

Equality Commission

FOR NORTHERN IRELAND



Section 75 Statutory Equality and Good Relations Duties Acting on the evidence of public authority practices

Summary Report for Consultation

October 2017

Equality Commission for Northern Ireland

Foreword

The statutory equality and good relations duties on public authorities in Section 75 of the Northern Ireland Act 1998 are a vital part of the legal framework in Northern Ireland. It is as important as ever that public authorities pay due regard to the need to promote equality of opportunity and regard to the desirability of promoting good relations.

It is hard to believe that it is almost 20 years since the Good Friday/Belfast Agreement and the Northern Ireland Act 1998. Much in the landscape has changed in the intervening period. But what has remained constant, recognising some progress, is the need to continue to address inequalities in Northern Ireland. Some of these are enduring inequalities and some are more recently emerging – it is imperative that public authorities effectively mainstream equality and good relations considerations in the planning and delivery of public policy and the public services for which they are responsible.

The Commission has a role to keep the effectiveness of the Section 75 duties under review. The duties were intended to transform the practices of public authorities so that considerations of equality of opportunity and good relations are central to policy making and implementation. We have gathered evidence of practices amongst public authorities fulfilling their statutory equality and good relations duties.

Our consideration of public authorities' practices is timely, not only as we are 20 years on, but also because of the real and concrete opportunities to embed fully equality and good relations considerations through the approach taken to the current draft Programme for Government, which has a specific focus on delivering better outcomes for individuals.

This report presents the evidence gathered and makes recommendations on how to address a number of issues identified. The Commission agreed that there is sufficient evidence of issues for public authorities to address as a matter of priority, to ensure the effective implementation of their statutory equality and good relations duties. These issues have been presented to and discussed with a range of stakeholders; and the Commission is already addressing them through its advisory work.

It is clear that cultural and institutional change is required to fully embed the legislative requirements, and to ensure a focus on the impacts and consequences of policies and decisions on the lives of people in Northern Ireland. We have highlighted leadership, in particular, as core to the effective delivery of the statutory equality and good relations duties. We are fully committed to engaging with leaders across the public sector to encourage renewed focus on such delivery.

One of the actions identified is a review of our use of investigation powers, scheduled in the current business year. On completion of this, the Commission will consider the overall position in relation to its function to 'keep under review the effectiveness of the duties imposed by Section 75'.

We are publishing this report now for consultation on the issues, recommendations and proposed actions; we welcome your comments. We are also using the findings to focus on the issues identified and on the delivery of our statutory remit relating to the duties.

Dr Michael Wardlow
Chief Commissioner

Background and context

The Equality Commission for Northern Ireland (Commission) has a considerable body of evidence available on the operation of the Schedule 9 requirements of the Northern Ireland Act 1998. The Schedule 9 requirements are there to enable public authorities to fulfil their statutory equality and good relations duties set out in Section 75, and to enable enforcement of those duties.

This document summarises a full report which sets out evidence that the Commission considered during the course of the 2016-17 business year. The evidence has presented a picture of how the duties are being implemented by public authorities.

This picture has been drawn from: detailed consideration of the evidence gathered; the Commission's understanding from experience in advising public authorities and others; the Commission's understanding of the wider political and economic context for public services in Northern Ireland; and other sources such as from the use of our investigation powers. A number of reviews commissioned during the period; analysis of other research and relevant sources that are referenced in the report, as well as stakeholder engagement, have also contributed.

As a result of examining public authority practices, the Commission is concerned about the effective implementation of the Section 75 duties by public authorities.

The Commission has identified a number of issues from this, which it believes are fundamental to the effective implementation of the duties by public authorities.

The Commission will continue to provide advice and information on the statutory equality and good relations duties, and fulfil its functions as set out in Schedule 9. It will focus on addressing the issues identified below.

Your comments and response to this consultation report

The Commission would welcome comments, particularly on the **issues identified, recommendations and proposed actions associated to them.**

We would welcome your comments on this report on or before:
Wednesday 31 January 2018.

If you would like any further information, information in an alternative format, or to submit your response, please contact us, as follows:

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Issues identified in public authorities' implementation of the Section 75 duties

Leadership. While recognising the circumstances of reduced resources, leadership continues to be imperative within public authorities to ensure the maintained focus on equality matters, as well as ensuring good governance and the mainstreaming of equality considerations throughout the business of the authority.

Ownership. The evidence, and our experience in providing advice, suggests that public authorities do not, in all instances, see the purpose of having an Equality Scheme as assisting in fulfilling their statutory equality and good relations duties.

Understanding and/or misinterpreting the purpose and scope of the duties. The evidence clearly suggests that Equality Schemes continue to be seen by public authorities as processes in themselves; they are not seen as contributing equality of opportunity and good relations considerations to decision making.

The evidence also suggests there are different understandings of, or expectations of, what is required in fulfilling the duties (i.e. to have “due regard/regard to...”) amongst different stakeholders.

Definitions of key terms and expectations. It remains the case, reflected in the evidence of practice, that there is an issue in the continuing differences among stakeholders in what is understood by the terms “equality of opportunity” and “good relations”.

Transparency and accountability. The requirements of Schedule 9 provide for a model for the duties described as “responsive” (in the context of legislation and regulation that can be reflexive and/or responsive)¹. The evidence also suggests that some public authority practices have moved away from the responsive approach², with limited opportunities for stakeholder involvement in decision making through use of the Equality Scheme processes, and limited information presented in assessments when public authorities present equality assessments as screening templates.

Data development. Equality Scheme commitments have not driven a data development agenda in the public sector, despite the requirements in Schedule 9 for particular monitoring arrangements and the Commission’s longstanding advice.

Accountability and risk. Evidence suggests that the perceived risks of not fulfilling the statutory equality and good relations duties, and/or non-compliance, are probably small.

¹ Conley, H., [A review of available information on the use of impact assessment in public policy formulation and in contributing to the fulfilment of statutory duties](#) (ECNI, 2016).

² Identified through a number of events that have been held for those with lead responsibility for equality matters within public authorities.

Issues identified in the Commission's powers and duties in Schedule 9

Complaints. There are specific requirements on the Commission in relation to complaints. The range and nature of complaints to the Commission has consistently reflected particular issues on policies and practices that are of concern to the complainant, which are not always clearly associated with what Equality Scheme arrangements provide for.

Investigations are adversarial, given the statutory requirement that they are considered in relation to a belief of non-compliance by a public authority with an equality scheme. They have mostly been driven by particular circumstances. They have provided some learning for public authority practices, but can be limited in the ripple effect of the findings, particularly when arising from a paragraph 10 complaint.

Recommendations

The Commission recommends to public authorities that:

- senior leaders and decision-makers in organisations routinely seek assurance within their organisations that they are fulfilling the duties to have due regard to the need to promote equality of opportunity and regard to the desirability of promoting good relations;
- those responsible for providing information for decision-making on a function or policy should ensure they provide sufficient information, from their equality assessments, for the appropriate consideration (i.e. due regard to the need to promote equality of opportunity and regard to the desirability of promoting good relations) to be given in particular decisions;
- the importance of the statutory equality and good relations duties are restated, given the wider political and economic context, as well as reconfirming the necessity of fulfilling the duties within the organisation – they continue to be a statutory requirement;
- the shift of focus from process to outcomes should continue. Equality Schemes are to enable public authorities to fulfil the Section 75 duties – to give the appropriate consideration to the need to promote equality of opportunity and desirability of promoting good relations - when they deliver their functions. Through giving the appropriate consideration, a public authority will ensure that the decisions they take will be mindful of the “consequences on the lives of people”³; and
- they ensure their consideration of the need to promote equality of opportunity, and desirability of promoting good relations, is evidence based and the data is

³ [Section 75 of the Northern Ireland Act: A Guide for Public Authorities](#) (ECNI, 2010), page 10.

available to support the consideration. There is a clear link between the consideration needed to meet the Section 75 duties and the data development agenda that is required for the Outcomes Based Accountability approach to the draft Programme for Government. This should drive the collection and use of equality data.

Proposed actions

The Commission has identified a number of actions that it proposes in support of these recommendations:

- To set the agenda and debate in highlighting the importance of the duties and their continuing relevance to, and assistance in the development of, public policy and service delivery in Northern Ireland.
- To engage specifically with politicians, senior leaders in public authorities and decision makers to re-confirm their roles and responsibilities.
- To convey and communicate one of the most important issues and success factors – leadership. While recognising the circumstances of reduced resources, leadership continues to be imperative within public authorities to ensure the maintained focus on equality matters, as well as the mainstreaming of equality considerations throughout the business of the authority.
- To prioritise its advisory activities on public authority practices in screening and Equality Impact Assessment (EQIA), to ensure that these central methodologies are used to greatest effect by public authorities in consistently providing meaningful equality assessments of the policy objectives and policy goals under consideration at any given time.
- To use the issues identified in the report and review its approach to investigations generally in the forthcoming period.

The Commission will continue to engage with all stakeholders with roles to play with respect to ensuring that public authorities are fulfilling their statutory equality and good relations duties in Section 75.

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