corporation's Equality Programme.

## Equality Action Programme for the Local Authority Service

Local Authorities throughout the country were required to have equality structures in place, before the end of 1998 to ensure fairness of practice and procedures in employment in this crucial sector. The Minister for the Environment and Local Government, Mr. Noel Dempsey T.D. formally launched in 1998, the introduction of an Equality Action Programme in all local authorities and issued a Guideline Document on Equal Opportunity Policy and Sexual Harassment Policy/Procedures to these authorities. Measures include the adoption of an active equality policy, implementation of a sexual harassment policy, gender balanced interview boards, development of job specifications and monitoring procedures. An equality officer will be appointed

and an equality action team will be set up in local authorities to oversee a culture of equal opportunity. EEA addressed the first meeting of the Local Authorities network and maintains ongoing contact.

One of the catalysts for this change has been Dublin Corporation. EEA together with IMPACT and senior management conducted an equality audit, (Quality Through Equality) in Dublin Corporation under the EU funded NOVA scheme. The extensive report published in 1996 also included a model of best practice suitable for the entire local authority sector. Key findings included the concentration of women in the lower paid clerical grades, the need for equal opportunity policies and the appointment of an Equality Officer. Management's response has been positive with the establishment of equal opportunity and anti-harassment policies, the creation of an Equality Liaison committee and full-time Equality Officer.

### **The Freedom of Information Act, 1997**

The Freedom of Information (FOI) Act establishes three statutory rights:

- ♦ a legal right for each person to access information held by public bodies;
- ♦ a legal right for each person to have official information relating to him/herself amended where it is incomplete, incorrect or misleading;

- ♦ a legal right to obtain reasons for decisions affecting oneself.

The Act asserts the right of members of the public to obtain access to official information to the greatest extent possible, consistent with the public interest and the right to privacy of individuals.

An EEA manual is prepared in accordance with publication requirements set out in Section 15 of the Act. Its purpose is to facilitate access to official information held by EEA, by outlining the structure and functions of EEA, information on the classes of records we hold and information on how to make a request to EEA under the Freedom of Information Act, 1997. Furthermore, in accordance with Section 16 of the Act, an EEA manual outlining procedures, practices and guidelines is also available.

### **Equality Audit Committee of the Department of Public Enterprise**

During 1998, the Minister for Public Enterprise, Mary O'Rourke, T.D., wrote to all Semi-State Bodies under her remit to enquire about their equality policy practices and pending cases. She also included social exclusion and disability initiatives in her request for information. A Departmental committee of five representatives was established and EEA was invited as the only outside representative and its sixth member. An analysis of equality audits on the 12 Semi-State bodies, under the Department's

remit was conducted and a report was forwarded to the Secretary General and the Minister. As part of the Partnership 2000 process, the Department of Public Enterprise has established an equality committee and invited EEA to sit on the committee.

### **Expert Working Group on Women's Access to Labour Market Opportunities**

EEA continued its participation in 1998 in this Working Group set up under Partnership 2000. The following are the terms of reference:

- a) To review the issues underlying access by women to labour market opportunities and supports (including mainstream vocational education, training and employment programmes), with a view to increasing gender equity in access to such programmes and improving job opportunities, and
- b) To make recommendations to Government in this regard.

Areas for perusal and discussion included equal treatment in access to labour market opportunities, access to information on labour market programmes, family care, employment trends, tax system, education, training and personal development. The findings of the Working Group are to be reported to Government in 1999.



# EEA in Europe

## EU Advisory Committee

The European Commission's Advisory Committee on equal opportunities met in February, July and October 1998. The committee comprises representatives from the 15 EU Member States, national equality bodies and the social partners.

Issues which concerned the committee during the year were the Members States' 1998 Employment Policy Guidelines and the National Action Plans on employment (NAPS). The Committee members at its July meeting adopted the 1998 guidelines and the NAPs and said it was important that the equal opportunities pillar is retained in the 1999 guidelines with quantified targets introduced. The introduction of quantified targets in the guidelines would allow a more effective monitoring of national policy. The integration of mainstreaming into the other three pillars i.e. employability, entrepreneurship, and adaptability should also be strengthened. The committee also said that promoting equality should cut across all activities proposed by Member States and that this was not the case with the 1998 NAPs despite "significant progress" having been made.

At the October meeting, the Committee discussed its draft opinion on the Commission's

proposed reforms of the Structural Funds. It said the proposed reforms show the Commission's "willingness to integrate the dimension of equality into all policies and measures at all levels and in all fields". However, it also said it "disapproves" that there was no longer a specific Community Initiative within the Funds promoting equality between women and men. The Commission proposes to replace this with an initiative that will concentrate on combatting all forms of discrimination and inequality which prevent access to employment.

EEA's representative on the committee was Carmel Foley, Chief Executive.

## A new drive for equality in the Structural Funds

EEA was represented at a European seminar organised by the Commission in co-operation with the Portuguese authorities which was held in Viano do Castelo, Portugal, in September. The seminar attracted over 300 participants from across the EU to share good experiments financed within the framework of the Structural Funds and to start the debate on the proposals for the



♦ Barbara Cashen, Assistant CEO, EEA.

next programming period (2000 - 2006).

The conclusions of the debate centred around the following principles:

- ♦ the need to continue collecting information and carrying out research to better identify the needs, expectations and potential of women in regional development;
- ♦ the use of new development indicators, taking better account of existing links between different sectors of activity, local participation or the quality of negotiation at social level;
- ♦ the use of some of the technical assistance credits provided for in the programmes or the design of new financial tools to help small groups initiate projects and create, in this way,



♦ Catherine Jestrin, Policy and Administration

"support structures that allow new ideas to be developed and put into practice".

## 'Equality is the future'

The European Commission organised a major conference on equal opportunities in Brussels on 21/22 September, 1998. It was organised as part of the 4th Medium Term Action Programme on Equal Opportunities. The event aimed to highlight the Communities equal opportunities policies as well as the achievement of the action programme. An exhibition of projects was

organised in parallel with the event, co-funded under the programme

The Social Affairs Commissioner, Pádraig Flynn opened the conference. He said that the combined commitment to equal opportunities in the EU's employment strategy and the funding power of the revised Structural Funds were "a powerful set of tools for equal opportunities"

in the future. Over the two day conference, thematic workshops discussed and outlined a number of pointers for future work on equal opportunities in the fields of mainstreaming, equality law, equality in the media, the employment market, women in decision making and the reconciliation of work and family life. EEA was represented at the conference.

## Annual Tripartite Meeting

The 1998 annual tripartite meeting was hosted by the EOC(NI) and took place in Belfast in April, 1998. The main topics of discussion included: the Employment Equality Bill, 1997, the proposals for future legislation and policies on Employment Equality in Northern Ireland; and the EOC's(GB) consultation paper on legislative amendments. EEA was represented by Carmel Foley, Chief Executive and Barbara Cashen, Asst. Chief Executive.



♦ Kate Hayes, Chair, EEA, Dr. Ma Mowlan, Secretary of State for Northern Ireland, Carmel Foley, CEO, EEA and Joan Smyth, Chair and CEO, EOC N. Irl, pictured in Belfast in 1998.



# Appendix 1

## Decisions issued by Labour Court and Labour Relations Commission in 1998

Summaries of these decisions are contained in Appendix 2

### Employment Equality Act, 1977 Equality Officer Recommendations

EE 01/1998	Ms Sandra Dempsey & Irish Ferries Ltd/Eucan	Access to employment	Unsuccessful
EE 02/1998	Ms J McCarthy (Rep. by Peter Morrissey & Co., Solrs) & Dublin Corporation	Access to promotion	Successful
EE 03/1998	Mr Bernard Ivory (Rep. by MANDATE) & Tesco Irl. Ltd. (formerly Power Supermarkets Ltd.)	Suspension for wearing an earring	Unsuccessful
EE 04/1998	Ms Breda Smith (Rep. by EEA) & MGI Ltd.	Access to employment	Unsuccessful
EE 05/1998	Ms. Margaret Fleming (Rep. by the PNA) & North Eastern Health Board (Rep. by the HSEA)	Access to promotion	Partially successful Recommend £2,000 compensation
EE 06/1998	Mr Govind Basnet & Analog Devices BC	Denied job opportunities, and job training. Promotion given but taken away again	Unsuccessful
EE 07/1998	Dr Josephine Browne (Rep by Frances Meenan, Solrs) & Dublin Institute of Technology (Rep by Arthur Cox, Solrs)	Access to promotion	Unsuccessful
EE 08/1998	Dr Josephine Browne (Rep by Frances Meenan, Solrs) & Dublin Institute of Technology (Rep by Arthur Cox, Solrs)	Access to promotion	Unsuccessful
EE 09/1998	Dr Josephine Browne (Rep by Frances Meenan, Solrs) & Dublin Institute of Technology (Rep by Arthur Cox, Solrs)	Access to promotion	Unsuccessful
EE 10/1998	Mr Tom Merriman & Eastern Health Board (Rep by the HSEA)	Access to adaptive leave	Successful
EE 11/1998	Garda J. Grennan & Garda Commissioner An Garda Síochána (Rep by the Chief State Solicitor Office)	Access to overtime	Unsuccessful
EE 12/1998	Mr Anthony Herbert (Rep by Mandate) & Tesco Irl. Ltd. (formerly Power Supermarkets Ltd.)	Denied supply of uniform	Unsuccessful
EE 13/1998	Ms Deirdre Casey (Rep by Mandate) & Tracys Shoes (Rep by Conway Kelleher Tobin Solrs)	Reduction of hours	Unsuccessful
EE 14/1998	Ms Alison Coard (Rep by SIPTU) & Eason & Son Ltd (Rep by IBEC)	Access to promotion	Unsuccessful
EE 15/1998	Ms Ann Phelan & Michael Stein Travel (Rep by Vincent & Beatty Solrs)	Discriminatory interview	Successful
EE 16/1998	An Employee (Rep by EEA) & Southern Health Board Cork University Hospital (Rep by Conway Kelleher Tobin Solrs)	Access to promotion	Unsuccessful

EE 17/1998	Ms Carmel Brinn (Rep by the TSSA) & Bus Eireann	Access to promotion	Unsuccessful
EE 18/1998	Mr Jeremiah Murphy & Dublin Institute of Technology (Rep by Arthur Cox & Co. Solrs)	Access to employment	Unsuccessful
EE 19/1998	Mr Jeremiah Murphy & Waterford Corporation	Access to employment	Unsuccessful
EE 20/1998	Ms Heda McGrath & St. Peter & Paul's CBS	Access to promotion	Successful £1,500 awarded
EE 21/1998	Mr Tom Keady (Rep by Eames & Co Solr) & Bank of Ireland (Rep by Dr. M Redmond Solr)	Marriage Gratuity	Unsuccessful
EE 22/1998	Ms Maureen Browne (Rep by PNA) & Midland Health Board	Victimisation	Unsuccessful

### **Employment Equality Act, 1977 Labour Court Determinations**

DEE 01/1998	An Post & Ms Frances O'Connor	Access to full pay while on maternity leave	Unsuccessful
DEE 02/1998	Telecom Eireann (Rep by Anthony Kerr B.L. instructed by Arthur Cox & Co. Solrs) & 58 Named Female Telephonists (Rep by EEA)	Working Conditions Access to weekend work	Unsuccessful
DEE 03/1998	Office of the Revenue Commissioners, Dept. of Finance & Ms. Philomena Flood (Rep by EEA)	Credit for job-sharing service	Successful
DEE 04/1998	Section 21 EEA 1977 A Credit Union (Rep by Murphy & Gordon Solrs) & A Worker	Access to promotion	Unsuccessful
DEE 05/1998	The Minister & Secretary of Justice Equality & Law Reform (Rep by Chief State Solicitor) & Ms Therese Hard (Rep by Anthony Kerr B.L.) (Instructed by O'Mara, Geraghty McCourt Solrs)	Access to job-sharing	Unsuccessful
DEE 06/1998	Dublin Corporation (Rep by Marquente Bolger, B.L.) & Ms J. McCarthy (Rep by Niall Beirne, B.L.)	Access to promotion	Successful £1,000 awarded
DEE 07/1998	Irish Ferries Ltd & Ms Sandra Dempsey	Access to employment	Unsuccessful
DEE 08/1998	Dublin Institute of Technology & Brian Doolin	Adoptive leave	Successful £6,500 awarded
DEE 09/1998	The Commissioner, An Garda Síochána & Garda Mary Flynn (Rep by Finbar Cahill & Co. Solrs)	Victimisation	Successful £7,500 awarded

### **Labour Court Orders**

EEO 01/1998	A Company (Rep by Pat Power Westgate Services) & A Worker (Rep by EEA)	Dismissal for wearing earring	Successful awarded £400
EEO 02/1998	A Company & A Worker (Rep by the EEA)	Sexual harassment dismissal	Successful awarded £3,000
EEO 03/1998	A Company (Rep by IBEC) & A Worker (Rep by Cunor Dignam B.L. instructed by O'Grady's Solrs)	Sexual harassment dismissal	Unsuccessful
EEO 04/1998	Aer Lingus (Rep by Arthur Cox Solrs) & Gail Coman (Rep by SIPTU)	Constructive Dismissal/jobsharing	Unsuccessful
EEO 05/1998	Aer Lingus (Rep by Arthur Cox, Solrs) & Annelies Delgacauw (Rep by SIPTU)	Constructive Dismissal/jobsharing	Unsuccessful
EEO 06/1998	Aer Lingus (Rep by Arthur Cox, Solrs) & Niamh O'Dwyer (Rep by SIPTU)	Constructive Dismissal/jobsharing	Unsuccessful
EEO 07/1998	Aer Lingus (Rep. by Arthur Cox) & Susan Stuart (Rep. by SIPTU)	Constructive Dismissal/jobsharing	Unsuccessful



EEO 08/1998	Bon Port Ltd./Mr Mindy Jasser & A Worker (Rep by EEA)	Sexual Harassment Dismissal	Successful £5,200 awarded
EEO 09/1998	A Dental Surgery & A Worker (Rep by Margaret Casey Solr)	Sexual Harassment Dismissal	Successful £500

### Anti-Discrimination (Pay) Act 1974 Equality Officer Recommendations

EP 01/1998	8/17/1 Named Female Employees (Rep by SIPTU) & Peamount Hospital (Rep by IBEC)	Equal Pay	Unsuccessful
EP 02/1998	Mr. Adrian Hegarty (Rep by Donal J. Hamilton & Co. Solrs) & Bank of Ireland (Rep by Dr. Mary Redmond, Solr)	Equal Pay/ marriage gratuity	Unsuccessful
EP 03/1998	Mr Martin Horgan & Bank of Ireland	Equal Pay/ marriage gratuity	Unsuccessful
EP 04/1998	Mr G. Murphy (Rep by Sean Allen & Co. Solrs) & Bank of Ireland (Rep by Dr. Mary Redmond Solr)	Equal Pay/ marriage gratuity	Unsuccessful
EP 05/1998	6 Named Female Employees (Rep by Mandate) & Dunnes Stores (Rep by BCM Hanby Wallace, Solrs)	Equal Pay	Unsuccessful
EP 06/1998	36 Named Female Employees (Rep by SIPTU) & UCD (Rep by IBEC)	Equal Pay	Successful arrears of pay awarded
EP 07/1998	26 Workers (Rep by CPSU) & The Depts. of Finance, Social Welfare, Agriculture & Food, Education, Defence, OPW, and the Revenue Commissioners	Equal Pay	Unsuccessful
EP 08/1998	Ms Colette Ivory (Rep by SIPTU) & EVE Holdings Ltd	Equal Pay	Unsuccessful
EP 09/1998	3/2 Named Male Employees (Rep by SIPTU) & University of Dublin, Trinity College (Rep by IBEC)	Equal Pay	Unsuccessful
EP 10/1998	Mr Govind Basnet & Analog Devices BV	Equal Pay	Unsuccessful
EP 11/1998	Ms E. Curley (Rep by IMPACT) & Revenue Commissioners, Dept. of Finance	Equal Pay	Unsuccessful
EP 12/1998	Ms M. Kennedy & Early & Baldwin Solrs	Equal Pay	Unsuccessful
EP 13/1998	Dr Vincent Molony (Rep by C.M. Collins & Co) & Eastern Health Board (Rep by the HSEA)	Equal Pay	Unsuccessful
EP 14/1998	3 Named Male Employees (Rep by Ms E. Meenan Solr) & Eastern Health Board (Rep by HSEA)	Equal Pay	Unsuccessful
EP 15/1998	Ms Gretta Cosgrove (Rep by SIPTU) & County Wexford VEC (Rep by Lennon Heather & Co Solrs)	Equal Pay	Successful
EP 16/1998	47 Named Female Employees (Rep by Mandate) & Roches Stores Limited (Rep by IBEC)	Equal Pay	Unsuccessful
EP 17/1998	24 Named Female Employees (Rep by Mandate) & Roches Stores Limited (Rep by IBEC)	Equal Pay	Unsuccessful
EP 18/1998	Ms Brenda Conroy (Rep by Mandate) & Ballet International 2000 (Rep by IBEC)	Equal Pay	Successful
EP 19/1998	Mr Tom Keady (Rep by Eames & Co. Solrs) & Bank of Ireland (Rep by Dr. M. Redmond Solr)	Marriage Gratuity	Unsuccessful
EP 20/1998	Mr Patrick Quigley (Rep by Kieran O'Reilly & Co. Solrs) & Bank of Ireland (Rep by Dr M. Redmond Solr)	Marriage Gratuity	Unsuccessful
EP 21/1998	Ms Margaret Thornton (Rep by Cookley Moloney, Solr) & Ridge Tool Co. (Rep by Ronan Daly Jermyn Solr)	Equal Pay	Unsuccessful

EP 22/1998	27 Named Female Employees (Rep by SIPTU) & Rangeland Meats Ltd	Equal Pay	Successful
EP 23/1998	Ms Carmel Looney (Rep by MANDATE) & O'Sullivan Darcy Eng. Ltd (Rep by CIF)	Equal Pay	Successful

### Anti-Discrimination (Pay) Act, 1974 Labour Court Determination

DEP 01/1998	Pennys Ltd (Rep by IBEC) & Mandate	Equal Pay	Successful for supervisors. Unsuccessful for the sales assistants
DEP 02/1998	Irish Times Ltd (Rep by IBEC) & SIPTU	Equal Pay	Unsuccessful
DEP 03/1998	Peamount Hospital (Rep by IBEC) & SIPTU	Equal Pay	Unsuccessful
DEP 04/1998	Power Supermarkets Ltd. & Mandate	Equal Pay	Unsuccessful
DEP 05/1998	Irish Times Limited (Rep by IBEC) & SIPTU	Equal Pay	Unsuccessful
DEP 06/1998	Dept. of Enterprise Trade & Employment, Labour Relations Commission & Ms Deirdre Sweeney	Equal Pay	Unsuccessful
DEP 07/1998	A Credit Union (Rep by Murphy & Condon Solrs) & A Worker	Equal Pay	Successful
DEP 08/1998	St Patricks College (Rep by IBEC) & SIPTU	Equal Pay	Successful
DEP 09/1998	Chief State Solrs. Office, Dept. of Finance (Rep by the Chief State Solrs. Office) & Irish Municipal Public and Civil Trade Union	Equal Pay	Unsuccessful
DEP 10/1998	The Revenue Commissioners, Department of Finance (Rep by the Chief State Solrs. Office) & Irish Municipal Public and Civil Trade Union	Equal Pay	Unsuccessful
DEP 11/1998	University of Dublin Trinity College (Rep by IBEC) & SIPTU	Equal Pay	Unsuccessful
DEP 12/1998	Dunnes Stores (Rep by Marguerite Bolger B.L.) (instructed by BCM Hanby Wallace Solrs) & MANDATE	Equal Pay	Unsuccessful

#### COPIES OF THESE DECISIONS CAN BE OBTAINED FROM:

The Labour Relations Commission/  
The Labour Court  
Tom Johnson House  
Haddington Road,  
Dublin 4  
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#### COPIES OF ECJ JUDGEMENT (FOR REFERENCE ONLY) ARE AVAILABLE AT:

Commission of European Communities  
Representation in Ireland,  
Jean Monet Centre,  
18 Dawson Street,  
Dublin 2  
Telephone: 01 662 5113



# Appendix 2

## Summaries of Equality Decisions in 1998

### Recommendation EE1/98: A Female Worker v Irish Ferries Ltd/Eucon

**UNSUCCESSFUL**

**Complaint:** The claimant alleged that she had been discriminated against because she was denied access to a permanent position. Claimant and a male worker were employed in the Credit Control Department of Irish Ferries on temporary contracts terminating on 25 October 1996. The claimant was recommended for a permanent job in an unrelated company by her Manager, while the male worker was recommended for a permanent position in an associated company called Eucon by the same Manager. The claimant was not afforded an opportunity to apply for the position in Eucon. She accepted the job offered to her but left shortly afterwards. The Company stated that it does not discriminate on the grounds of sex in employing staff members.

#### Conclusions of Equality Officer, Gerardine Coyle:

That the Company did not discriminate against the complainant on the basis of her sex in terms of Section 2(a) and Section 2(c) of the 1977 Act, and in contravention of Section 3 of that Act when it did not put her forward for a position in Eucon.

### Recommendation EE2/98: A Female Worker (Represented by Peter Morrissey & Co. Solrs) v Dublin Corporation

**SUCCESSFUL**

**Complaint:** The claimant alleges that she was discriminated against on the basis of her sex and claims that 2 males were promoted to the post of Senior Legal Assistant. The claimant worked in the Conveyancing Section of the Legal Department in Dublin Corporation since 1982. In 1996 she applied for the position of Senior Legal Assistant. There were 6 applicants in total. Two males were appointed to the posts in November 1996, from the Litigation Section of the Legal Department, and both applicants had no experience in the Conveyancing Section. The claimant states that during the interview she was asked discriminatory questions, and was not asked any questions on her knowledge of conveyancing. The employer denied that they discriminated against the claimant on the basis of her sex, and pointed out that a female had been placed in third position on the panel. The employer claimed that the successful candidates had a greater knowledge of all areas in the Legal Department, whereas the claimant had no experience in the area of litigation.

#### Conclusion of Equality Officer, Mary Solan Avison:

- that Dublin Corporation did ask claimant discriminatory questions
- that the claimant was not asked the same range of questions as the successful candidates
- that the claimant should be appointed to the position with effect from 1 January 1997, and be paid any salary and benefits related to the post from that date.

### Recommendation EE3/98: A Male Worker (Represented by MANDATE) v Tesco Ireland Limited (formerly Power Supermarkets Ltd)

**UNSUCCESSFUL**

**Complaint:** The Union alleged that the Company discriminated against the claimant on the basis of his sex when it suspended him from work because he was

wearing an ear-ring. The claimant was employed by Tesco Ireland between February 1989 and March 1997. On 18 May 1996 he arrived 10 minutes late for work, and was wearing an ear-ring. The Manager asked him to go home. The Company stated that the claimant was sent home from work because he was untidy and unshaven, and denied that the reason for sending the claimant home was because he was wearing an ear-ring. The Company stated that the claimant had worn an ear-ring both before and after the date of the complaint. The Union wrote to the Company requesting a meeting on the issue and stated that it would request an investigation by an Equality Officer if no response was received by 7 June 1996. The Company replied on 13 June requesting that the claim be withdrawn. The Union refused to withdraw the claim.

#### Conclusions of Equality Officer, Gerardine Coyle:

- that the Union failed to produce credible evidence in support of the case
- that the Union did not present sufficient evidence that the Company discriminated against the claimant because he was wearing an ear-ring
- that Tesco Ireland Limited did not discriminate against the claimant in terms of Section 2(a) and Section 2(c) of the 1977 Act, and in contravention of Section 3 of that Act for wearing an ear-ring.

### Recommendation EE4/98: A Female Worker (Represented by EEA) v MGI Limited

**UNSUCCESSFUL**

**Complaint:** The claimant applied for the position of office administrator with the Company, and was interviewed on 11 June 1996 for the position. She stated that she was asked discriminatory questions relating to her marital status, her family commitments and her childcare arrangements. The claimant stated that she was well qualified for the post, and that were it not for the fact that she was discriminated against at interview, that she would have been successful in her application. Her application was unsuccessful, and the successful appointee was single and female. The Employer stated that the alleged questions about her background had nothing to do with her lack of success at interview, but that they were more concerned with her profile and work experience, as compared to the other candidates.

#### Conclusions of Equality Officer, Mary Solan Avison:

- that all candidates regardless of gender or marital status, were treated in the same manner by the interview panel
- that the claimant was not discriminated against due to her marital status at the interview
- that the claimant was not discriminated against when she was not appointed to the post.

### Recommendation EE5/1998: A Female Worker (Represented by the PNA) v North Eastern Health Board (Represented by the HSEA)

**SUCCESSFUL**

**Complaint:** The claimant alleged that the North Eastern Health Board discriminated against her on the grounds of sex by failing to appoint her to the post of Acting Assistant Chief Nursing Officer. The claimant attended for interview for the above post in 1994, and was placed in fourth position on a panel of five successful applicants.



The top three candidates on the panel were male, and the claimant stated that she had equal or greater management experience and higher qualifications than the three men placed ahead of her on the panel. The Union felt that having regard to her academic qualifications, relevant experience and general suitability that the decision not to appoint the claimant to the position or to a higher position on the panel was based on her sex. The Health Board states that the selection process was conducted without regard to gender or marital status of all the candidates, and that the interview board consisted of 2 males and 1 female. The Board denied that it discriminated against Ms Fleming on the grounds of her sex.

#### Conclusion of Equality Officer, Deirdre Sweeney:

- that the claimant had equal or greater management experience and higher educational qualifications than each of the 3 men placed ahead of her on the panel.
- that the Health Board had not shown adequate or objective reasons for not placing the claimant in a higher position on the panel
- that the discrimination did not result in her non appointment to the position, but did result in a lower placing on the panel
- that the claimant be awarded £2000 as compensation for the distress suffered as a result of the discrimination

#### Recommendation EE6/1998: A Worker v Analog Devices BV

UNSUCCESSFUL

**Background:** The claimant claimed that the respondents had discriminated against him within the meaning of Section 2(a) 2(b), 2(c) and 2(d) of the Employment Equality Act, 1977 and in contravention of Section 3 of that Act when denied access to job opportunities, training and his responsibilities taken from him and given to a junior female staff member. The claimant contended that he was discriminated on grounds of sex in relation to working conditions and promotion. He alleges preferential treatment was given to a junior female member of staff which resulted in him being denied job opportunities and relevant job training. The claimant also argued that he was victimised and bullied while trying to bring matters to the Rights Commissioners. The respondent denied that they discriminated against the claimant. They stated that the claimant had been treated strictly in accordance with the Company's Human Resource Policy.

#### Conclusion of Equality Officer: Gerardine Coyle

- that Analog Devices BV did not discriminate against the claimant either directly or indirectly
- that the claimant had no basis for a claim of penalisation against Analog Devices BV

#### Recommendation EE7/1998: A Female Worker (Represented by Frances Meenan, Solicitor) v Dublin Institute of Technology (Represented by Arthur Cox, Solicitor)

UNSUCCESSFUL

**Background:** The claimant claimed that the respondents had discriminated against her on grounds of her sex in terms of section 2(a) and Section 2(c) of the Employment Equality Act, 1977 and in contravention of Section 3 of that Act when it failed to consider her for the position of Local Strategic Research Development Assistant Manager. The claimant alleges she made a verbal application for the position but failed in her application. The claimant contended that she has worked for the past thirteen years in this area and had achieved a significant position in her area of study and research. In addition the claimant was of the view that she was

better qualified and experienced than the successful male applicant. The claimant was of the view that the successful applicant was a personal friend of the Acting Head of the School and for this reason her name was not put forward. The DIT stated that the reason that the claimant's name was not put forward was that her application was too late and that the successful male applicant's experience was wide-ranging and extensive.

#### Conclusion of Equality Officer: Gerardine Coyle

- The Acting Head of the School should have forwarded the claimant's name as nominee and failed to comply with procedure by not doing so.
- there was no evidence to suggest that the successful male applicant was appointed because of his sex
- that the successful applicant previous experience was a major factor in his appointment
- that the respondent did not discriminate directly or indirectly against the claimant.

#### Recommendation EE8/1998: A Female Worker (Represented by Frances Meenan, Solicitor) v Dublin Institute of Technology (Represented by Arthur Cox, Solicitor)

UNSUCCESSFUL

**Background:** The claimant alleges that she was discriminated on the grounds of her sex when it did not shortlist her for interview for the position of Director of Academic Affairs. The claimant states that she was better qualified for the position than the successful male applicant. The claimant also alleges that it was because of her sex that the respondent did not shortlist her for interview and was penalised for taking a previous claim against it under the Employment Equality Act, 1977. The respondent appointed outside consultants to assist in the selection process. The respondent state that the outside consultants were unaware of the claimant's previous claim taken under the Employment Equality Act. The respondent claimed that the external consultant were satisfied that those candidates called for interview did process the relevant experience and expertise for the position.

#### Conclusion of Equality Officer: Gerardine Coyle

- found no basis for the claim that the respondent penalised the claimant within the meaning of Section 2(d) of the Employment Equality Act, 1977
- judging by the selection criteria employed, statistically a higher proportion of women than men were shortlisted.
- that the claimant was not indirectly discriminated against on the basis of her sex

#### Recommendation EE9/1998: A Female Worker (Represented by Frances Meenan, Solicitors) v Dublin Institute of Technology (Represented by Arthur Cox, Solicitor)

UNSUCCESSFUL

**Background:** The claimant claimed that the respondents had discriminated against her on terms of Section 2(a), Section 2(c) and Section 2(d) of the 1977 Act and in contravention of Section 3 of that Act when it did not shortlist her for interview for the position of Director, Faculty of Business. The claimant alleges that she was extremely well qualified and more suitable than the successful male applicant. A selection criteria was established and the claimant was not placed in the selection category called for interview. The claimant states that it was because of her sex that she was not shortlisted for the interview and was penalised for taking a previous claim under the 1977 Act. The claimant also states that there was four specific incidents of victimisation. The respondents claim that there was no clear evidence in



her application of proven management ability and rejects the allegation that she was penalised for taking a previous proceeding under the 1977 Act.

#### Conclusion of Equality Officer: Gerardine Coyle

- found that DIT did not treat all candidates equally under the selection procedure however in relation to educational qualifications, it was for reasons other than her sex that she was not shortlisted for interview
- that there was no claim of victimisation in relation to the specific incidents on the basis of sex
- that there was no evidence available that the claimant was treated any differently by the respondent because of her previous claim.

#### Recommendation EE10/1998: A Worker v Eastern Health Board (Represented by the HSEA)

**Successful**

**Background:** The claimant claimed that the respondents had discriminated against him on grounds of sex and marital status contrary to Section 3 of the Employment Equality Act, 1977 in terms of Section 2 of that Act. The claimant states he intended to adopt overseas and formally applied for adoption leave quoting in his application the decision in the High Court case of *Telecom Eireann v O'Grady*. The Health Board refused his application. The claimant stated that female employees of the EHB adopting a child are entitled to ten weeks paid adoptive leave subject to satisfying certain service criteria. The claimant contends that he has been denied access to this adoption leave by virtue of being a male employee and therefore this is discriminatory. The EHB states there was nothing inherently discriminatory in their decision to refuse the claimant's application for adoptive leave. The EHB acknowledges however, that the Supreme Court has upheld the High Court's ruling that the granting of paid adoptive leave for female employees only is discriminatory against men but that it has created an anomaly, in that employers who provide a paid adoptive leave scheme are legally obliged to afford adoptive fathers such paid leave. Therefore the EHB states that the new legislation will address this anomaly and in this regard the claimant's claim under the 1977 Act should not be allowed.

#### Conclusion of Equality Officer: Deirdre Sweeney

- based on the decision of the Supreme Court in the *Telecom Eireann v O'Grady* it was found that the EHB discriminated against the claimant by treating him less favourable than a woman would have been treated in similar circumstance
- that the claimant be paid ten weeks adoptive leave

#### Recommendation EE 11/98: A Male Garda v Garda Commissioner An Garda Síochána (Represented by the Chief State Solicitors Office)

**Unsuccessful**

**Background:** The claimant is employed in the Ballyshannon district of an Garda Síochána. He alleged that he had been discriminated against on the grounds of his sex and/or marital status when he was not assigned overtime in the period March to July, 1996. During this period there was a "border operation" that involved manning checkpoints on all border crossings on a 24 hour basis, and this entailed large amounts of overtime to provide the necessary man hours to service the operation. He was seeking compensation for the loss of earnings over that period and an acknowledgement that he was discriminated against.

The employer argued that the claimant was not considered for overtime because he works as a Junior Liaison Officer (J.L.O.) in the district and has done so since 1981. This work is carried out in plain clothes and the claimant is paid two allowances for this work, a plain clothes and a J.L.O. allowance. The employer argued that the

operation of the checkpoints by its nature had to be a highly visible one and so only uniformed officers were used. The employer also argued that the claimant had not applied for overtime before this particular operation and as soon as his request was received he was included in the rosters.

#### Conclusion of Equality Officer, Mary Solan Avison:

- that the claimant was not discriminated against due to his marital status or sex: she noted that the majority of the staff assigned to this work were of a similar sex and marital status as the claimant;
- that all uniformed staff (male and female) in the Ballyshannon district were treated in the same manner and were assigned overtime;
- that the claimant is paid a plain clothes allowance and rarely wears uniform and consequently staff in the district have tended to consider him to be a plain clothes officer;
- that the claimant was not offered overtime because both the Superintendent and the Sergeant in charge of organising the rotas to man the checkpoints understood that the claimant did not have a uniform and had not been seen by them in uniform or on uniform duties for many years;
- further, both of them understood, though this was denied by the claimant, that he was not interested in working overtime on this occasion or in previous years;
- that the claimant was not discriminated against by the Garda Commissioner, an Garda Síochána in terms of the Employment Equality Act, 1977 when he was not offered overtime prior to July, 1996.

#### Recommendation EE 12/98: A Male Worker (Represented by MANDATE) v Tesco Ireland Limited (Formerly Power Supermarkets Limited)

**UNSUCCESSFUL**

**Background:** The claimant alleged that he was discriminated against by the company on grounds of his sex within the meaning of section 2(a) and 9(c) and in contravention of section 3 of the Act in relation to the supply of clothing for use in work.

The complainant was employed by the company from October, 1991 to July, 1997. The complainant complied with the direction from local management that he should purchase shirts and slacks as a uniform. The Union in its submission stated that in support of the complainant claim that "a male pro-rata employee, was required to purchase his uniform while all female pro-rata staff were provided with blouses, cardigans and skirts. The complainant was treated less favourably... on the basis that he was a male."

The Company stated that it supplies all its Sales Assistants, regardless of their sex and employment status, with uniforms. Sales Assistants received the following standard uniform:

**Females** 2 skirts, 2 blouses, 2 cardigans. **Males** 2 trousers, 2 sweat shirts, 2 polo shirts. The Company stated that it had difficulty obtaining a polo shirt of the size required by the claimant. After some time trying to find one it became apparent that an alternative to the polo shirt was necessary and the company issued the claimant 2 shirts and a tie instead of a polo shirt. The uniform had been supplied to the claimant during December, 1995.

#### Conclusion of Equality Officer, Jim Clerkin:

- that there was no evidence that other male Sales Assistants, who worked with the claimant various times in the period 1992 to December, 1995 were not issued with uniforms it must follow that the reason the claimant was not supplied with an uniform in that period was not related to his sex;
- that the claimant was offered a V neck sweater instead of a polo shirt and as a polo shirt forms part of the standard male Sales Assistant's uniform, but is not



part of the female Sales Assistant's uniform, it seems that the complaint of discrimination must lie against male Sales Assistants.

- on that basis, that the claimant's claim in relation to the issue of clothing in December, 1995 was not related to his sex;
- that all Sales Assistants regardless of their sex are issued with a uniform, albeit the claimant did not receive his until December, 1995 the standard male uniform, the Company's treatment of him could not be held as sex discrimination;
- that there was no unlawful discrimination, either direct or indirect in nature, against the claimant and that the Company was not in breach of the Employment Equality Act, 1977.

**Recommendation EE 13/98: A Female Worker (Represented by MANDATE) v Tracys Shoes (Represented by Conway Kelleher Tobin, Solicitors) Unsuccessful**

**Background:** The claimant alleged that the Company discriminated against her on the basis of her marital status at the end of January, 1996 when it reduced her working hours from 37 hours to 22 hours per week. The claimant commenced employment with the Company as a full-time Sales Assistant from 19th March, 1979. She worked a 37 hour week from 9.30 a.m. to 6 p.m. Monday to Saturday with one day off per week. In January, 1996 the claimant's working hours were reduced from 37 hours per week to 22 hours per week and she was given no notice of this change and her employer told her that he couldn't guarantee her job. The claimant alleges that this reduction in hours resulted from the fact that she was the only single member in the Company and she claims that the respondent discriminated against her in terms of Section 2(b) of the Employment Equality Act, 1977. The claimant also stated that she was refused permission to change her day off from a Thursday to a Friday for a dental appointment despite giving her employer a week's notice. The claimant stated that other part-time staff had been allowed to change their working hours without giving any notice. The claimant also stated the Company employs three other part-time staff, all of whom are married. She stated that one of these part-time staff was given extra hours as a Sales Assistant while the hours of the other two remained the same. MANDATE contended that the company could not reduce the claimant's working hours and said that the correct method for dealing with the situation was "last in, first out".

The Company stated that in 1995 and particularly in early 1996, there was a significant downturn in business which resulted in the need to reduce staffing levels. The Company stated that in reviewing staff arrangements two issues were considered namely the productivity of individual staff members and the suitability of staff members. The Company matched sales figures by the claimant and her colleagues. According to the information the claimant had lower average sales figures than each of her colleagues. MANDATE contended that the Company could not reduce the claimant's working hours and said that the correct method for dealing with the situation was "last in, first out". The Company stated that it had no recollection of the alleged request by the claimant to change her day off so that she could attend the dentist. The Company stated that, even if such a request was made, it treats all employees fairly and would facilitate employees where possible. The Company stated also that the additional hours were given to a particular female because she was considered the most suitable to carry out the work previously being done by a male member of staff who had left the Company.

**Conclusions of Equality Officer, Geradine Coyle:**

- that the company had reasons other than the claimant's marital status to reduce her weekly working hours;
- that it was for reasons other than marital status, that the additional hours were given to the claimant's colleague

- that the Company did not directly discriminate against the claimant on the basis of her marital status in terms of Section 2(b) of the Employment Equality Act, 1977 and in contravention of Section 3 of that Act when it reduced her weekly working hours.

**Recommendation EE 14/98: A Female Worker (Represented by SIPTU) v Eason & Son Ltd. (Represented by IBEC) Unsuccessful**

**Background:** The Union contended that the claimant was discriminated against on the grounds of her sex in terms of Section 2(a) and in Section 3 of the Employment Equality Act, 1977 because she was denied the opportunity of applying for, or being appointed to, one of four salaried Stock Control positions.

The claimant commenced employment with the Company in its Stationery Division in November, 1991 and remained there until March, 1994 when she transferred to the Book Department. The Union stated that in May, 1995 the claimant took up a stock control position within the Company's Book Department, where three other stock controllers worked. The Union stated that in July 1996 the four stock control positions were regraded to salaried positions. As the claimant was not appointed to one of the positions the union believed that the Company unlawfully discriminated against her. Four employees, three males and one female, were appointed to the positions. The claimant stated that she was not given a opportunity to apply for one of the positions. She alleged that she was discriminated against on the grounds of her sex because a male, the former Warehouse Supervisor, in particular, who had little or no relevant experience was appointed to one of the posts. The claimant alleged that the Manager of the Book Department made unwelcome/unwarranted remarks to her such as she entered stock control "through the back door", references to her "being in limbo" and he "didn't know where she fitted in". The claimant argued that she had to endure harassment from the Manager, who she claims nominated the four appointees.

The Company rejected the claimant's allegation of discrimination on grounds of sex. The Company pointed out that she was afforded the same consideration as other staff including the four successful candidates. The Company submitted that the work of three of these candidates mainly involved stock control duties whilst the fourth worked as a Warehouse Supervisor. It further submitted that at the time the vacancies arose the claimant's work included some minor stock control duties. The Company maintained that a number of staff in the Book Department, including the claimant were considered for the positions of Stock Controller. The four appointed to the positions, the company asserts, had some weeks previously been unsuccessful applicants for the position of Stock Control Manager. The claimant made no application for this managerial position. The Company maintained that the four appointees had significantly greater relevant experience for the new positions than the claimant.

**Conclusion of Equality Officer, Jim Clerkin:**

- that the remarks such as those complained of by the claimant were sex neutral in that they could be directed at and unwelcome by an employee of either sex. It therefore follows that the remarks allegedly directed at the claimant do not infer discrimination on grounds of sex;
- that based on the evidence available, that the claimant's job did not contain the same level of stock control work as three of the disputed posts;
- that the decision of the Company not to advertise or hold interviews in relation to the disputed posts applied to male and females;
- that the claimant was not treated any differently than the male employees who did not apply for the Stock Control Manager post;
- that the selection criteria used was sex neutral and the criteria was applied in a sex neutral manner;



- that the appointment decisions were not made by the Manager of the Book Department;
- that the claimant was not equal or better than the former Warehouse Supervisor as he had 21 years service in the Book Department which was longer than that of the claimant's total service of some 5 years of which less than two years was spent in the Book Department;
- that the Company did not discriminate against the claimant in contravention of Section 2(a) of the Employment Equality Act, 1977.

**Recommendation EE 15/98: A Female Worker  
v Michael Stein Travel (Represented by Vincent  
& Beatty, Solicitors)**

**Successful**

The claimant alleged that she was discriminated within the meaning of Section 2(b) of the Employment Equality Act, 1977 and in contravention of Section 3 of that Act when she was asked discriminatory questions at an interview for the position of book-keeper with Michael Stein Travel.

The claimant alleged that during the course of the interview she was asked about her husband, her children and her childcare arrangements. These questions would not have been asked of females with a different marital status.

The Company denies that it asked the claimant about her children at the interview and the Company claimed that it was the claimant who raised the issue of her children. The claimant and the Company are in direct conflict over whether the claimant was asked questions about her husband and her children or whether she volunteered the information herself. The Company stated that the claimant was not selected for the position because there were other more suitable candidates based on their experience.

**Conclusion of Equality Officer, Gerardine Coyle:**

- that Michael Stein Travel did ask the claimant discriminatory questions, but that there were other candidates with higher qualifications and more experience for the position than the claimant
- that there was insufficient evidence available to suggest that the failure to offer the position to the claimant was as a direct result of the Company having asked her discriminatory questions at the interview
- that Michael Stein Travel pay the claimant £500 in compensation.

**Recommendation EE16/98 A Female Doctor  
(Represented by EEA) v Southern  
Health Board (Represented by Conway  
Kelleher Tobin, Solicitors)**

**Unsuccessful**

**Background:** The claimant alleged that the respondent discriminated against her on the grounds of her sex in terms of Section 2(a) of the Employment Equality Act, 1977 and in contravention of Section 3(1) of the Act in relation to access to the permanent post of Consultant. The claimant was employed by the SHB as a Locum Consultant Physician for 5 years but was unsuccessful in her application for the permanent post. A male applicant was appointed whom she alleges had less qualifications and experience. The SHB argued that they were not the appropriate respondents as the Local Appointments Commission (LAC) which is an independent Body carried out the interviews for the position. It was further argued that under Section 12(3) of the 1977 Act selections by the LAC are precluded from the scope of the Act. It was submitted on behalf of the claimant that the Chief Executive of the SHB made the appointment and was therefore responsible from any discrimination arising out of that appointment and furthermore to exclude the claimant from the protection of the Act was contrary to the EU Directive on Equal Treatment.

**Conclusions of Equality Officer:**

- that the respondent was not liable for the conduct or actions of the interview panel or the findings of that panel
- that the SHB was not responsible or answerable for the conduct or selection decision of the interview panel set up by the LAC
- that the respondent did not discriminate against the claimant contrary to the 1977 Act.

**Recommendation EE17/98 A Female Worker  
(Represented by TSSA) v Bus Éireann**

**Unsuccessful**

**Background:** The claimant alleged that the respondent discriminated against her under the Employment Equality Act, 1977 in relation to the selection procedure for promotion to the post of Services Manager. The claimant, who worked in Iarnród Éireann, stated she applied for the post but unlike her male colleagues was not invited to attend for interview or aptitude test. The respondent case is that as a result of a restructuring agreement and a voluntary redundancy a number of promotional posts were created on condition that there would be no overall increase in staff. As a consequence of this it was necessary to restrict selection for the post to employees of Bus Éireann.

**Conclusions of Equality Officer: Gerardine Coyle**

- the respondent did not directly discriminate against the claimant given that male applicants from Iarnród Éireann were not called for interview.
- the requirement imposed by the respondents that applicants be employees of Bus Éireann substantially affected more females than males
- that the requirement was imposed for economic reasons and was objectively justified for reasons not related to sex.
- that the claimant was not indirectly discriminated against in contravention of the 1977 Act.

**Recommendation EE18/98: A Male Employee  
v Dublin Institute of Technology (Represented  
by Arthur Cox & Co., Solicitors)**

**Unsuccessful**

**Background:** The claimant alleged that he was discriminated against by the respondent under the Employment Equality Act, 1977 in relation to his application for the position of Librarian. He states subsequent to his application for the post he was called for interview for a temporary Library Assistant post. He states he agreed to the interview after assurances that this interview would not have any implications in relation to his application for the Librarian post. He alleges that he was subjected to a formal interview for the assistant position which was then used to exclude him from the post of Librarian. The claimant was critical of the manner in which the interview was conducted and states that he was asked questions about his management experience, keyboard skills and why he had not attended the UCD postgraduate course, that these questions were discriminatory and would not have been asked of females. The respondents case is that the questions were relevant to both posts and in relation to the Librarian post that only applicants with post library qualification professional experience in a college library or fully qualified permanent staff of the respondent Organisation were shortlisted. The claimant did not meet the requirements and was not discriminated against.

**Conclusions of the Equality Officer: Gerardine Coyle**

- that the issues raised by the claimant in connection with his application and interview were not related to his sex
- that both male and females were not shortlisted for interview



- that there was no evidence to suggest that the criteria applied favoured female applicants for the job;
- that the claimant was not indirectly discriminated against on the basis of his sex under the 1977 Act.

**Recommendation EE19/98 A Male Employee  
v Waterford Corporation**

**Unsuccessful**

**Background:** The claimant alleged that he was discriminated against by the respondent under section 2(c) and 2(d) of the Employment Equality Act, 1977 in relation to an interview for the post of Assistant Staff Officer. As a result of preliminary interviews the claimant was not shortlisted for the final interview. The claimant alleged that the interview was conducted in a discriminatory manner, that no attempt was made to find out about his "experience of value" and no credit was given for his qualifications. The claimant also contended that Waterford Corporation indirectly discriminated against him by having the term "Christian Name" on the application form for the position of Assistant Staff Officer. The claimant alleges that Waterford Corporation penalised him for having brought a previous action against the Organisation.

Waterford Corporation stated that a total of 64 applicants (39 males and 25 females) attended for interview and 25 applicants (11 males and 14 females) were shortlisted and that the claimant was unsuccessful in his application and was not shortlisted for final interview. The Organisation denied that the claimant's interview was conducted in a discriminatory manner. The Organisation also denied the claimant's assertion that the discrimination resulted from a previous action he had taken against the Organisation. According to the Organisation none of the interview board members were aware of the claim by the claimant. Waterford Corporation stated that the questions posed to the claimant were similar to those put to the other applicants.

**Conclusion of the Equality Officer: Gerardine Coyle**

- that the claimant had submitted no evidence to support his contention that the interview was conducted in a discriminatory manner and that none of the questions specifically relate to either his sex or his marital status;
- that the term "Christian Name" relates to a person's first name and applies to all persons irrespective of their sex;
- that there was no evidence available to support the claim that Waterford Corporation penalised against the claimant for having taken a previous claim;
- that Waterford Corporation did not indirectly discriminate against the claimant within the meaning of Section 2(c) of the Employment Equality Act, 1977 when it did not shortlist him for final interview for the position of Assistant Staff Officer;
- that Waterford Corporation did not penalise the claimant in terms of Section 2 (d) of the Employment Equality Act, 1977 for having brought a previous claim against them under the 1977 Act.

**Recommendation EE 20/98: A Female Teacher  
(Represented by the INTO) v St Peter & Paul's CBS  
(Represented by O'Brien & Binchy, Solicitors)**

**Successful**

The claimant, a teacher, alleged that she had been discriminated against by the Board of management of St Peter and Paul's C.B.S. within the meaning of section 2(a), 2(b) and 2(c) of the Employment Equality Act, 1977 and in contravention of Section 3 of that Act when it did not appoint her to the position of Principal in that school. The Union contended that the school discriminated against the claimant on the basis of her sex because it did not appoint her to the post of Principal. The Union says that

the scheduling of the interview (i.e. taking place on the day of her departure on holidays), the composition of the interview board (i.e. only one female on an interview board comprising five people), the manner in which the interview was conducted (i.e. lack of introduction by the Chairman) and the failure to ask the claimant any questions on religion mitigated against her. The claimant claimed that she was discriminated against on the basis of her experience and management abilities. The Union argued that the claimant was indirectly discriminated against by the criteria used by the interview board, the single biggest influencing factor was significant specific experience and that consideration was given to "previous experience of a comparable nature" and "specific past experience being a Principal of a substantial school". The Union contends that previous experience as a Principal is not an essential requirement for appointment to posts of Principal. The Union stated that the requirement of the Board that candidates should have "previous experience of principalship" was discriminatory against women, as women are least likely to hold positions of Principal in large boys' schools. The Union submitted statistics in support of its argument.

The School denied the allegation of discrimination. The school denies that the claimant's qualifications, in any way, particularly qualified her ahead of the other candidates. The interview board was satisfied that it selected the best candidate both as to qualifications and experience. The school said that the interview board objected to the contention that it sought to select a male candidate simply because it was a boys' school.

**Conclusion of the Equality Officer, Gerardine Coyle:**

- that there were other candidates in the competition with more relevant experience than the claimant given that they had held the position of Principal;
- that the Union had established a prima facie case of discrimination and has shown that the requirement imposed by the school on the applicants for the position of school Principal affects substantially more females than males;
- that the requirement was not essential to undertake the work of school Principal because if it was, the requirement would have been clearly stated in the original advertisement for the post.
- that the School indirectly discriminated against the claimant on the basis of her sex within the meaning of Section 2(c) of the Employment Equality Act, 1977 in its selection of a candidate for the position of school Principal;
- that had the School not imposed the requirement to have previous experience as a school Principal there is still insufficient evidence to say that the claimant would have been offered the position;
- that the claimant be paid £1,500 by way of compensation for the stress caused by the discrimination.

**Recommendation EE 21/98 A Male Worker (Represented  
by Eames & Co., Solicitors) v Bank of Ireland  
(Represented by Dr M. Redmond, Solicitor)**

**Unsuccessful**

**Background:** This dispute concerned a claim, by the claimant that he was entitled, on resignation, to the payment of a marriage gratuity by the Bank in the same way as female staff received marriage gratuities.

The first issue for consideration was whether or not, the claim relates to remuneration and is covered by the Anti-Discrimination (Pay) Act, 1974 or whether it relates to conditions of employment and is appropriate for consideration under the Employment Equality Act, 1977.

**Conclusion of the Equality Officer, Gerardine Coyle:**

- that this claim relates to remuneration and it is, therefore, excluded from the application of the provisions of the Employment Equality Act, 1977 by virtue of Section 3(1) of that Act.



**Recommendation EE 22/98: A Female Worker  
(Represented by the Psychiatric Nurses  
Association) v Midland Health Board** **UNSUCCESSFUL**

**Background:** This case concerned a claim by an Assistant Chief Nursing Officer (A.C.N.O.) that the Midland Health Board had discriminated against her on grounds of her sex in terms of Section 2(a) and (c), had victimised her in terms of Section 2(d) of the Act, and breached Section 3 of the Act in relation to her conditions of employment.

The claimant states that she was discriminated against on the grounds of her sex in relation to the re-organisation of work, and as a result of a complaint to the Employment Equality Agency of alleged discriminatory treatment by the respondent, she was discriminated against on the grounds of victimisation by the Midland Health Board.

The Board categorically denied that the claimant had been discriminated against because of her sex or victimised in any way because of the fact that she complained of alleged discrimination to the Employment Equality Agency. The respondent stated that the redistribution of work arose from a review of the work assignments. The respondent also stated that following the appointment of a new Chief Nursing Officer and two new A.C.N.O.'s the Board deemed it opportune to review the nurse management arrangement for delivery of mental health services in the Longford/Westmeath area.

**Conclusions of the Equality Officer, Jim Clerkin:**

- that based on the evidence available on the assignments and redistribution of work, it did not support a claim that the claimant was "treated less favourably" because of her sex;
- that there was no indirect discrimination against the claimant;
- that the allegations of victimisation are in no way related to the letter from the Employment Equality Agency;
- that the claimant has not been discriminated in terms of Section 2(a), (c) or (d) (iv) of the Employment Equality Act, 1977
- that the Midland Health Board did not discriminate against the claimant contrary to the terms of the Employment Equality Act, 1977.

**Determination DEE 1/98: An Post  
v A Female Worker (Represented  
by CPSU)** **UNSUCCESSFUL - APPEAL DISMISSED**

**Complaint:** This was an appeal against Recommendation EE08/1997 which rejected a claim by a female job-sharer employee that An Post discriminated against her by refusing to pay her full pay while on maternity leave. The union on her behalf claimed that her 14 weeks' maternity leave must count as reckonable service and must be paid at the full rate.

**Determination:**

The Court determined that as the claimant is a job-sharer she is not a worker on full hours and hence her service entitlements remain intact but do not double for the period of maternity leave. The Court found that the claimant was not discriminated against by reason of her pregnancy as her employer credited her with the appropriate period of service and was paid during her period of leave at a rate she would have been paid had she been at work. The Court concluded that having found that the claimant had not suffered discrimination in relation to her maternity leave the question of remuneration did not arise. The Court rejected the appeal of the union and found there was no discrimination against the claimant.

**Determination DEE 2/98: Telecom Eireann  
(Represented by Anthony Kerr B.L. instructed  
by Arthur Cox and Company Solicitors)  
v 58 Named Female Telephonists  
(Represented by EEA)** **UNSUCCESSFUL - APPEALS DISMISSED**

**Complaint:** This is an appeal by 58 female named part-time night Telephonists against Recommendation EE5/97 which rejected a claim that Telecom Eireann had discriminated against them on the grounds of sex and/or marital status by implementing a rota system which excludes them from week-end attendance. The claimants contended that prior to the new arrangements they all had week-end attendance, the claimants claimed that they were treated less favourably than full-time (predominantly male) Night Telephonists on the grounds of their sex in relation to access to week-end work. The Company rejected the claim. The EEA argued on behalf of appellants that because they are part-time workers they suffered discrimination and have been deprived of access to the week-end rota. Since the appellants are predominantly female they suffered discrimination on grounds of sex. The workers who have access to the week-end rota are all full-time workers.

**Determination:**

The Court stated that the requirement to be a full-time worker to have access to the week-end rota does affect a greater number of women than it affects men. However those who can comply with the requirement are mostly women. Therefore, the impact on women is not disproportionate, and the question of discrimination as prohibited under Section 2 of the Act does not arise. The Court stated that the fact that the 'disadvantaged' group consisted of mostly women who are working part-time does raise the presumption of indirect discrimination under Section 3 of the Act. In this case the restriction on access to the week-end roster affects mostly women, and only a few male part-time night telephonists. The onus of proof that the practice is not discriminatory therefore is on the employer to show that it is based on objectively verifiable factors which are unrelated to sex. The company argues that it sought to contain costs and protect employment by decreasing unnecessary and expensive staff attendance at the week-end. The new rotas were designed to bring staff attendance in line with the reduced level of calls and in line with the daily and weekly call variations. The Court considered the arguments put forward by the company and finds that the employer has established to its satisfaction that the changes in the week-end rota are objectively justified on grounds which have no relation to the sex of the workers who are affected by the changes. The Court held that the appellants did not suffer discrimination, the appeal was dismissed.

**Determination DEE 3/98: Office of the  
Revenue Commissioners, Department of  
Finance v A Female Worker  
(Represented by EEA)** **SUCCESSFUL-APPEAL ALLOWED**

Appeal by the EEA against Equality Officer's Recommendation No EE 15/95 concerning an allegation that the Office of the Revenue Commissioners and the Department of Finance discriminated against Ms Flood on the grounds of her sex and marital status by regarding her period of service as a job-sharer to be the equivalent of only half of her service had she been in full-time employment during that period. The employer claimed that Ms Flood as a job-sharer enjoyed, on a pro-rata basis, the benefits of an established civil servant in terms of attendance, pay, annual leave, privilege days, bank holidays, sick leave, and superannuation. Following the decision of the European Court in the Gersfer case on 2nd October, 1997, the claimant will be given full service credit for her time at work in a job-sharing capacity for the purposes of any promotional posts for which she applies.



**Determination:**

The Court is satisfied, in relation to the past, that the claimant was not able to point to any actual detriment which she had suffered as a result of not being credited while job-sharing with full-time service. The Court noted that in relation to any future promotional opportunities, the claimant will have the benefit of the changes made following the Geister decision. The court was satisfied that the claimant suffered no loss as a result of the former alleged discriminatory practice of the Revenue Commissioners. It allowed the appeal and it made no other determination.

**Determination DEE 4/98: A Credit Union****(Represented by Murphy & Condon Solicitors)****v A Worker****UNSUCCESSFUL-APPEAL DISMISSED**

This was an appeal by a worker against Equality Officer's Recommendation No. EE 31/97. The claimant was secretary of the Board of Directors of the Credit Union in a voluntary capacity. Following the unexpected resignation of the manager she was asked by the Board to take on the responsibility of running the office on an interim basis. The claimant was put on a weekly wage and acted as manager for the period April, 1994 to June, 1995. The Credit Union held a competition for the post of manager, five applicants were interviewed and a male candidate was successful. The Equality Officer found that the Credit Union did not discriminate against the claimant contrary to the terms of the Employment Equality Act, 1977.

**Determination:**

The Court upheld the recommendation of the Equality Officer, it found that the conclusions of fact reached by the Equality Officer and set out in her Recommendation were supported by the evidence as a whole. In the hearing of the appeal, the Court found significant differences in recollection, between the claimant and witnesses who gave evidence on her behalf and witnesses who gave evidence on behalf of the employer, as to the events surrounding the filling of the post.

**Determination DEE 5/1998: The Minister for Justice,  
Equality & Law Reform, The Secretary,  
Department of Justice, Equality & Law Reform  
(Represented by the Chief State Solicitor)**
**v A Female Civil Servant (Represented by EEA)  
(Represented by Anthony Kerr B.L.)**
**(Instructed by O'Mara, Geraghty****McCourt, Solicitors)****UNSUCCESSFUL FOR EMPLOYEE**

**Complaint:** This was an appeal (1) by the Department against the Equality Officer's Recommendation EE 12/97. The Equality Officer found that the worker was discriminated against contrary to the terms of the Employment Equality Act, 1977 when the Department did not facilitate her request for a job-sharing position. The Department contested the findings of the Equality Officer on a large number of issues of fact and of law.

**Determination:**

The Court held that the claimant did not suffer discrimination within the meaning of the Employment Equality Act, 1977. The Court found, however, that the Department was guilty of carelessness in the manner in which it dealt with the claimant during the period from December, 1995, when the suitable job-share position was identified, to June, 1996, when the claimant refused an offer of a job-sharing position. The Court recommended that the claimant not be disadvantaged in any way or at any financial loss for that period of time.

**Determination DEE 6/1998: Dublin Corporation****(Represented by Marquerite Bolger B.L.)****(Instructed by BCM Hanby Wallace, Solicitors)****v A Female Employee (Represented by****Niall Beirne B.L.) (Instructed by Peter****Morrissey & Co., Solicitors)****SUCCESSFUL FOR EMPLOYEE**

**Complaint:** This is an appeal by Dublin Corporation against Recommendation EE 2/98 which accepted a claim by a female employee that she was discriminated against in relation to access to promotion from Legal Assistant to Senior Legal Assistant with Dublin Corporation. The Equality Officer recommended that the claimant be offered the post for which she had applied as of January 1997. The claimant stated that in the course of her interview for the post, she was questioned in relation to her previous work experience as a Law Clerk with a firm of Solicitors in private practice and was asked if she did typing. She stated that a male candidate with similar previous work experience was not asked this question.

**Determination:**

The Court was satisfied, as a matter of probability, that the claimant was asked the question because she was a woman. The Court concluded that the claimant did suffer some distress at being asked the question, (which the Court regarded as objectionable and discriminatory) the Court was satisfied that neither the question itself, nor the claimant's response to it materially affected the outcome of the interview or the ranking which the claimant received in the competition. The Court held that in putting the offending question to the claimant at the interview, the respondent discriminated against her within the meaning of the Employment Equality Act, 1977. The Court determined that the claimant be compensated for the distress suffered, which the Court measured at £1,000.

**Determination DEE 7/1998: Irish Ferries Limited****v A Female Employee****UNSUCCESSFUL - APPEAL DISMISSED**

**Complaint:** This is an appeal by a female employee against recommendation EE 1/98 which accepted that the claimant had not been discriminated against. The claimant made a complaint to the Court in relation to access to employment with an associated company of the respondent. The claimant stated that on the termination of her contract with the respondent, a vacancy arose in an associated company which the respondent was asked to fill. She complained that the respondent directed a male employee to the associated company in preference to her, and that she was denied an opportunity to apply for this position because of her sex.

**Determination:**

The Court determined that the appeal be dismissed. It was for the claimant to establish, on the balance of probabilities, that the reason she was not offered employment with the associated company was on grounds of her sex. The Court found that the claimant had not discharged that onus.

**Determination DEE8/1998: Dublin Institute  
of Technology, City of Dublin VEC**
**(Represented by Patrick F O'Reilly & Co)****v A Male Worker (Represented by the TUI)****SUCCESSFUL**

**Complaint:** This is an appeal by the Union against Equality Officer's Recommendation EE13/1993. The claimant stated that he was denied Adoptive Leave because of his sex, contrary to Section 3(1) and 3(4) of the 1977 Act. The Equality Officer found that the College of Commerce/City of Dublin VEC did not discriminate against the claimant in relation to Adoptive Leave, and the case was



appealed to the Labour Court on 9 August 1993. The claimant argued that the Equality Officer had not provided an appropriate remedy to the claimant in respect of the discrimination suffered when it was found that the College of Commerce/City of Dublin VEC did not discriminate against the claimant.

#### Determination:

At the beginning of the hearing the Respondent conceded that in view of the decision of the Supreme Court in the case of *Telecom Eireann and A Male Worker*, it could no longer contest the claimant's complaint that he had suffered unlawful discrimination by being denied adoptive leave. Therefore, the Court found that the claimant suffered discrimination by being refused adoptive leave in April 1991. The Court decided that although the claimant did not suffer any pecuniary loss in being denied adoptive leave, he did suffer emotional loss and distress for which he must be compensated. The Court awarded compensation in the amount of £6,500.

#### **Determination DEE9/1998: The Commissioner, An Garda Síochána, Minister for Justice, Equality and Law Reform v A Female Garda (Represented by Finbar Cahill & Co., Solicitors) SUCCESSFUL**

**Complaint:** This is an appeal against Equality Officer's Recommendation EE11/97. The claimant had alleged that she had been discriminated against when she was not short-listed for promotion in 1995, and she also alleged that she had been victimised on account of pursuing an earlier claim of discrimination against An Garda Síochána under the Act. The Equality Officer found that the claimant had not been discriminated against when she was not short-listed for promotion, and also rejected her claim of victimisation, and the case was appealed to the Labour Court on 25 June 1998.

#### Determination:

This is an appeal from the Recommendation of an Equality Officer decision (EE11/97) under Section 21 of the Employment Equality Act, 1977. At the appeal hearing before the Labour Court the claimant accepted that she could not prove that a less suitable person than herself had been promoted, and that she did not intend to pursue an allegation that discriminatory questions were asked at the interview stage. The appeal proceeded on the basis that the claimant had been victimised after she had taken an earlier case claiming discrimination. The Court heard evidence that the views of a candidate's immediate superiors weighed heavily with an interview panel, and after having examined the documentation produced, it was clear to the Court that the claimant's superiors had held very negative views about her in 1995 and 1996, and that although the written views for 1994 were not available, it was unlikely that the views expressed were any different than in 1995 and 1996. However, in 1997 the claimant acquired new superiors and received excellent assessments. The Court was therefore satisfied that the claimant was victimised by her superiors after she took a claim of discrimination in 1993 under the 1977 Act. The Court found that the claimant did suffer discrimination under Section 2(d) of the Act, and awarded the claimant the sum of £7,500 compensation.

#### **Labour Court Order EEO 1/98: A Company (Represented by Pat Power, Westgate Services) v A Worker (Represented by EEA) SUCCESSFUL**

**Complaint:** Claimant contended that he was constructively dismissed in contravention of Section 27 of the 1977 Act. The claimant was employed as a night porter in a hotel. The claimant alleges that he was dismissed from his employment because he wore an earring. The company argued that it was outlined to the claimant at his interview that a strict dress code would apply to all employees coming into contact

with guests. All such employees were expected to be neat and tidy. Jewellery could be worn if considered "conservative". This criteria applied to both male and female employees. The company also claimed that the claimant was not dismissed but left of his own volition.

#### Labour Court Order:

- the Court was satisfied that the company did not have a discriminatory policy with regard to the wearing of jewellery.
- the dispute arose because of the size of the earring the claimant wore, there was conflicting evidence as to the size.
- the claimant for his part contributed to the dismissal by not removing the earring, at least temporarily, to allow the issue to be resolved calmly by both parties.
- the Court is satisfied that discrimination occurred resulting in a constructive dismissal.
- the Court was also satisfied that the claimant contributed to the dismissal and the Court ordered that nominal compensation of £400 be paid to the claimant for the distress caused.

#### **Labour Court Order EEO 2/98: A Company v A Worker (Represented by EEA) SUCCESSFUL**

**Complaint:** The claimant contended that she had been subjected to sexual harassment by the Chief Executive of the company, and that she has been dismissed because of her opposition to such harassment. The claimant alleged that she was subjected to offensive treatment by the Chief Executive, she stated she was locked in the office at lunch time and told offensive jokes, that he stared at her in a manner that made her feel uncomfortable and brushed against her unnecessarily, that he asked her personal questions about her boyfriend and gave her unnecessary advice about her personal life. The Chief Executive denied that any sexual harassment had taken place. The company claimed that the claimant was taken on for a 4 week trial period but proved incapable of doing the work and as a result she was dismissed.

#### Labour Court Order:

- the Court was not satisfied that sufficient evidence had been produced to substantiate the claim of sexual harassment
- the Court found that the claimant's evidence was more credible, and concluded that the claimant was dismissed because she complained to the EEA and started proceedings against the Company
- the Court found the company in breach of Section 26 (1) of the Act, and awarded the claimant £3,000.

#### **Labour Court Order EEO 3/98: A Company (Represented by IBEC) v A Worker (Represented by Conor Dignam B.L. Instructed by O'Grady's, Solicitors) UNSUCCESSFUL**

**Complaint:** The claimant alleged that she was unfairly dismissed in contravention of Section 27 of the 1977 Act. The claimant alleged that she had been subjected to unwelcome attention, comments, suggestions and leering from the Managing Director over the period of her employment. The Managing Director denied all such allegations and claimed that the claimant was incompetent and that this was the reason for her dismissal.

#### Labour Court Order:

- the Court's investigation of this case was made extremely difficult by the fact that conflicting evidence was given by the parties on most of the relevant



issues.

- the Court is not satisfied that there is sufficient evidence to substantiate the case.
- the Court could not be satisfied that the complaint was well-founded.

**Labour Court Order EEO 4, EEO 5, EEO 6, EEO 7/98:  
A Company (Represented by Arthur Cox Solicitors)  
v 4 Workers (Represented by SIPTU) UNSUCCESSFUL**

**Complaint:** The four claimants contended that they were constructively dismissed under Section 27 of the Employment Equality Act, 1977. The Union claimed that the four workers were forced to resign because of the company's refusal to grant their request to work part-time. The claimants resigned from their employment because of their inability to work full-time in the light of their family and child-minding commitments. The company had a Part-Time Scheme in operation, it enabled a guaranteed minimum of 5% of cabin crew to avail of part-time options at any one time. The company stated that it had tried to be flexible and was willing to increase the availability of part-time work, but that necessary alternative measures could not be agreed with the Union.

**Labour Court Order:**

- On the question of direct discrimination, the Court noted that the part-time working Scheme in operation in the company was and still is open to all in the employment of the company as cabin crew members, male and female, married or single. There is no evidence to suggest, therefore, that the Scheme was directly discriminatory.
- On the question of indirect discrimination, the Court noted that the Scheme was only guaranteed to 5% of the permanent cabin crew staff at any one time. The claimants could not avail of the scheme because there was already a full take-up when they applied for it.
- The Court noted that the 5% figure was an agreed percentage, fixed in negotiations between the company and union on manning levels, and on the experience and numbers of staff required to provide a proper service within adequate levels and within the reasonable commercial objectives of the company.
- The Court found that the restriction of the Scheme to 5% of the cabin crew was justified as "essential", therefore, it could not be a discriminatory requirement.
- the Court found that there was no discrimination in relation to the resignation of the claimants, and rejected their claims as not well-founded.

**Labour Court Order EEO8/1998: Bon Port Limited  
v A Worker (Represented by EEA) SUCCESSFUL**

**Complaint:** The claimant worked in Bon Port Ltd, a take away restaurant since 1995 as a receptionist/cashier. She was 15 years old when she started, and worked during school holidays and shift work the remainder of the time. The claimant stated that she was subjected to physical and verbal sexual harassment by a chef in the restaurant from shortly after she started work until September 1997 when she claims she was constructively dismissed. The worker claimed that she continually asked the chef to stop his offensive treatment, and reported him to her employer. The employer said he needed the chef and did nothing to end the harassment. The claimant said she left the employment because she was unable to continue to work with the chef and she was frightened to remain in the shop on her own with him. The employer did not send a submission to the Labour Court, and did not attend the hearing.

**Labour Court Order:**

- The Court was satisfied that there was ongoing sexual harassment of the

claimant.

- The Court was also satisfied that the claimant had no option but to leave the employment, as the employer failed to prevent the harassment and failed to protect her from it.
- The Court found that the harassment had a very serious effect on the claimant, and she was likely to need counselling to overcome the trauma she had suffered.
- The Court awarded the claimant the sum of £5,200 which represented the full extent of the Court's jurisdiction of 104 weeks' remuneration.

**Labour Court Order EEO9/1998: A Dental Surgery  
(Represented by Larkin, Tynan and Company,  
Solicitors) v A Female Worker (Represented  
by Margaret T.C. Casey, Solicitor) SUCCESSFUL**

**Complaint:** The claimant worked in the dental surgery from July 1996 until her dismissal on 14 April 1997. The claimant alleged that she was unfairly dismissed from her job as a full-time dental nurse, because she made a complaint of sexual harassment to her employer. The Court was told that the complaint was made to a female partner in the dental practice (Partner B) against a male partner (Partner A) who is the husband of Partner B. The claimant said she made the complaint for the purpose of having the alleged harassment stopped.

The Employer denied that the claimant was dismissed and claimed that she abandoned her employment. While it is accepted that the claimant told Partner B that Partner A had "made a pass" at her, the respondent denied that there was any basis for this complaint. The claimant was asked to enter the surgery area by Partner B and repeat the allegation in the presence of Partner A, but she refused to do this.

**Labour Court Order:**

- The Court was satisfied that the claimant was dismissed by Partner A on 14 April 1997, when she was prevented from resuming her employment.
- The Court concluded that based on the evidence, the claimant was dismissed because of the complaint she made to Partner B on 11 April 1997.
- However, the Court considered that the claimant's refusal to discuss the basis of her complaint with the respondents when asked to do so, was a major contributory factor in the events which followed.
- The Court upheld the claimant's complaint under Section 26(1) of the Act and considered that compensation was the appropriate form of redress.
- The Court also considered that the amount awarded should be significantly reduced because of the claimant's conduct after she made the complaint.
- The Court awarded the claimant £500 compensation.

**Recommendation EP1/98: 8/17/1 Named Female  
Employees (Represented by SIPTU)  
v Peamount Hospital (Represented by IBEC) UNSUCCESSFUL**

**Complaint:** The 26 female claimants are employed at Peamount Hospital as kitchen, laundry and household staff. They are paid the household rate of pay on a 13 point scale ranging from £181.74 to £192.13 per week. They receive a lower rate of pay than the three named male comparators. The three male comparators named in the claim were recruited by the hospital as domestic staff in December 1995 and January 1996. They were placed on the general operative rate of pay on a 13 point scale ranging from £194.06 to £205.81 per week, instead of the household rate of pay. The Hospital stated that the payroll staff made an error and



put the 3 comparators on the general operative rate of pay instead of the domestic rate of pay, and that the error did not become apparent until several months after the recruitment of the 3 comparators. The Hospital also stated that under the Payment of Wages Act, 1991 there are certain difficulties involved with the recovery of overpayment of wages by the employer. The Hospital accepts that "like work" exists between the jobs of the claimants and the named comparators, but that the 3 comparators are paid an incorrect rate of pay because of an error made at the time of their recruitment.

#### Conclusions of Equality Officer, Gerardine Coyle:

- that "like work" exists between the work performed by the female claimants and the male comparators
- that the Hospital did not have a policy of discrimination against its female staff
- that 2 further male staff members were recruited and placed on the domestic rate of pay, and that the Union accepts that these 2 staff members are performing "like work" with the claimants in the case
- as both male and female staff members are on domestic rate of pay, there is no discrimination because of their sex
- there are grounds other than sex for the difference in pay between the claimants and the male comparators.

#### Recommendation EP2/98: A Male Worker (Represented by Donal J Hamilton & Co. Solicitors) v Bank of Ireland (Represented by Dr Mary Redmond, Solicitor)

**UNSUCCESSFUL**

**Complaint:** The claimant was employed by Bank of Ireland from 1967 until his resignation in 1972. The dispute concerns a claim for the payment of a marriage gratuity to the claimant from Bank of Ireland. The claimant argued that he was recruited by the bank prior to 1974 and married while working for the bank. He stated that all women who were recruited prior to 1974 and subsequently married had been paid a marriage gratuity on resignation, and although he satisfied these two conditions, the bank refused to pay him a marriage gratuity. The female comparator was employed by Bank of Ireland and she received a marriage gratuity. The Bank stated that the claimant was not entitled to a marriage gratuity and said that they are payable to a certain number of female employees who meet certain requirements. The bank also stated that the marriage gratuity was linked with the marriage bar where all female employees had to retire on marriage and that this bar did not apply to male staff.

#### Conclusions of Equality Officer, Mary Solan Avison:

- that the marriage gratuity was paid to the comparator because she fulfilled certain conditions, namely she was married while working for the bank, and she was recruited before 1974
- the entitlement to a marriage gratuity does not arise from the sex of the payee but from the two conditions mentioned above
- that the claimant is not entitled to the payment of a marriage gratuity under the terms of the Anti-Discrimination (Pay) Act, 1974

#### Recommendation EP3/98: A Male Worker (Represented by Donal J Hamilton & Co. Solicitors) v Bank of Ireland (Represented by Dr Mary Redmond, Solicitor) **UNSUCCESSFUL**

**Complaint:** The claimant was employed by Bank of Ireland from 1972 until his resignation in 1989. This dispute concerns a claim made by the claimant for the payment of a marriage gratuity. The claimant argued that he was recruited by the

bank prior to 1974 and married while working for the bank. He stated that all women who were recruited prior to 1974 and subsequently married had been paid a marriage gratuity on resignation, and although he satisfied these two conditions, the bank refused to pay him a marriage gratuity. The female comparator was employed by Bank of Ireland from 1973 until her resignation in 1989 and she received a marriage gratuity from the bank. The claimant states that under Section 3 of the 1974 Act that he was performing like work with the female comparator who was paid a marriage gratuity. The bank stated that the claimant had no entitlement to a marriage gratuity as they were payable only to female staff who met certain requirements, namely that they were recruited before 1974 and that they married while working for the bank. The bank further stated that the marriage gratuity is linked with the marriage bar where all female employees had to retire on marriage, and that this bar did not apply to male staff.

#### Conclusions of Equality Officer, Mary Solan Avison:

- that the marriage gratuity was paid to the comparator because she fulfilled certain conditions, namely she was married while working for the bank, and she was recruited before 1974
- the entitlement to a marriage gratuity does not arise from the sex of the payee but from the two conditions mentioned above
- that the claimant is not entitled to the payment of a marriage gratuity under the terms of the Anti-Discrimination (Pay) Act, 1974

#### Recommendation EP4/98: A Male Worker (Represented by Sean Allen & Co. Solicitors) v Bank of Ireland (Represented by Dr Mary Redmond, Solicitor) **UNSUCCESSFUL**

**Complaint:** The claimant was employed by Bank of Ireland from 1972 until his resignation in 1989. The dispute concerns a claim made by the claimant for the payment of a marriage gratuity. The two female comparators were employed by Bank of Ireland and when they resigned they both received marriage gratuities. The claimant argued that he was recruited by the bank prior to 1974 and married while working for the bank. He stated that all women who were recruited prior to 1974 and subsequently married had been paid a marriage gratuity on resignation, and although he satisfied these two conditions, the bank refused to pay him a marriage gratuity. The bank stated that the claimant had no entitlement to a marriage gratuity as they were payable only to female staff who met certain requirements. The bank further states that the marriage gratuity is linked with the marriage bar where all female employees had to retire on marriage and that this bar did not apply to male staff.

#### Conclusions of Equality Officer, Mary Solan Avison:

- that the marriage gratuity was paid to the comparators because they fulfilled certain conditions, namely they were married while working for the bank, and they were recruited before 1974
- the entitlement to a marriage gratuity does not arise from the sex of the payee but from the two conditions mentioned above
- that the claimant is not entitled to the payment of a marriage gratuity under the terms of the Anti-Discrimination (Pay) Act, 1974

#### Recommendation EP5/1998: 6 Named Female Employees (Represented by MANDATE) v Dunnes Stores (Represented by BCM Hanby Wallace, Solicitors) **UNSUCCESSFUL**

**Complaint:** MANDATE claimed on behalf of six female employees that they



performed work of equal value to that of seven named male comparators and were therefore entitled to the same rate of pay in terms of Section 3(c) of the 1974 Act. The claimants were employed by Dunnes Stores as Canteen/Cleaning Staff earning £4.18 per hour. The seven named male comparators were employed as Sales Assistants in the Delicatessen Department and their weekly salaries ranged from £148.68 to £221.79 on a six point pay scale. The Company stated that the claimants work in the staff canteen, are responsible for the preparation, presentation and sale of meals to staff, and work flexible part-time hours. The Company also stated that the comparators are responsible for the presentation and sale of raw and cooked foods in the delicatessen department, and regularly work late hours. The Company argued that the claimants work is neither the same nor of equal value to that performed by the comparators.

#### Conclusions of Equality Officer, Gerardine Coyle:

- that the claimants earn the same hourly rate of pay, but they do not perform "like work" with each other, and that the claimants fall into 2 categories
- that the claimants in category 1 perform "like work" with each of the named comparators in terms of Section 3(c) of the Act.
- that the claimants in category 2 do not perform "like work" with each of the named comparators in terms of Section 3(c) of the Act.
- that the same rate of pay applies equally to both male and female sales assistants in the delicatessen department
- therefore there are grounds other than sex in terms of Section 2(3) of the Act, for the difference in remuneration between the claimants and the comparators
- that the claimants do not have any entitlements to the same rate of remuneration as that paid to the named comparators

#### Recommendation EP6/98: 36 Female Workers (represented by SIPTU) v University College Dublin (represented by IBEC) **SUCCESSFUL**

**Complaint:** SIPTU representing thirty-six canteen assistants is claiming equal pay with five named comparators. The thirty-six female employees are employed as canteen assistants in University College Dublin. The male comparators are also employed in the College. The claim was rejected by the College. The union contended on behalf of the claimants that on claiming equal pay under section 3(c) that the skill, physical effort, mental effort, responsibility and working conditions of the claimants are at least of equal value to those of the five comparators. The college argued that the work of the claimants and the comparators is not similar work and that the comparators jobs are a higher value than those performed by the claimants as defined by the Act in Section 3(b) and Section (c) of the 1974 Act.

#### Conclusion of the Equality Officer: Mary Solan Avison

- that the work of the claimants and comparators were equally demanding and therefore of equal value
- that the work of the claimant was more demanding than that of the comparator with regard to physical effort and responsibility, the same in terms of mental effort and working conditions and less demanding in terms of skill therefore he concluded that the work of the claimant is equal in value to that carried out by the comparator.
- that each of the claimants be paid the same rate of remuneration as the comparator and be applied retrospectively for three years.

#### Recommendation EP7/98: 26 Female Workers (Represented by the CPSU) v The Departments of Finance, Social Welfare, Agriculture and Food, Education, Defence and the Offices of Public Works and Revenue Commissioners **UNSUCCESSFUL**

**Complaint:** This dispute concerns a claim by twenty-six Clerical Assistants in various Government Departments/Offices for equal pay with nine named comparators under Section 3(c) of the Anti-Discrimination (Pay) Act, 1974. The union contends that the basis for paying the claimants and the comparators different rates of remuneration is both direct and indirect sex discrimination. The union contended that the work performed by the claimants in the Clerical Assistant grade is equal in value to the work performed by the Paperkeeper grade and that Clerical Assistant is predominately female in comparison to that of the comparator which is male. The Department maintains that these are entirely separate grades within the civil service grading structure with separate scales of pay and that the difference of pay is no way related to the sex of the individuals involved.

#### Conclusion of Equality Officer: Gary Dixon

- there are legitimate grounds other than sex for the different rates of remuneration payable to the claimants and the named comparators in this case
- the claimants are not entitled to the same rate of remuneration as that paid to the named comparators
- from the evidence found that the reason for the starting pay rate being significantly higher for the Paperkeeper grade was that the grade afforded limited opportunities for advancement, whereas the Clerical Assistant grade had more scope for promotion

#### Recommendation EP8/98: A Female Worker (Represented by SIPTU) v EVE Holdings Ltd **UNSUCCESSFUL**

**Complaint:** SIPTU argued on behalf of the claimant that she was entitled to the same rate of remuneration as a male colleague under the terms of the Anti-Discrimination (Pay) Act, 1974.

Both are employed as Supervisors/Instructors but the comparator is paid at higher rate than the complainant. The employer conceded that the complainant performed "like work" with the named comparator. The comparator was the subject of a disciplinary matter within the organisation and was re-deployed from his present position to that of Instructor/Supervisor. However his conditions of employment with regard to remuneration and annual leave was retained as to a Rights Commissioner hearing. The union argued that the claimant was better qualified Instructor than the comparator.

#### Conclusion of Equality Officer: Jim Clerkin

- there is no dispute in this case on the question of 'like work' or that the comparator is on a higher rate of pay than that of the complainant
- it is necessary to establish that a complainant was treated less favourably than a person of the opposite sex
- that the complainant has no entitlement to equal pay with the named comparator under the terms of the Act of 1974

#### Recommendation EP9/98: 3/2 Named Male Employees (Represented by SIPTU) v University of Dublin Trinity College (Represented by IBEC) **UNSUCCESSFUL**

**Complaint:** SIPTU claimed on behalf of five males employed by the University of Dublin Trinity College that they are entitled to the same rate of remuneration as three



named female comparators in terms of Section 3(b) and Section 3(c) of the 1974 Act. The complainants are employed on a permanent full-time basis as senior security officers and the comparators are cleaning supervisors. The union contends that the male complainants perform 'like work' with the named female comparators and are therefore entitled to the same rate of pay. In terms of Section 3(c) of the 1974 Act the union submits that the duties performed by the complainants are equal in value to those performed by the comparators. The college rejected these claims.

#### **Conclusion of Equality Officer: Gerardine Coyle**

- found that the demands made on the named female comparator are greater, in terms of skill, physical effort, responsibility and working conditions than those made on the claimant and the demands made on both, in terms of mental effort, are equal
- that the duties of the complainants are not similar to the duties of the comparators
- the complainants are not entitled to the same rate of remuneration as that of the comparators.

#### **Recommendation EP10/98: A Worker v Analog Devices BV**

**UNSUCCESSFUL**

**Complaint:** The claimant contended that he was entitled to the same rate of remuneration as a named female colleague in terms of Section 3(a), 3(b) and 3(c) of the 1974 Act. The claimant was employed as a Systems/Business Analyst and the named female comparator was employed as a Business/Analyst in the same Company. The claimant contended that he performed 'like work' with that of the named female comparator and as such is entitled to equal pay. He argues that the company took his responsibilities away from him and indirectly gave them to the named female comparator. The company disputes this claiming that the claimant's remuneration is based on his level of performance and contribution to the company and it has not been influenced in any way by the claimant's sex.

#### **Conclusion of the Equality Officer: Gerardine Coyle**

- found that the claimant and the named female comparator do not perform the same work within the meaning of Section 3(a) of the 1974 Pay Act
- although the tasks carried out by both are different, was satisfied that the differences are of small importance in relation to the work as a whole and therefore found that the claimant and the named comparator perform 'like work' within the meaning of Section 3(b) of the 1974 Pay Act.
- found evidence that the comparator received higher appraisal rankings hence a higher percentage increase in salary; there is also evidence to show the comparator received higher appraisal ranking to that of other staff, both male and female and therefore the equality officer was satisfied that the comparator was entitled to the higher rate of pay on grounds other than sex.

#### **Recommendation EP11/98: A Female Worker (Represented by IMPACT) v Revenue Commissioners, Department of Finance**

**UNSUCCESSFUL**

**Complaint:** The union contended that while the claimant was eligible for promotion since 1984 from the grade of Higher Tax Officer (HTO) to Inspector of Taxes, she was not promoted until 1993 when the union took her case up at head office level that she was promoted. Staff at HTO grade are normally promoted internally on a seniority basis.

#### **Conclusions of Equality Officer, Mary Solan Avison:**

- that the question of like work does not arise in this case as the male comparator cited by the claimant was promoted in September, 1989.

- that the union has argued that the Anti Discrimination (Pay) Act, 1974 and the Employment Equality Act, 1977 can be construed together in accordance with section 56(2) of the 1977 Act and has sought to have this claim considered under both acts. As the claimant has not referred this claim under the 1977 Act to the Labour Court in accordance with Section 19(1) of the Act and that the Act at Section 19(5) places a time limit on lodging such cases, this case has been examined under the Anti-Discrimination (Pay) Act, 1974 only.
- that the claimant and comparator were both afforded the same treatment on promotion. Both were appointed to the third highest point of the pay scale.

#### **Recommendation EP12/98: A Female Worker v Early & Baldwin, Solicitors**

**UNSUCCESSFUL**

**Complaint:** The claimant was employed by the firm of solicitors, Early and Baldwin from 1st May, 1990 to 25th April, 1997 as a Solicitor. She claimed equal pay with a comparator who was also employed as a Solicitor with the company. The claimant originally made the claim against 2 comparators but when the facts in relation to salary of one were made known to her by the employer she withdrew her claim in relation to him.

#### **Conclusions of Equality Officer, Mary Solan Avison:**

- that the comparator carried out additional functions to the claimant and that they were not "in every respect interchangeable with the other in relation to the work".
- that the comparator performed additional functions in relation to the management of the practice and to "problem cases" that the claimant did not and in fact on occasion the claimant referred one of the cases from her caseload, in which a problem had arisen, to the comparator for him to deal with.
- that the demands made on the comparator in terms of working conditions were greater than those made on the claimant.

#### **Recommendation EP 13/98: A Male Worker (Represented by C.M. Collins & Co., Solicitors) v Eastern Health Board (Represented by HSEA)**

**UNSUCCESSFUL**

**Complaint:** This concerns a claim by a male consultant psychiatrist employed by the Eastern Health Board as Director of Mental Handicap since 1976. In 1981 a common contract for consultant doctors was adopted, giving consultants a common salary, common duties and responsibilities. The contract provided, inter alia, for an enhanced remuneration package for consultant medical staff. The claimant did not become a party to this contract and continued to be employed under the terms of his existing contract, having the salary applicable to that contract updated by national pay increases. As a result of this a disparity in the salary of the claimant and the comparators arose.

#### **Conclusions of Equality Officer, Deirdre Sweeney:**

- that the reason for the difference in the claimants rate of remuneration and that of the comparators' is due to the fact that he did not sign up for the 1981 or 1991 "common contracts". The Board offered both male and female consultant medical staff, including the complainant the "common contract".
- that the Board's offer of a "common contract" to both male and female consultant medical staff is not discriminatory on the basis of sex.
- that the complainant and each of the comparators are paid on the basis of whether or not they are parties to the "common contract" and work to the provisions of these contracts.



- that in addition to the four female comparators named by the claimant in this claim, the other twenty one female and twenty eight male specialist medical staff employed in the Board's psychiatric service are also paid on the same basis as the comparators.
- that there are valid grounds other than sex within the meaning of Section 2(3) of the Act to justify the difference in the rate of pay of the complainant and each of the comparators.

**Recommendation EP 14/1998: 3 Named Male Employees (Represented by Ms F. Meenan, Solicitor) v Eastern Health Board (Represented by HSEA) UNSUCCESSFUL**

**Complaint:** This is a claim under section 3(a), 3(b) and 3(c) of the Anti-Discrimination (Pay) Act, 1974 for equal pay by three male psychiatric nurses employed by the Eastern Health Board with three named female comparators. The claimants argue they perform 'like work' within the meaning of Section 3 of the 1974 Act and are, therefore, entitled to the 90% acting up allowance which is being paid to the three named female comparators.

**Conclusions of Equality Officer, Gerardine Coyle:**

- that the reason the three male claimants in this case are not entitled to the 90% allowance, which is being paid to the three named female comparators, is not related to their sex.
- that two of the claimants failed to apply for the 'once-off' promotion competition which was open to all staff (both male and female). This was a prerequisite to being eligible for the 90% allowance. The third claimant had not acted-up in a substantive post. In his case complete statistical evidence was not available to support the contention that if he had been female he would have acted-up in a substantive post.

**Recommendation EP 15/1998: A Worker (Represented by SIPTU) v County Wexford VEC (Represented by Lennon Heather & Company, Solicitors) SUCCESSFUL**

**Complaint:** SIPTU claimed on behalf of claimant that she was entitled under the Anti-Discrimination (Pay) Act, 1974 to the same rate of remuneration as that paid to a male colleague.

**Conclusions of Equality Officer, Deirdre Sweeney:**

The Equality Officer concluded following detailed submissions, both written and oral made by the parties, and her observations of the work actually carried out by and interviews with the workers involved.

- that the claimant, her comparator and the second caretaker form, in a sense, a team of three and divide a range of duties between them.
- that they carry out work of a similar nature within the meaning of Section 3(b) of the Act. Section 3(b) permits differences between the work so long as the differences occur infrequently or are of small importance in relation to the work as a whole.
- that the complainant's additional functions are at least as demanding as those of her comparator. That no other differences between the work performed by the claimant and that performed by the named comparator that would justify a higher rate of remuneration being paid to him. That the claimant is employed on like work with that of her comparator for the purpose of Section 3(b) of the Act.
- that the claimant is entitled to the same rate of remuneration as that of her comparator. Section 8(5) of the Act provides for the payment of arrears of

remuneration up to a maximum of three years from the date in which the relevant dispute was referred. That the appropriate retrospective be paid to the claimant.

**Recommendation EP16/1998: 47 Named Female Employees (Represented by MANDATE) v Roches Stores Limited (Represented by IBEC) UNSUCCESSFUL**

**Complaint:** This dispute concerns a claim by the MANDATE trade union on behalf of 47 female claimants that they are entitled under the terms of the Anti-Discrimination (Pay) Act, 1974 to the same rate of remuneration as paid to five named comparators. The 47 female claimants are employed by Roches Stores Limited in Cork as Catering Assistants working as Coffee Bar/Restaurant Staff, on a full-time, part-time or casual basis. The comparators are employed as Sales Assistants and work in the food department of the Company's Supermarket. The claimants are paid at the Catering Assistants Rate. The comparators are paid in accordance with the "Cork retail drapery and allied trades non commission and clerical rate".

The Union stated that the claimants do "like work" within the meaning of section 3(c) with the 5 named comparators and are entitled to receive the same rate of remuneration. The Company rejected that "like work" as defined by Section 3(c) of the Anti-Discrimination (Pay) Act, 1974 existed between the work of the claimants and the named comparators. The Company stated that while the claimants job is carried out almost exclusively by women, the comparators job is carried out predominantly by women. The Company stated that there are legitimate grounds other than sex to justify the higher rate of pay for the named comparators.

**Conclusions of Equality Officer, Jim Clerkin:**

- that the claimants performed "like work" with each of the comparators
- that there is no case of direct or indirect discrimination against the claimants.
- that there are reasons other than sex to justify the higher rate of pay for the comparators.
- that the claimants have no entitlement to the same rate of remuneration as that paid to the named comparators.

**Recommendation EP17/1998: 24 Named Female Employees (Represented by MANDATE) v Roches Stores Limited (Represented by IBEC) UNSUCCESSFUL**

**Complaint:** This dispute concerns a claim by the MANDATE trade union on behalf of 24 female claimants that they are entitled under the terms of the Anti-Discrimination (Pay) Act, 1974 to the same rate of remuneration as paid to five named comparators. The 24 named female claimants are employed as Catering Assistants and work as Coffee Bar/Restaurant staff in Roches Stores on a part-time basis. They are paid at the Catering Assistants rate of pay. The 5 named comparators are employed as Sales Assistants and work in the food department of the Company's Supermarket. They are paid in accordance with the "Cork retail drapery and allied trades non commission and clerical rate".

The Union stated that the 24 claimants do "like work" within the meaning of Section 3(c) of the Anti-Discrimination (Pay) Act, 1974, with the five named comparators and are therefore entitled to receive the same rate of remuneration. The Company stated that while the claimants job is carried out almost exclusively by women, the comparators job is carried out predominantly by women. The Company stated that there are legitimate grounds other than sex to justify the higher rate of pay for the named comparators.



**Conclusions of Equality Officer, Jim Clerkin:**

- that each of the claimants performed "like work" with each of the comparators
- that as both groups are predominantly female there was no direct or indirect discrimination against the claimants
- that the reason for the pay differential between the two groups is not related to sex
- that the claimants have no entitlement to the same rate of remuneration as that paid to the named comparators

**Recommendation EP18/1998: A Female Worker  
(Represented by MANDATE) v Ballet International  
2000 (Represented by IBEQ) SUCCESSFUL**

**Complaint:** The claimant was employed by Ballet International 2000 as an office clerk since April 1986. In 1988 she was transferred to the purchasing department earning £11,606.39 per annum. The union is claiming equal pay on her behalf with a male comparator who is employed in the purchasing department as a Purchasing Assistant since 1996. The claimant and the comparator work the same hours and according to the union, all of the tasks performed by the male comparator are also performed by the claimant. The union says that the claimant has vast experience in the purchasing department and has a greater knowledge of all the requirements of the Ballet International purchasing department than the comparator. The employer argued that the claimant was employed as a Purchasing Clerk and that the comparator was employed as Assistant Purchasing Manager, and that this explained the difference in their rates of pay.

**Conclusions of Equality Officer, Mary Solan Avison:**

- that the work of the claimant and the comparator is not equal in value in terms of section 3(a) of the Act.
- that the work of the claimant and the comparator is not equal in value in terms of section 3(b) of the Act.
- that the work of the claimant and the comparator is equal in value in terms of section 3(c) of the Act.
- that the claimant is entitled to the same rate of remuneration as the comparator and that the rate should be applied retrospectively for three years prior to the date of the claim.

**Recommendation No. EP19/1998: A Male Worker  
(Represented by Eames & Co., Solicitors)  
v Bank of Ireland (Represented by  
Dr M Redmond, Solicitor) UNSUCCESSFUL**

**Complaint:** The dispute concerns a claim for the payment of a marriage gratuity to the claimant from Bank of Ireland. The claimant was employed by Bank of Ireland from 1968 until his resignation in 1985. The claimant argued that he was recruited by the bank prior to 1974 and married in 1974 while working for the bank. He stated that all women who were recruited prior to 1974 and subsequently married had been paid a marriage gratuity on resignation, and although he satisfied these two conditions, the bank refused to pay him a marriage gratuity. The Bank stated that the claimant was not entitled to a marriage gratuity and said that they are payable to a certain number of female employees who meet certain requirements. The bank also stated that the marriage gratuity was linked with the marriage bar where all female employees had to retire on marriage and that this bar did not apply to male staff.

**Conclusions of Equality Officer, Gerardine Coyle:**

- that a number of recommendations and determinations along with a High Court ruling have issued under the 1974 Act in similar disputes.
- that one of the first claims was allowed by the Equality Officer and the Labour Court but the High Court found that the claimant was not entitled to a marriage gratuity.
- that as this case cannot be distinguished from the case considered by the High Court that the claimant in this case does not have an entitlement to a marriage gratuity under the terms of the Anti-Discrimination (Pay) Act, 1974.

**Recommendation No. EP20/1998: A Male Employee  
(Represented by Kieran O'Reilly & Co., Solicitors)  
v Bank of Ireland (Represented by  
Dr. M. Redmond, Solicitor) UNSUCCESSFUL**

**Complaint:** This dispute concerns a claim by the claimant that he is entitled on resignation to the payment of a marriage gratuity from his employer, Bank of Ireland, in the same way as female staff received marriage gratuities. The claimant commenced employment with Bank of Ireland in 1973, and married while working for the bank. He resigned in 1996 and made a claim for a marriage gratuity to be paid to him, which was refused by the bank. He stated that all women who were recruited prior to 1974 and subsequently married had been paid a marriage gratuity on resignation, and although he satisfied these two conditions, the bank refused to pay him a marriage gratuity. The Bank stated that the claimant was not entitled to a marriage gratuity and said that they are payable to a certain number of female employees who meet certain requirements. The bank also stated that the marriage gratuity was linked with the marriage bar where all female employees had to retire on marriage and that this bar did not apply to male staff.

**Conclusions of Equality Officer, Gerardine Coyle:**

- that a number of recommendations and determinations along with a High Court ruling have issued under the 1974 Act in similar disputes.
- that one of the first claims was allowed by the Equality Officer and the Labour Court but the High Court found that the claimant was not entitled to a marriage gratuity.
- that as this case cannot be distinguished from the case considered by the High Court that the claimant in this case does not have an entitlement to a marriage gratuity under the terms of the Anti-Discrimination (Pay) Act, 1974.

**Recommendation: EP21/1998: A Female Worker  
(Represented by Coakley Moloney, Solicitors)  
v Ridge Tool Company (Represented  
by Ronan Daly Jermyn, Solicitors) UNSUCCESSFUL**

**Complaint:** The dispute concerns a claim by the claimant that she is entitled to the same rate of remuneration as that paid to four named male comparators in terms of Section 3(b) and 3(c) of the Anti-Discrimination (Pay) Act, 1974. The claimant was employed by the Company as a Warehouse/Shipping Supervisor and has worked with the company for eighteen years. For sixteen of those years she was employed as a Supervisor. The four male comparators are all employed as Supervisors over other Departments within the Company. The claimant said she was advised by the Company in 1997 that it was treating her differently to the other male Supervisors in terms of her pay and pay scale, and she stated this caused her great distress. The Company stated that in 1997 the claimant expressed her dissatisfaction with her pay stating she was being underpaid, and was therefore being discriminated against, which the Company denied. The Company stated the claimant



went on maternity leave in 1997 and in October 1997 advised her Supervisor that she did not wish to return to work and asked to be made redundant. The Company said it was not in a position to agree to this request as her post is still on-going. The Company stated that the claimant's post of Warehouse/Shipping Supervisor is distinguishable from the other Supervisory roles in that it is predominantly a clerical role and it does not involve any technical knowledge.

#### Conclusions of the Equality Officer, Gerardine Coyle:

- that "like work" does not exist between the claimant and the four named male comparators within the meaning of Section 3 of the 1974 Pay Act.
- that there are grounds other than sex, in terms of Section 2(3) of the 1974 Pay Act for the difference in pay between the claimant and each of the named comparators.
- that the claimant does not have any entitlement to the same rate of remuneration as that paid to the four named male comparators.

#### Recommendation EP 22/98: 27 Named Female employees (Represented by SIPTU) v Rangeland Meats Limited

**SUCCESSFUL**

**Complaint:** The Union claimed on behalf of 27 named female claimants that they entitled to the same rate of remuneration as paid to 10 named comparators. The comparators all work in the production process and the claimants are normally involved in the packing of production. The comparators are all paid at the same hourly rate which is higher than the hourly rate applicable to the claimants. The Union contended that the work performed by the 27 claimants was "like work" within the meaning of section 3 (a), (b) and (c) of the Act with the ten named comparators.

#### Conclusions of Equality Officer, Jim Clerkin:

- that each of the claimants performed "like work" with each of the comparators for the purposes of section 3(c) of the Act
- that equal demands were placed on the claimants and the comparators with regard to "working conditions" and that greater demands were placed on the comparators in terms of "physical effort". In relation to "skill, mental effort" and "responsibility" that greater demands were placed on the claimants.
- that each of the claimants has an entitlement to equal pay to that of the comparators.

#### Recommendation EP 23/98: A Female Worker (Represented by MANDATE) v O'Sullivan Darcy Engineering Limited (Represented by CIF)

**SUCCESSFUL**

**Complaint:** Claimant contended that she was entitled to the same rate of remuneration as paid to one or other of two named comparators. The claimant works in a shop as a Sales Assistant and the two nominated comparators work in another shop, but are employed by O'Sullivan Darcy engineering Limited. One comparator is employed as a Sales Assistant and is on a higher rate of remuneration than the claimant. The other comparator, while is also involved in sales, carries out a joint managerial role and is on higher rate of remuneration than either of the aforementioned Sales Assistants. The company rejects that "like work" exists between the work of the claimant and the named comparators.

#### Conclusions of Equality Officer, Jim Clerkin:

- that the work performed by the claimant is of a similar nature to that performed by one of her male comparator (Sales Assistant)

- that the claimant does not perform "like work" with the other male comparator
- that the claimant has an entitlement to equal pay with that of her male comparator (Sales Assistant)

#### Determination DEP1/98: Penneys Limited (Represented by IBEC) v MANDATE **UNSUCCESSFUL - APPEAL DISMISSED**

**Complaint:** This is an appeal by the union against Recommendation EP11/96. The Equality Officer recommended that none of the named sales assistant claimants was entitled to the same rate of remuneration as the male comparators, and also recommended that the named supervisor claimants be paid the same rate of remuneration as each of the comparators. The Union appealed the decision of the Equality Officer in relation to the sales assistant claimants. The Company also appealed the decision of the equality officer that each of the named supervisor claimants be paid the same rate of remuneration as each of the male comparators.

#### Determination:

##### Sales Assistants' Case:

The Court rejected the appeal of the Union and found that the Company did not discriminate against the workers. The Court agreed with the conclusions of the equality officer on "like work" and determined that the work carried out by the claimants was overall equal in value to that of the relevant comparators. The Court accepted the employer's defence that the differences in rates arose from grounds other than sex, that both pay structures were based on unisex rates achieved by different industrial relations negotiating routes, and the differences therefore between the pay rates of both groups of workers were not related to the sex of the workers concerned.

##### Supervisors' Case:

The Court upheld the Recommendation of the Equality Officer and rejected the appeal by the Company. The Court agreed with the conclusions of the Equality Officer that the supervisors perform "like work" with the comparators, and with her rejection of the defence by the Company that there were "grounds other than sex" for the differences in the rates of pay between the two groups.

#### Determination DEP2/98: Irish Times Limited (Represented by IBEC) v SIPTU **UNSUCCESSFUL - APPEAL DISMISSED**

**Complaint:** This is an appeal by the Company against, and an appeal by the Union for implementation of Recommendation EP05/97, involving 2 female workers claiming equal pay with 4 named male comparators working in Irish Times. In the case of the first named female worker, the equality officer found that she performed like work with 3 of the 4 comparators, and recommended that she be paid the same rate of remuneration as those three. In the case of the second named female worker, the Equality Officer found that she did not perform "like work" with the 4 male comparators, and was not entitled to the same rate of remuneration as that paid to them. In the case of the first named female worker the Company appealed the Recommendation of the Equality Officer (EP05/1997) stating that grounds other than sex existed for the higher rate of pay of the three comparators. The Court agreed with the findings of the Equality Officer, and dismissed this appeal. The Union appealed the Recommendation with regard to the second female worker. The Court agreed that the Equality Officer erred in her conclusion in that, in paragraph 6.1, she contradicted the conclusion of paragraphs 5.6 and 5.8 which established "like work". On this basis the Court set aside paragraph 6.1. The Court agreed with the conclusions of the Equality Officer in paragraph 5.6 of her Recommendation, and therefore it dismissed this part of the Union's appeal.



### **Determination DEP3/98: Peamount Hospital (Represented by IBEC) v SIPTU** **UNSUCCESSFUL - APPEAL DISMISSED**

**Complaint:** This is an appeal by the Union against Recommendation EP1/98 (see above) which rejected a claim by 26 named female employees employed in the household, laundry and kitchen areas of the hospital for equal pay with 3 male comparators who worked in the hospital as domestic staff. The Equality Officer found that there were grounds other than sex for the difference in remuneration paid to the 26 named female claimants and to the 3 named male comparators. The Union appealed the Recommendation on the grounds that the Equality Officer erred under law.

#### **Determination:**

The Court heard the appeal and decided that the Union did not sustain the argument nor produce reasonable proof that the difference in pay between the claimants and comparators was deliberately based on gender. The Court therefore, upheld the Equality Officer's findings and dismissed the appeal.

### **Determination DEP4/98: Power Supermarkets Ltd. v MANDATE** **UNSUCCESSFUL**

**Complaint:** This is an appeal by the Union against Equality Officer's Recommendation No. EP9/1997, which rejected a claim by 61 named female employees (system checkers) for equal pay with the comparators who worked as goods receiving chargehands. The Union stated that it clearly requested the claim to be considered as a group submission. However the Equality Officer compared only one claimant and one comparator. The Union further stated that the Equality Officer had erred in law and in fact in not finding that the work of the claimants was equal or higher in value to that of the comparators under Section 3(c) of the 1974 Act. The Company denied that any discrimination had taken place in relation to the claimants.

#### **Determination:**

The Court carried out inspections at six locations which were identified by the parties as being representative of all locations at which the claimants and comparators are employed. The Court reviewed the conclusions of the Equality Officer and evaluated the submissions from both parties. The Court found that greater demands are placed on the comparators than on the claimants, and agreed with the conclusions of the Equality Officer. Therefore the claimants do not perform "like work" with the named comparators, and are not entitled to the same rate of remuneration as that paid to the comparators.

### **Recommendation DEP5/98: The Irish Times Ltd (Represented by IBEC) v SIPTU** **UNSUCCESSFUL**

**Complaint:** This is an appeal by the Union against Equality Officer's Recommendation EP06/1997. The Equality Officer rejected a claim for equal pay on behalf of a named male worker, with two named female comparators. The Equality Officer concluded that the claimant did not perform "like work" with that performed by either of the two named female comparators, and that he therefore has no entitlement to the same rate of remuneration as that paid by the Irish Times Ltd to the two named comparators. The Union appealed the decision by claiming that the Equality Officer was in error in her conclusions in relation to the issue of "like work", and that the Equality Officer failed to properly apply the provisions of Section 2(3) of the Act to the case.

#### **Determination:**

The Court is satisfied that if the employer was paying the claimant and the comparator different rates of pay on the basis of factors which had no relation to the

sex of the workers, then even if the work was "like work" the different rates would not be due to discrimination on the part of the employer. The Court is satisfied that the pay rates for staff in the IT Services Department and in the Commercial Systems area were agreed prior to any recruitment to these areas, therefore the rates applied whether male or female staff were recruited. The claimant is being paid the rate for the job, which was fixed before he came into the job. The claimant's job and the comparator's job are different jobs in different areas, to which the employer attached different values. As it had been established that there were grounds other than sex for the differential, the appeal was dismissed.

### **Determination DEP 6/1998: Department of Enterprise, Trade and Employment, Labour Relations Commission v A Female Worker** **UNSUCCESSFUL**

**Complaint:** This is an appeal by the worker that the Equality Officer's Recommendation EP10/97 has not been implemented. The worker claims that for the Recommendation to be properly implemented, she should be reggraded to the same grade as her comparators.

#### **Determination:**

The Court rejected the appeal and determined that,

- the matter before the Equality Officer was a claim for "remuneration" and that claim was dealt with by the Equality Officer. At no stage of the proceedings is there any record of the question of grading having been raised thus, it would appear that the Court was being asked to deal with a matter which had not been the subject of the Equality Officer's hearing.
- that in this appeal the recommendation of the Equality Officer cannot be interpreted as having extended to the question of grade. The appeal, therefore, was not properly before the Court and was rejected.

### **Determination DEP 7/1998: A Credit Union (Represented by Murphy & Condon Solicitors) v A Worker** **SUCCESSFUL FOR EMPLOYEE**

**Complaint:** This is an appeal against Equality Officer's Recommendation EP11/97 and Appeal for determination that the Equality Officer's Recommendation EP11/97 has not been implemented.

#### **Determination:**

- that differences in experience and qualifications as may have existed between the claimant and the comparator did not have any material bearing on her ability to carry out the duties of manager of the Credit Union. Accordingly, they could not provide objective justification for payment of a lower rate of remuneration to the claimant than that paid to the comparator.
- that in addition to basic pay the comparator received a number of additional benefits in the course of his employment with the respondent. None of these perquisites were available to the claimant. It was submitted on behalf of the respondent that it had never authorised the payment of unvouched expenses, pension contributions or a company car to the comparator.
- that the Court considers it appropriate to deem the value of the current manager's remuneration package to be the authorised value of the comparator's remuneration.
- that the respondent's appeal against the Recommendation of the Equality Officer is disallowed and the claimant's appeal for implementation of that Recommendation is allowed.



**Determination DEP 8/1998: St. Patrick's College  
(Represented by IBEC) v 31 named  
Female Workers (Represented  
by SIPTU) SUCCESSFUL FOR EMPLOYEES**

*Complaint:* This is an appeal by the Company and the Union against Equality Officer's Recommendation EP8/97 and appeal by Union for Determination that EP8/97 has not been implemented.

**Determination:**

- that the Court concurred with the conclusion of the equality officer on 'like work' with the Catering Assistants and Housekeepers with the Maintenance man. That the Caretaker holds a rate of pay that is specific to him personally, and that there are grounds other than sex for this rate of pay.
- that the Equality Officer erred in finding that the work of the Cleaners and Housekeepers (Residences) was not like work with that of the Maintenance Man.
- that the claimants described as Cleaners, Housekeepers (House) and Housekeepers (Residences) and Catering Assistants are all employed on work of equal value to the Comparator - (Hogan) described as a Maintenance man with the terms of Article 3(c) of the Anti-Discrimination (Pay) Act, 1974.

**Determination DEP 9/1998: Chief State Solicitor's  
Officer, Department of Finance (Represented  
by the Chief State Solicitor's Office)  
v A Female Worker (Represented by Irish  
Municipal, Public and Civil Trade Union) UNSUCCESSFUL**

*Complaint:* This is an appeal by the Union on behalf a female worker against Equality Officer's Recommendation EP6/96. The claimant argued that she should receive the same entitlement in respect of public and privilege holidays as the comparator who works full-time. Her claim is based on the proposition that, while the "pro rata" principle can be applied to many terms and conditions of employment, entitlement to public holidays is a minimum legal entitlement which cannot be diminished. The Equality officer had found that the claimant, as a job-sharer, was not entitled to similar payment/time off as her comparator but was, correctly, in receipt of payments/time off pro rata to the comparator.

**Determination:**

The Equality Officer concluded that the claimant is in receipt of equal remuneration, pro rata, with the comparator and found that her claim was not well founded. The Court found that the conclusions of the equality officer were correct.

**Determination DEP 10/1998: The Revenue  
Commissioners (Represented by  
the Chief State Solicitor's Office)  
v A Female Worker (Represented by Irish  
Municipal, Public and Civil Trade Union) UNSUCCESSFUL**

*Complaint:* This is an appeal by the Union on behalf of a female worker against Equality Officer's Recommendation EP7/96. The claimant argued that she should receive the same entitlement in respect of public and privilege holidays as the comparator who works full-time. Her claim is based on the proposition that, while the "pro rata" principle can be applied to many terms and conditions of employment, entitlement to public holidays is a minimum legal entitlement which cannot be diminished.

**Determination:**

The Equality Officer concluded that the claimant is in receipt of equal remuneration, pro rata, with the comparator and found that her claim was not well founded. The Court found that the conclusions of the equality officer were correct.

**Determination DEP11/1998: University of  
Dublin, Trinity College (Represented by IBEC)  
v SIPTU UNSUCCESSFUL**

*Complaint:* This is an appeal by the Union against Recommendation EP9/98 (see above) which rejected a claim by five male workers employed by the College as senior security officers, for equal pay with 3 named female comparators. The Equality Officer decided that the claimants did not perform "like work" with any of the 3 named comparators, and found that they were not entitled to the same rate of remuneration as that paid to the comparators. The Union appealed the Equality Officer's recommendation to the Labour Court.

**Determination:**

The Court decided that the case advanced in support of the appeal did not disclose sufficient basis on which the Court could conclude that the Equality Officer erred in her recommendation. The Court also found that the claimants did not perform like work with any of the named female comparators in terms of Section 3(b) and Section 3(c) of the Anti-Discrimination (Pay) Act, 1974, and the claim was dismissed.

**Recommendation DEP12/1998: Dunnes Stores  
(Represented by Marguerite Bolger B.L.)  
v MANDATE UNSUCCESSFUL**

*Complaint:* This is an appeal by the Union and the Company against the Equality Officer Recommendation EP6/98 (see above). The Union had argued on behalf of 6 female employees that they were entitled to the same rate of remuneration as that paid to seven named male comparators in terms of Section 3(c) of the 1974 Act. The Equality Officer found that there were grounds other than sex for the difference in pay between the six claimants and the named comparators, and that the claimants did not have any entitlement to the same rate of remuneration as that paid by Dunnes Stores to the named comparators. The Union appealed against the finding of the Equality Officer that the claimants were not entitled to the same rate of pay as the comparators. The Union alleged that the Equality Officer did not consider the issue of indirect discrimination, and also that her finding of grounds other than sex for the difference in pay was an error. The Company appealed on the grounds that certain of the findings of the Equality Officer in relation to the work of certain of the claimants and that of the comparators were not justified in the circumstances.

**Determination:**

The Court was satisfied that there were grounds other than sex for the payment of different rates of remuneration to the claimants and the comparators. This finding was on the grounds that the comparators were seven males out of a group of 24 sales assistants, and that the remaining 18 sales assistants were all female. The Court also found that the allegation of indirect discrimination cannot be upheld either in this case since the group with which the claimants compared themselves consisted mostly of women workers. The Court is satisfied that the employer, in paying the Sales Assistants more than the claimants, was doing so on grounds which are not sex-based.







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