



11 February 2016

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Dear Mr Campbell

Re: Health and Social Care: Reform and Transformation – Getting the structures right

The Equality Commission for Northern Ireland (the Commission) welcomes the opportunity to respond to the consultation by the Department on: *Health and Social Care: Reform and Transformation – Getting the structures right*.

The Commission recognises that resources directed towards health and social care provision are presently divided between maintaining the status quo and beginning the roll out of Transforming Your Care and that it is necessary to take steps to free up the resources needed to enable to the necessary ‘shift left’ required to deliver the reform programme.

The Commission accepted the thrust of the proposal advanced in the Donaldson Report that the commissioning of services should be

redesigned to make it simpler and more capable of informing and reshaping health and social care services in the future¹. We therefore acknowledge the need, outlined in the current consultation, to replace the existing commissioning model and replace it with a more streamlined, more accountable and more responsive service.

We acknowledge that there is a need to better co-ordinate commissioning services, that clear leadership is critical to the design and delivery of health and social care provision and that there is a need for clarity as to the allocation of overall responsibility for the commissioning and delivery of health and social care.

The Commission notes the proposal to devolve health and social care commissioning budgets to the five Health and Social Care Trusts (HSC) and acknowledges the potential for this to more effectively enable localised accessible service provision and enhanced accountability to service users consistent with the central principles of Transforming Your Care.

However, the Commission would welcome further detail on the arrangements by the Department to co-ordinate and scrutinise the work of the HSC Trusts.

Moreover, we emphasise that the reconfigured commissioning arrangements should include a clear focus on the need to promote equality of opportunity and the desirability of promoting good relations and, therefore, application of the relevant Equality Scheme arrangements.

Furthermore we strongly reiterate that the Department should take full account of any equality/good relations implications and all human rights considerations arising from the proposed abolition of the Health and Social Care Board.

¹ Equality Commission for Northern Ireland (April 2015): Response to the consultation by the Department for Health, Social Services and Public Safety on *The Right Time, The Right Place – An expert examination of the application of health and social care governance arrangements for ensuring the quality of care provision in Northern Ireland*, paragraph 14, page 5.

The Commission considers that it is crucial that an equality appraisal (whether screening and/or EQIA) considers whether any current disadvantages experienced by equality constituencies in the delivery of health and social care are compounded, and/or new disadvantages created, as an outcome of the re-configuration of structures and delivery arrangements². In addition the consideration of the equality impacts will assist the Department to seek opportunities to promote equality of opportunity and good relations within the new structures.³

Although in our response to the *Donaldson Review* we advised that the *Review of HSC Commissioning Arrangements* should be informed by the duties to have due regard to the need to promote equality of opportunity and regard to the desirability of promoting good relations; we noted that the final report was not accompanied by a screening report.

The Commission has been advising the Department, on an ongoing basis, in relation to screening and consideration of EQIA in the context of the Department's equality scheme commitments. Commission advice is that any consultation on an equality appraisal (whether screening or EQIA) is recommended to be undertaken at the same time as and alongside the consultation on the policy proposal.

The Commission notes that the *Health and Social Care: Reform and Transformation* consultation, issued for consultation on 15th December 2015, was not accompanied by a screening document. Following contact by the Commission, a screening document was subsequently put on the Department's website. The Commission also notes that this was published on the Department's website on 8 February 2016, less than a week before

² The United Nations Committee on Economic, Social and Cultural Rights has clearly stipulated the obligation on state parties to prevent retrogression of rights. Source: Committee on Economic, Social and Cultural Rights: *General Comment No. 3, The Nature of States Parties' Obligations* (Fifth session, 1990), U.N. Doc. E/1991/23, paragraph 9. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCESCR%2fGE C%2f4758&Lang=en

³ Equality Commission for Northern Ireland (2010): Section 75 of the Northern Ireland Act 1998 A Guide for Public Authorities, page 27.

the consultation closes and does not appear to have been proactively issued to consultees, as the policy consultation was in December 2015.

As previously advised; issuing a screening / Equality Impact Assessment (EQIA) document with the Department's assessment of the equality impacts of a policy, assists to inform consultees' responses. Putting a screening template on the Department's website one week before the consultation closes, provides insufficient time for consultees to consider any equality impacts identified and furthermore, many consultees may not even be aware that the document has been published.

In addition, the Commission is concerned about the quality of the screening undertaken and provides the following advice:

- **Limited evidence:** The evidence that is set out regarding both potential staff and services equality impacts is very limited. The Department may not have detailed information at this stage regarding functional allocations; however it could have considered the different potential policy options associated with the current policy and determined the potential equality impacts associated with each policy options.
- **Level of impact not determined:** The Commission notes that where the Department has identified equality impacts, it has provided no information on its assessment of the *extent of those impacts*. I.e. on pages 8 and 9 of the screening document the '*level of impact*' column, where impacts are identified by the Department, has been left blank.
- **The screening decision made by the Department, as to whether it is conducting an EQIA or not, is unclear.** The Consultation Questionnaire published on 15 December 2015 states that, '*at this stage, it is considered that a full Equality Impact Assessment will (underline our emphasis) be required*'.

However the Department's screening exercise, which identified potential equality impacts, states that, '*further screening(s) and possibly a Full Equality Impact Assessment may be necessary depending on the final decision(s) (underline our emphasis).'*' In addition the level of impact at 3.1 on the form is blank and the screening decision at 3.2 – if to 'screen out' the policy.

- **No Monitoring arrangements:** The screening document does not set out any monitoring arrangements, as required by scheme commitments.
- **Recommendation to revise screening:** The purpose of screening at an early stage is to identify equality impacts early on in the policy development process which would then enable a public authority to consider mitigation or alternative policy options.

The Commission recommends that the Department reviews the screening exercise in light of this advice, to ensure appropriate evidence is set out, that there is clarity about the screening decision (with appropriate evidence base) and further considers undertaking an EQIA, in order to robustly consider the equality impacts that it has already identified.

The Commission is happy to advise further on the Departments Section 75 responsibilities in this context and Kevin Oakes, Equality Officer, can be contacted to discuss these issues further if the Department would find that useful: Tel: 02890 500 698 Email: koakes@equalityni.org

Yours sincerely

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Annex 1

The Equality Commission for Northern Ireland

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, sex discrimination and equal pay, race relations, sexual orientation, disability and age.

The Commission's remit also includes overseeing the statutory duties on the Department to promote equality of opportunity and good relations under Section 75 of the Northern Ireland Act 1998 (Section 75) and to promote positive attitudes towards disabled people and encourage participation by disabled people in public life under the Disability Discrimination Act 1995.

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 duties;
- keeping the legislation under review;
- promoting good relations between people of different religious belief and / or political opinion.

The Equality Commission, together with the Northern Ireland Human Rights Commission, has been designated under the United Nations Convention on the rights of Persons with Disabilities (UNCRPD) as the independent mechanism tasked with promoting, protecting and monitoring implementation of the Convention in Northern Ireland.