

Response to Department of Education Review of Public Administration Policy Paper 20: Publicly owned schools – ownership and representation

March 2009

Introduction

1. The Equality Commission for Northern Ireland (“the Commission”) is an independent public body established under the Northern Ireland Act 1998. The Commission is responsible for implementing the legislation on fair employment and treatment, sex discrimination and equal pay, race relations, age, sexual orientation and disability. The Commission’s remit also includes overseeing the statutory duties on public authorities to promote equality of opportunity and good relations under Section 75 of the Northern Ireland Act 1998 (s 75).
2. The Commission’s general duties include:
 - working towards the elimination of discrimination;
 - promoting equality of opportunity and encouraging good practice;
 - promoting positive / affirmative action;
 - promoting good relations between people of different racial groups;
 - overseeing the implementation and effectiveness of the statutory duty on relevant public authorities; and
 - keeping the legislation under review.

Context

- 3 The Commission engages in public policy development to ensure that the maximum potential for the promotion of equality of opportunity and good relations is mined from each policy decision.

‘Everything has a consequence. All public policy decisions by Government, by public authorities, by large private companies,

whether international or national; all decisions by communities, by small companies, by individuals – all our actions have consequences that affect others, whether we wish it so or not. This is a call to those with responsibility to remember the reality of inequality, to have it in mind in the decisions they take and to adjust or modify those decisions so that they can reduce its consequences in the lives of peopleⁱ.

- 4 The Commission welcomes the opportunity to contribute at this stage to policy development relating to the ownership of schools. This issue is a key factor in two current cross cutting priorities for the Commission. First, we are committed to work to ensure that the opportunities provided by the Review of Public Administration (RPA) in reconfiguring public bodies and service provision reach their full potential in achieving equality of opportunity and good relationsⁱⁱ.

Second, as our statement on the key inequalities in education, *Every Child an Equal Child*ⁱⁱⁱ details,

'We consider that all children and young people must be valued equally and believe that they should be allowed the opportunity to develop to their full potential. The role of the education system should therefore be to foster and facilitate that development.'

This, we believe, embraces the education system in its entirety and in each of its separate facets.

- 5 The Commission recognises that the Department shares this dual commitment. Minister for Education, Caitriona Ruane, set out this position in detail at the Commission's annual conference in October 2008 and our engagement with officials has demonstrated to us the steps being taken to promote equality of opportunity and good relations throughout the RPA in education.
- 6 We also recognise the commitment from the Department to ensure *'that the most vulnerable in our society do not suffer further disadvantage'*^{iv} as well as to work for excellence. This dual approach requires lateral thinking as well as adequate resources.

ⁱ Bob Collins, Chief Commissioner, Statement of Key Inequalities in Northern Ireland, ECNI 2007

ⁱⁱ Review of Public Administration, ECNI 2004 and on

ⁱⁱⁱ Every Child an Equal Child, ECNI 2008

^{iv} Letter to Evelyn Collins, Chief Executive ECNI from Will Haire, Permanent Secretary DE, 18 December 2008

7 In developing this work and our position on equality and education, the Commission has three overarching objectives

- every child has equality of access to a quality educational experience
- every child is given the opportunity to reach his or her full potential
- the ethos of every school promotes the inclusion and participation of all children^v.

We are continuing our work with the Department and ETI to develop indicators which reflect the interaction between equality, good relations and a quality educational environment.

8 If the education (in the widest sense of the word) of children and communities for the well-being of the community is the long term policy intention, *this makes the issue of ownership and the relationship with other school owners and stakeholders all the more critical*. Moreover, it is essential to consider mechanisms to ensure that separate ownership of individual schools does not result in variable approaches or inconsistencies such as would have an adverse impact on children or on issues touching on equality of opportunity and good relations in schools. It is also important that the Department is clear on long term intent, providing timelines and targets where possible.

9 The Commission is of the view that there is potential for inconsistency and the creation of disequilibrium. A number of questions arise for us relating to both ownership and representational issues in the light of this consultation and recent debate and discussions with the Department and the Transferors' Representative Council. These include:-

- If publicly owned (ie currently defined as controlled) schools are the locus of diversity, how are the various traditions to be catered for?
- How is ownership defined given that the Roman Catholic education sector is fully funded from the public purse?
- Will publicly owned and maintained schools operate within separate cultures, with diversity in the former and uniformity in

^v Every Child an Equal Child, ECNI 2008

the latter? The Commission believes that it is essential that all educational bodies and schools operate within an equality ethos which both protects identity and promotes diversity.

- How does one avoid the possibility of differential approaches to the educational prospects and environments for children? What are the opportunities, rather, to promote equality of opportunity and good relations and to ensure the same life chances for all our children, regardless of their choice of school or allocated school?

Introduction – overarching matters of representation

- 10 The Commission welcomes the Department's recognition in the policy paper (paragraph 8) of the pluralist nature of the education sector and notes the Department's commitments to reflect this in any new structures, linking to the Programme for Government's vision of a shared and better future for all. Thus this paper deals with matters of representation as well as ownership in finding ways in which the various sectors can continue to play their necessary roles. We note the Department's consideration of this and of the significance of the wider policy intent and context.
- 11 Whilst organisational relationships are discussed, there is a striking absence of discussion on the relationship with the Roman Catholic education sector. (paragraphs 12 to 16 consider only the controlled sector) However unintended, this absence does little to dispel concerns about continuing fragmentation of education provision. There is a need for coherent policy requiring *all* education providers to work together to achieve the best for *all* children in Northern Ireland, and there is goodwill among the providers which could be harnessed at this time.
- 12 In practical terms we ask the Department to provide more clarity on the above issues and, specifically, a timeline for the establishment of the proposed Working Group.

Composition of the Working Group to develop proposals for an independent organisation

- 13 The Commission recommends that, in the light of the growing diversity of the population of Northern Ireland and the school population attending controlled schools in particular that the Working Group should, in the context of s 75, reflect this diversity.

This should include consideration of representatives of Christian and non-Christian faiths as well as people of no religious faith, in addition to representation from the Transferors' Representative Council. We recognise the Department's intention to achieve as much inclusion as possible in the working group.

Considering the consequences of ownership

- 14 Before considering the technicalities of ownership the Commission wishes to raise issues on the consequences of proposed *owner* functions. The consultation paper does suggest (paragraph 18) that *"the new legal owner of controlled schools would therefore appear to have a very limited role – that of simply being the technical legal owner of the schools"*. The paper then continues, given those limitations to offer options (paragraph 19), by suggesting that the new legal owner could be assigned functions such as *"nominating foundation governors, bringing forward development proposals, and the disposal of surplus assets"*. These latter issues are of fundamental importance and are not simply technical matters. The Commission therefore seeks more clarity in relation to policy intention, better to engage on this issue.
- 15 The document is also silent on the role of the Roman Catholic Church in terms of its ownership of the Catholic school estate. There is a need to ensure that there is a consistency of approach to all education estate owners in terms of requirements. There is much to be gained from estate owners working together in an interim period of considerable change and challenge to schools, to provide excellence in education provision. This can recognise the current reality of separate education while supporting a transition to shared education.
- 16 We believe the potential for disequilibrium as demonstrated by the questions above requires close and careful consideration in the decisions concerning the ownership of schools. We would welcome the opportunity to discuss how the Department has considered these issues. We may also wish to offer advice on the equality implications of this issue, which relate to a range of grounds and stakeholders.
- 17 The Department's very clear commitments to equality and good relations should be more visible in the outcomes from this consultation, including a statement of commitment to ensuring the

new body actively promotes equality and good relations, moving beyond the position of tolerance outlined in the policy paper.

Other impact of ownership

- 18 With regard to the more technical implications, we would refer the Department to the Commission's position on *Schools for the Future*^{vi} (Annex 1). We believe that, as asserted in the Programme for Government and Investment Strategy, schools exist at the heart of communities. There is significant disparity between communities across Northern Ireland and significant inequalities exist which must be addressed. Schools can play a central role in the promotion of equality of opportunity and good relations and if this potential for change is not fully grasped we miss the chance, through RPA, to bring about a fair, equal, integrated and inclusive society for all.
- 19 This in turn means that schools, and their ownership, must be examined in the light of other policies – Extended Schools, community education, care services, transport, urban renewal, rural and regional development and many more. Local area planning and the introduction of community planning and the power of wellbeing conferred on new local councils will provide the context to achieve this more comprehensively.
- 20 It is imperative that the significant financial investment currently being made delivers maximum return in achieving equality of opportunity and good relations, replacing unfit and underused schools with 'sustainable schools at the heart of communities'. The Commission notes the commitments to all our children, to the role of schools in the community and to partnership with other public services in the Programme for Government 2008-2011 and the Investment Strategy for Northern Ireland 2008-2018.

'The Executive is determined that our schools estate will be redeveloped in time to engage children from all backgrounds – so that all are helped to reach their full potential. Our future economic and societal well-being depends on it.'^{vii}

^{vi} Response to 'Schools for the Future: a Policy for Sustainable Schools, ECNI 2007

^{vii} Investment Strategy for Northern Ireland 2008-2018

- 21 The Commission's guidance, *Equality of Opportunity and Sustainable Development in Public Sector Procurement*^{viii} describes how public services can take the whole policy context into consideration when taking projects forward.

The Department's embracing of the guidance will assist in developing consistent procurement practice which is sensitive to the diverse needs of schools in different sectors or different areas. It will also support better policy making, identifying adverse impact and options for mitigating measures. It will allow a transparent way of planning and development of education services and a framework for partnerships in delivery.

The Commission advises that the Department uses this and other relevant guidance in all its policy development and decision making.

Achieving equality within the ownership of schools

- 22 Equality objectives in complex public policy developments can and should be achieved through rigorous attention to s 75 requirements.

Screening

- 23 The Commission wishes to draw attention to the absence of evidence cited in the screening document. The *Guide to the Statutory Duties*^{ix} is clear about the evidential requirements of the screening process. The Commission would welcome further clarification on the sources of evidence used to inform the Department's screening analysis of this policy. The Commission is aware that, in a meeting with representatives of the Department on 12 June last year, the issue of concerns expressed by the Transferors' Representative Council were raised. However, these concerns are not reflected in the screening document or the Policy Paper as evidence.
- 24 The Commission is aware of considerable equality impacts being raised in respect of RPA Policy Paper 5 and discussed this with the Department. However, the considerable number of responses to Paper 5 is not referred to or reflected in the screening document or the policy paper as evidence.

^{viii} Equality of Opportunity and Sustainable Development in Public Sector Procurement, ECNI and CPD, 2008

^{ix} Guide to the Statutory Duties, ECNI 2005 (p62)

In the light of the above, the Commission would welcome further clarification on the sources of evidence used to inform the Department's screening analysis of this policy.

Status of the independent organisation as a public authority

25 Given that the proposed body will legally own the current controlled schools and have a number of functions that relate to the promotion of equality of opportunity and good relations, the Commission considers that there is a strong case for designating this organisation as a public authority falling within the remit of s 75 of the Northern Ireland Act 1998. Those functions proposed include:

- nomination of foundation governors,
- bringing forward development proposals and the disposal of assets (from an estate worth over £2.3 billion),
- taking into account the views of the representational body,
- supporting schools to connect more directly with their own communities, and
- potentially other functions of a transformative nature if the body is a transition one.

Conclusion

26 The Commission welcomes an opportunity to comment on this consultation paper and may wish to advise the Department further in respect of its s 75 obligations once it receives the clarification requested above on a number of issues. We welcome the opportunity to discuss this in more detail, to enhance our understanding of policy intention and to share thinking with the Department on how this policy paper can add value to equality of opportunity and good relations within education provision. In the interim, the Commission asks the Department to consider how it can more fully take account of the wider policy context of these proposals, including wider relationship issues.

27 This communication is made without prejudice to any consideration or determination which the Commission might make in performance of its statutory function to investigate individual complaints under Schedule 9 of the Northern Ireland Act 1998 or conduct any other investigation under that Schedule.

Equality Commission
March 2009

Annex 1

Equality Commission response to Schools for the Future, 2007



Response to ‘Schools for the Future: A Policy for Sustainable Schools’

Introduction

1. The Equality Commission for Northern Ireland (“the Commission”) is an independent public body established under the Northern Ireland Act 1998. The Commission is responsible for implementing the legislation on fair employment and treatment, sex discrimination and equal pay, race relations, sexual orientation and disability. The Commission’s remit also includes overseeing the statutory duties on public authorities to promote equality of opportunity and good relations under Section 75 of the Northern Ireland Act 1998, and to to promote positive attitudes towards disabled people, and to encourage participation by disabled people in public life under the Disability Discrimination Act 1995.

2. The Commission’s general duties include:
 - working towards the elimination of discrimination;
 - promoting equality of opportunity and encouraging good practice;
 - promoting positive / affirmative action;
 - promoting good relations between people of different racial groups;
 - overseeing the implementation and effectiveness of the statutory duty on relevant public authorities; and
 - keeping the legislation under review.

3. The Commission welcomes the opportunity to respond to the consultation on ‘Schools for the Future: A Policy for Sustainable Schools’, and believes that the policy intentions contained provide a unique opportunity to ensure equality of access to quality education

for all children and young people, and enhancing the role of schools in the promotion of good relations. While the Commission supports the principles of sustainable schools, the need for better strategic planning of the schools estate, and the need for sharing and collaboration, it has concerns that the Department has failed to sufficiently consider the equality implications of the proposals and missed opportunities to promote good relations.

Assessing the impact of the proposals on equality of opportunity

4. Throughout this response, the Commission has highlighted a number of areas where it feels the proposals could better promote equality of opportunity and good relations, and where the proposals could adversely impact on particular groups. The Commission's *Guidance for Implementing Section 75 of the Northern Ireland Act 1998* is clear that all designated public authorities, in meeting their statutory obligations, must assess the likely impact of their policies on equality of opportunity; 'proposed policies must be subject to screening and to consultation on the outcomes of the screening exercise, and those policies identified as having significant implications for equality of opportunity must be subject to full impact assessment'. The Commission is very concerned that the consultation document contains no information on whether and how it has considered the equality implications of the proposals; whether and how it has carried out screening and equality impact assessment, and contains no quantitative or qualitative data to ensure meaningful consultation.
5. The Commission seeks urgent clarification of the steps which the Department is currently taking to meet its obligations under Section 75 of the Northern Ireland Act 1998 in relation to its *Policy for Sustainable Schools*.

Assessing the impact of the proposals on good relations

6. Section 75(2) of the Northern Ireland Act 1998 places a duty on the Department of Education to have regard to the desirability to promote good relations. The proposals in the document have the potential to impact significantly on good relations; both in positive and negative ways. For example, collaboration between schools, where those communities had not shared services in the past, could help to improve relations between communities. However, there are also potential risks associated with the proposals. Closure of a single denominational school within a local area could result in an increase in community tension and fail to promote good relations between the

two communities. Particular difficulties are like to arise where segregation is at its strongest and high levels of community tensions already exist. The Department, in meeting its obligations under Section 75(2) of the Northern Ireland Act 1998, must have regard to the desirability of promoting good relations (both within and between communities) on the grounds of race, religious belief and political opinion. If a school closure results in poor relations between communities, steps must be taken to address that situation and gain the trust and acceptance of all parts of the community.

7. Furthermore, it is not clear from the proposals contained in the consultation document, how area based planning links with outcomes arising from the Review of Public Administration, such as the development of a community planning model and reform within local government. The Commission advocates a 'joined up' approach by Government to maximise the potential to promote good relations.

Impact of inward migration

8. The proposals contained within the consultation are informed by the Department's analysis of demographic trends in Northern Ireland; in particular the projected decline in the numbers of children at school age. However, given the two fold increase in inward migration from 7,000 in 2000-01 to 14,000 in 2004-05, the Commission is concerned that insufficient attention has been paid to estimating longer-term inward migration so that education provision for the children and young people of migrant workers can be properly planned. Investment in research is required to ensure that implementation of the Sustainable Schools Policy is informed by robust projections for inward migration.

Consideration of longer-term viability

9. The consultation document places considerable emphasis on financial cost associated with smaller schools, and the connection to enrolment numbers. The document considers stable enrolment trends as a central characteristic of a sustainable school, and includes it as one of six criterion against which schools will be judged as part of consideration of their longer-term liability. The Commission supports such an approach as potentially providing a consistent and accountable system and injecting greater transparency in the decision-making process. However, we have a number of comments regarding the practical application of such a system, and recommend

amendments to the indicators used to measure progress within schools.

Departmental Commitments to Promote Good Relations

10. The Commission agrees, as set out in *A Shared Future*, that education is pivotal to an inclusive, reconciled and open society built on trust, partnership, equality and mutual respect. 'Separate but equal' educational provision will fail to promote equality of opportunity and good relations for all; an integrated approach should be a fundamental principle in pursuing change in this society.
11. The Commission is encouraged by recent policy initiatives that have placed importance on the centrality of good relations in education. Firstly, The *Shared Future* First Triennial Action Plan places an explicit commitment on the Department of Education that 'in decision making on new schools or re-organisation/rationalisation of schools, proposals will be required to demonstrate that options for collaboration or sharing on a cross community basis have been considered and fully explored'. It also states that on the basis of clear criteria to be developed, projects relating to new schools, reorganisation or rationalisation are more likely to justify receipt of financial support if they are shared or operate across a community divide.' Secondly, in January 2007, the Secretary of State announced a new 'Shared Future Accreditation Scheme' for schools which will recognise existing sharing and collaboration between and within schools and encourage further work in all schools, and bring with it financial and other support.
12. The proposals in the *Sustaining Schools* document fail to sufficiently take account of the Department's commitments in relation to *A Shared Future* and could potentially undermine the effectiveness of the Accreditation Scheme. The sustainability criteria and indicators do not reflect the requirement on the Department to demonstrate that options for collaboration or sharing on a cross community basis have been considered and fully explored, the development of clear criteria regarding financial support if they are shared or operate across a community divide, or the provisions of the Accreditation Scheme. The sustainability criteria and indicators do not link in with the Government's stated intentions that projects relating to new schools, reorganisation or rationalisation are more likely to justify receipt of financial support if they are shared or operate across the community divide. Furthermore, the criteria do not reflect the Bain Review recommendations that proposals for new schools, or re-organisation

or rationalisation of schools should demonstrate that options for collaboration and sharing on a cross-community basis have been considered and fully explored. The Commission recommends that the indicators are amended so that collaboration or sharing on a cross community basis is central to considerations of long term viability.

Weighting of Criteria

13. The document states that the six criterion should not be applied in a 'mechanistic' fashion, and makes reference to the relationship between the criteria. However, it is not clear how this will work in practice. The consultation paper does not provide any indication of the weighting attached to each criterion so as to facilitate a balanced, measured and more transparent judgment on the viability of a school. For example, the document is unclear as to whether the cost/enrolment factors will be given primacy over more qualitative criteria.
14. Equality of access to a quality educational experience must be the goal of education policy. The Commission believes that to that end, and to ensure read across between Departmental policies on promoting good relations and its Section 75 obligations, primacy be given to the criteria of quality educational experience, accessibility and strong links to the community is assessing the viability of schools. In finalising the *Policy on Sustainable Schools*, the Commission recommends that the Department include greater detail on the relative weights that will be applied to the criteria, in particular those relating to quality, accessibility and links with the community, with the *Links to Community* criterion to include an indicator for collaboration on a cross community basis.

Sustainability of the Community

15. In relation to the sustainability criterion *Strong Links with the Community*, the Commission considers that the Department should include as an indicator 'the sustainability of the community'. It is well-recognised that there is a link between the availability of school provision and the sustainability of communities. Families may often move home to be closer to available educational provision. The link to sustainable communities is particularly pertinent to rural

communities, given the potential impact of other policies, such as the Department of Regional Development's Planning Policy Statement 14 (PPS14) *Sustainable Development in the Countryside*. Concerns that the effect of PPS 14 will be to lead to the depopulation of some rural areas with subsequent consequences for the sustainability of rural communities have continued to be expressed by a range of interest groups, including the Rural Community Network, the Rural Development Council and a number of political parties. In its response to the draft Equality Impact Assessment on PPS14, the Commission raised the issue of potential adverse impact of the policy, and highlighted its concerns that '*Consequences for the groups concerned may be an erosion of the rural way of life, a weakening of social cohesion and a break down of traditional rural communities*'. Should the *Policy for Sustainable Schools* lead to widespread closure of schools in rural areas, these may have the effect of reinforcing adverse impacts arising from PPS 14, leading to the depopulation and, ultimately, sustainability of some rural communities. Given the particular socio-political geography of Northern Ireland, there is potential for adverse impact on groups of different religious belief and political opinion; and this should be reflected in an Equality Impact Assessment of the proposals. The Commission advises the Department to consider and monitor the impacts of the *Policy on Sustainable Schools* on rural areas in the context of the broader policy agenda.

Impacts for Disabled Children and Young People

16. The potential adverse impact of the outworking of the policy on accessibility of school provision for disabled children and young people must be taken into account by the Department, closely linked as this is to whether or not accessible transport is available where closures or amalgamation require greater travel distances and a more complex transport chain. When applying the criterion 'accessibility' regarding 'distance to travel' the Department should consider the barriers faced by disabled pupils and carers, if as a result of a school closure, they are required to travel to a school which is more difficult to access; both in terms of travel time, cost, and the availability of public transport.
17. The Commission reiterates the comments above that it is concerned that the criteria and indicators make no reference to the Department's obligations under A Shared Future, and recommends that the indicators are amended so that collaboration or sharing on a cross community basis is central to considerations of long term viability.

Rural issues

18. While NISRA and the Departments have accepted 4500 as a demarcation for an Urban settlement, the Commission is concerned as to whether the application of this measure is appropriate in assessing the viability of schools, particularly in the primary sector. It is recognised that there is considerable cross boundary mobility of children attending the post primary sector, however in general children attend their local primary school. Small market towns such as Ballyclare or Omagh have populations above this limit but their identity is primarily rural. Applying the same numerical criteria to schools in towns such as these as the Department would to Belfast L/Derry misses out on the distinctiveness of these towns and their connection to a 'hinterland' and its demographics.
19. The Commission notes that the Department has concluded that the options (including collaboration, clustering and federation) laid out in the Rural Development Council's Report *Striking the Balance* in respect of an approach to rural proofing of education provision may be helpful. In particular, the Commission welcomes the Department's acknowledgment (para 6.17) that *'there may be relevant reasons to retain a particular small school when it may not be justified in other parts of the country'*, but considers that the 'relevant reasons' should include the sustainability of rural communities with regard to potential adverse impacts on Section 75 categories as outlined above and the issue of accessibility for disabled pupils.

Conclusions

20. The reforms proposed in the paper provide a timely opportunity to ensure equality of access to quality education for all children and young people in Northern Ireland and to recognise the critical role of schools in promoting good relations.
21. The Commission supports the approach proposed; to develop a set of criteria and indicators against which the long term viability of a school will be judged. It recommends giving primacy to the criteria of quality of educational experience, accessibility and strong links with the Community.
22. While the Commission supports the principles contained in the document it has serious concerns that the Department has not

sufficiently considered the equality implications of what is proposed. Furthermore, the Commission believes that by not recognising within the viability criteria and indicators the central role which schools can play in the promotion of good relations through collaboration, an opportunity is being missed to bring about an integrated and inclusive society for all.