

Equality Commission

FOR NORTHERN IRELAND



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

# **Consultation Report Findings**

June 2018

Equality Commission for Northern Ireland

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## 1. Summary of consultation process undertaken

1.1. The Commission has a duty in Schedule 9 of the Act to “to keep under review the effectiveness of the duties imposed by Section 75”<sup>1</sup>. The Commission does this in a number of ways - through its continuing work to provide advice and guidance, as well as through specific review activities, such as the strategic review of the effectiveness of the Section 75 duties it undertook in 2006-8<sup>2</sup>.

1.2. The Commission’s draft Corporate Plan for 2016-19 set out that, in the 2016-17 Business Plan, action would be taken to:

*“Examine the evidence we have of current practice in public authorities of fulfilling their statutory equality and good relations duties in order to prepare for a formal effectiveness review of these duties.”*

1.3. The Commission considered the evidence of public authorities’ practices in implementing their Section 75 duties, and presented the evidence in a consultation report with a focus on the issues, recommendations, and proposed actions identified for public authorities to address as a matter of priority, and on the delivery of our statutory remit relating to the S75 duties.

1.4. The Commission consulted on this report between 2 November 2017 and 9 February 2018, providing a written document and questionnaire for responses and an online survey for completion of the questions.

## 2. Consultation findings

2.1. The Commission received 15 written responses, using the online survey, the questionnaire template and other formats.

2.2. Of the written responses, 12 were received from organisations and three were received from individuals.

2.3. The consultation exercise presented a broad consensus that the evidence supported the issues identified in the Report about the practices of public authorities. However, the majority of

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<sup>1</sup> Northern Ireland Act 1998, [Schedule 9](#), paragraph 1(a).

<sup>2</sup> [Section 75: Keeping it Effective](#) (ECNI, 2008).

respondents also highlighted issues with the practices of the Equality Commission and recommended stronger, more proactive action from the Commission, particularly focusing on enforcement.

### **3. Analysis, identification of key themes and Commission response**

- 3.1. The consultation exercise has provided very helpful comments on the issues identified and has further contributed to our understanding of, and factors affecting, public authority practices in the implementation of their statutory equality and good relations duties as set out in Section 75 of the Northern Ireland Act 1998.
- 3.2. The majority of the responses and comments received were from those who have an interest in the delivery of public functions and services as non-governmental organizations, and/or representing the interests of particular groups who are the beneficiaries or recipients of public services. The Commission engaged extensively with public authorities in the course of collecting the evidence and identifying the issues presented in the report.

#### *Issues identified*

- 3.3. Consultees broadly agreed with the issues identified and provided a range of examples to illustrate further how they had experienced the issues.
- 3.4. The focus of a number of responses, particularly a report from the Equality Coalition, was on the issues identified on the Commission's powers and duties in Schedule 9 and commenting on how the Commission's future actions in relation to enforcement should be the focus to ensure implementation of the duties by public authorities.
- 3.5. Given the Commission's commitment to use the issues identified in the report and review its approach to investigations generally, the further evidence, examples, experiences and comments provided in this consultation will contribute to that review.
- 3.6. A key theme identified in relation to the issues was that of engagement and consultation with those affected by the relevant

policy or function, when the public authority is considering the need to promote equality of opportunity or the desirability of promoting good relations, using the processes in their equality schemes. The summary written on the issue of transparency and accountability will be amended to reflect this.

- 3.7. A number of consultees made suggestions about the Commission's approach in relation to the issues. The suggestions included: areas for further Commission advice and/or guidance; processes to standardise practices across public authorities; and a new and additional screening template. In addition, one consultee confirmed the evidence presented in relation to public authorities' frustrations, and noting this related to the Commission's approach in its advice to public authorities.

#### *Recommendations to public authorities*

- 3.8. The majority of comments made in relation to the recommendations were that they should be strengthened. For example, a number of consultees commented that the first recommendation to senior leaders and decision makers should be stronger; it was phrased in the draft report that they should be seeking assurances. This phrasing reflects the requirements that have been established of what is needed in order for the public authority to fulfil its statutory equality and good relations duties set out in Section 75 of the Northern Ireland Act 1998.
- 3.9. A number of consultees commented that the focus on outcomes should continue. The Commission will maintain this approach but continues to note that this must be balanced with what is set out in statute and the requirements to fulfil the duties. These are clear processes to enable a public authority to have due regard/regard to the need to promote equality of opportunity and the desirability of promoting good relations.

#### *Proposed actions by the Commission*

- 3.10. As set out above, the majority of consultees emphasise the need for the Commission to focus more on enforcement of the duties on public authorities.

- 3.11. The Commission continues to act in accordance with the statutory framework as set out in Section 75 and Schedule 9 of the Northern Ireland Act 1998, and its actions and interventions are identified and planned accordingly.
- 3.12. The Commission deploys its resources along the continuum of the “enforcement” functions that are available: from providing advisory materials and advice to public authorities and others; to approving equality schemes, and to fulfilling its responsibilities in relation to complaints and investigations.
- 3.13. A number of consultees recommended that the Commission act to address the issues identified on the collection and use of data specifically. The action proposed in relation to public authority practices on screening and Equality Impact Assessment addresses the issues of ensuring appropriate evidence is available and used in order for a public authority to undertake an equality assessment of a particular function and/or policy.
- 3.14. Additionally, the Commission will engage further with those, such as the Northern Ireland Statistics and Research Agency, who provide data and analysis services and support for public authorities, as well as focus on highlighting the need to consider equality data in the development and delivery of a Programme for Government and the public services that flow from it.
- 3.15. The report set out that the Commission will, in due course, consider the overall position in relation to its function to “*keep under review the effectiveness of the duties imposed by Section 75*”.
- 3.16. Action by public authorities on the recommendations set out in the Report, alongside the Commission’s actions, as identified in the report and as presented in its annual Business Plan, should contribute significantly to ensuring the effectiveness of the duties imposed by Section 75 on public authorities in carrying out their functions.

## Appendix one

### Summary of consultation responses<sup>3</sup>

	Organisation/ individual	Q1. Does the evidence presented support issues identified?	Q2. Are there any other issues in PA practices?	Q3. Agree with the recommendations?	Q4. Other recs supported by evidence presented?	Q5. Other recs supported by additional evidence?	Q6. Any comments on the proposed actions?
1.	Fermanagh & Omagh District Council	Yes – more feedback needed from ECNI	Yes – more action needed from ECNI	Yes – more information needed from ECNI	Yes – more detail needed from	Yes – ensure PAs have access to same information	More clarity needed on detail of the actions
2.	Lisburn & Castlereagh City Council	Mixed	Yes	Mixed	Yes – ECNI should be more proactive	Yes – ECNI should be more proactive	Action needed from ECNI
3.	The Equality Coalition	Yes – data gaps highlighted	Yes + issues with ECNI	Mixed – more ‘stick’, less ‘carrot’ needed	Yes + recs for ECNI	Yes – full report submitted	Action needed from ECNI
4.	Irish Congress of Trade Unions	See Equality Coalition report	See Equality Coalition report	See Equality Coalition report	See Equality Coalition report	See Equality Coalition report	See Equality Coalition report
5.	NICCY	Yes – data gaps highlighted	Yes + issues with ECNI	Mixed – more ‘stick’, less ‘carrot’ needed	Yes + recs for ECNI	Yes + recs for ECNI	Action needed from ECNI
6.	NIPSA	See Equality Coalition report	See Equality Coalition report	See Equality Coalition report	See Equality Coalition report	See Equality Coalition report	See Equality Coalition report

<sup>3</sup> The information provided by consultees has been summarised for presentation in these tables; consultees have been notified of their organisation being identified in this report.

	Organisation/ individual	Q1. Does the evidence presented support issues identified?	Q2. Are there any other issues in PA practices?	Q3. Agree with the recommendations?	Q4. Other recs supported by evidence presented?	Q5. Other recs supported by additional evidence?	Q6. Any comments on the proposed actions?
7.	Children's Law Centre	Yes – data gaps highlighted	Yes + issues with ECNI	Mixed – more 'stick', less 'carrot' needed	Yes + recs for ECNI	Yes + recs for ECNI	Action needed from ECNI
8.	The North West Forum of People with Disabilities	See Equality Coalition report, and other issues identified	Yes + issues with ECNI	Need to make S75 more user friendly & should be mandatory	Yes + recs for ECNI	Yes + recs for ECNI	Yes and see Equality Coalition report
9.	RNIB	Yes	Yes + issues with ECNI	Mixed – more 'stick', less 'carrot' needed	Yes – strengthen the role of ECNI	No	The actions are minor and not enough alone
10.	Sinn Féin	Yes	Yes	Yes – stronger emphasis needed on enforcement	Yes + recs for ECNI	Yes + recs for ECNI	The actions are welcomed
11.	USEL	Yes	No	Yes	No	No	---
12.	Individual	Yes	No	Yes	Yes – ECNI should ensure accountability	Don't know – ECNI too focused on EQIAs	---
13.	Individual	Don't know	Yes – specific issues noted with one public authority.	Yes – action must be taken without fear of favour	No – but some organisations seem untouchable	<i>Not answered</i>	---
14.	Individual	Yes	<i>Not answered</i>	Yes	No	No	---
15.	FOCUS: The Identity Trust	Yes	See Equality Coalition report	See Equality Coalition report	See Equality Coalition report	See Equality Coalition report	---



	Organisation	Summary of points made on issues, recommendations and actions
1.	Fermanagh & Omagh District Council	<ul style="list-style-type: none"> <li>• Comments made from the Statutory Duty Network and Council supportive of those comments.</li> <li>• More needed from ECNI in the form of action on data sources, feedback to authorities, and good/best practice examples.</li> <li>• Greater clarity and detail of timings for recommendations needed and ensuring access to information.</li> <li>• ECNI should develop a standard preliminary screening form</li> <li>• ECNI should review its practices in relation to working with elected members, and training should be provided to Council leaders.</li> </ul>
2.	Lisburn & Castlereagh City Council	<ul style="list-style-type: none"> <li>• Notes that it is unsurprising that issues have been found in processes; Equality Schemes are part of the process and not considered to be user friendly. <i>“The overall processes involved are very much part of the all the problems noted ... this process driven approach remains constant”</i>.</li> <li>• The report should reflect that “frustrations” occur with the Commission’s guidance and approach; the approach to Schedule 9 should be more flexible and positive.</li> <li>• The work by Councils in relation to Community Planning and their “holistic” approach to data development is not reflected in the report.</li> <li>• Notes action on important issues identified should have occurred earlier and suggesting new approaches; comments on the inexplicability of continuing ambiguity on the statutory duties.</li> <li>• Comments on complaints and the use of the ECNI investigation powers.</li> </ul>
3.	The Equality Coalition	<ul style="list-style-type: none"> <li>• Submission of Equality Coalition report: <i>“Equal to the Task? Investigative powers and effective enforcement of the “Section 75” equality duty”</i> (January 2018) as their response to the consultation.</li> <li>• The five report recommendations to the ECNI are summarized as follows: <ul style="list-style-type: none"> <li>○ That the ECNI should use the screening decision review process in its assessment of public authorities’ policies;</li> <li>○ <i>“The ECNI should develop a strategic enforcement strategy...”</i>;</li> <li>○ <i>“The ECNI should give clear reasons for not investigating an admissible complaint;”</i></li> <li>○ <i>“The ECNI should address the issues of long delays in relation to initiating investigations”</i> and consider a <i>“fast track”</i> approach for <i>“more obvious procedural failures”</i>;</li> <li>○ <i>“...refer failures to comply with recommendations expeditiously to the Secretary of State”</i>.</li> </ul> </li> <li>• The report contains three conclusions, summarised as: <ul style="list-style-type: none"> <li>○ notwithstanding pockets of good practice, there is <i>“widespread flouting of equality scheme compliance”</i>;</li> <li>○ <i>“the approach of seeking to collaborate... has become insufficient and ineffective...”</i> and <i>“in our view only more effective enforcement of the duties and a ‘zero tolerance’ approach to significant failures to comply can reverse the patterns of non-compliance”</i>; and</li> </ul> </li> </ul>

	Organisation	Summary of points made on issues, recommendations and actions
		<ul style="list-style-type: none"> <li>○ <i>“whilst the enforcement powers could certainly be stronger.... they are very much underused by both civil society and the ECNI.”</i></li> <li>• There are two recommendations to civil society and affected persons, relating to greater use of the enforcement mechanisms.</li> </ul>
4.	Irish Congress of Trade Unions	<ul style="list-style-type: none"> <li>• Endorsement of the Equality Coalition report, its recommendations and that the ECNI should use its enforcement powers more.</li> </ul>
5.	NICCY	<ul style="list-style-type: none"> <li>• Agreed with issues found, particularly data gaps, but the ECNI needs to use more of its enforcement powers.</li> <li>• Concern that, given number of Effectiveness Review recommendations in 2008, there are only 5 recommendations to public authorities and 5 actions proposed. Actions arising should be <i>“clearer, SMART targets”</i>. Suggesting the recommendations from 2008 need to be addressed.</li> <li>• Advises that ECNI should take immediate action to ensure progress is made in the development of a data collection agenda.</li> <li>• That some issues be addressed by ECNI rolling out a comprehensive training programme for all stakeholders;</li> <li>• Would welcome the ECNI taking <i>“a much firmer position with regard to enforcement”</i> and linking this to addressing public knowledge of Section 75.</li> <li>• Recommends that ECNI examines the Children’s Services Cooperation (NI) Act 2015 in relation to the additional obligations in this Act on public authorities.</li> <li>• Noting the failure of public authorities to consult directly with children and young people as part of the policy development process, and noting this to be central to ensuring compliance with Section 75.</li> <li>• Seeking ECNI commitment to disseminate findings of formal investigations.</li> </ul>
6.	NIPSA	<ul style="list-style-type: none"> <li>• Endorsement of the Equality Coalition report, its recommendations and the ECNI should use its enforcement powers more.</li> </ul>
7.	Children’s Law Centre	<ul style="list-style-type: none"> <li>• Confirms the constitutional importance of Section 75 as <i>“one of the cornerstones of the peace settlement in NI”</i></li> <li>• Noting their experience of public authority practices and failures they raise through consultations;</li> <li>• Specific focus on reported failures in relation to data and consultation directly with children and young people;</li> <li>• Noting the failure of public authorities to consult directly with children and young people as part of the policy development process, and noting this to be central to ensuring compliance with Section 75;</li> <li>• That some issues be addressed by ECNI rolling out a comprehensive training programme for all stakeholders and/or public awareness raising;</li> </ul>

	Organisation	Summary of points made on issues, recommendations and actions
		<ul style="list-style-type: none"> <li>• Commenting on the ECNI actions on and processes in relation to complaints and investigations under Paragraphs 10 and 11 of Schedule 9 of the Northern Ireland Act 1998;</li> <li>• Recommends that ECNI examines the Children’s Services Cooperation (NI) Act 2015 in relation to the additional obligations in this Act on public authorities.</li> </ul>
8.	The North West Forum of People with Disabilities	<ul style="list-style-type: none"> <li>• Endorsement of the Equality Coalition report as its response;</li> <li>• <i>“...one of the most significant failures of Section 75 has been the lack of enforcement... diluted guidance, lack of resources and lack of genuine engagement”</i></li> <li>• <i>“would strongly welcome a greater commitment by the Commission to actively encourage public authorities to effectively engage with disabled people in the various consultation exercises associated with the development of public and social policy”;</i></li> <li>• Examples presented of public authorities where their view is: <i>“too many policies, practices and procedures which have been ignored by public authorities with their obligation to scree and equality impact assess potential adverse outcomes”;</i></li> <li>• There are points set out that S75 is not user friendly in the terms and language used and scope for ECNI to review this</li> <li>• Comments that the ECNI has a leadership role, but its action <i>“has been to reduce the quality and authority of the Revised Guidance (2010) under which they operate”</i> through the removal of concrete advice and ‘musts’.</li> <li>• Reminds the ECNI of its responsibilities in relation to the statutory equality and good relations duties on public authorities contained in the disability legislation and <i>“we strongly believe that this is the very poor relative of the two public sector equality duties”</i>.</li> </ul>
9.	RNIB	<ul style="list-style-type: none"> <li>• Noting exceptions, comments that <i>“it does not appear to us that the section 75 duties have been effectively “mainstreamed” by public authorities”</i>.</li> <li>• Would like to see the ECNI <i>“take a more robust approach than to date”</i> and <i>“the Commission can effect more transformative change more quickly if it takes a more vigorous approach, given the time, energy and expertise it has committed to date”</i>.</li> <li>• <i>“At present there do not seem to be any meaningful consequences in the instance where a public authority chooses not to fulfil its statutory obligations”</i></li> <li>• Comments have been provided against the issues identified and to provide examples of their experiences.</li> <li>• The recommendation made in the draft Report to senior leaders is not considered to be sufficiently robust.</li> <li>• <i>“The RNIB does not consider that simply ‘restating the importance of the statutory equality and good relations duties’ as in any way adequate”</i>. ECNI <i>“needs to take more potent action to promote the duties and promote and ensure compliance. As before this must be linked to consequences.”</i></li> <li>• Agrees that <i>“a public authority’s consideration of the need to promote equality of opportunity is evidence based.”</i></li> </ul>

	Organisation	Summary of points made on issues, recommendations and actions
		<ul style="list-style-type: none"> <li>• Comments that they believe for many of the proposed actions that “<i>should already occur</i>”. “... <i>we are firmly of the view based on our experience and observations that a mere advisory role will not suffice</i>”. Thematic reviews are recommended.</li> <li>• Supports the proposed action for ECNI to review its approach to investigations.</li> </ul>
10.	Sinn Féin	<ul style="list-style-type: none"> <li>• “...<i>concerns regarding the Commission’s indication that Section 75 duties are not being effectively implemented by public authorities</i>”;</li> <li>• “...<i>recognise that there is a need for stronger political coherence, leadership and sustained commitment in order to effectively address equality outcomes</i>”;</li> <li>• the ECNI should – collect and report statistics on screening and EQIAs undertaken; address issues of non-compliance; issue guidance to ensure a standardised approach to screening exercises; issue guidance to clarify the steps required by public authorities to fully comply with Section 75;</li> <li>• recommends “<i>an enhancement of the Commission’s enforcement powers</i>”; and that the ECNI “<i>adopt a renewed approach to Equality enforcement</i>”;</li> <li>• recommends training for all members of public authorities, additionally on policy formulation and the implications of equality legislation and international human rights conventions;</li> <li>• agrees with the need for a shift from “<i>the processes contained within an Equality Scheme towards impacts and better outcomes</i>”;</li> <li>• stating the Party’s position that “<i>stakeholder involvement is core to compliance with Section 75</i>” and ECNI should issue good practice guidance “<i>regarding stakeholder engagement with respect to statutory equality obligations</i>”;</li> <li>• refers to a number of statutory obligation and that they should be “<i>effectively mainstreamed within the planning and delivery of public policy and the public services</i>”, referring to, for example: the Child Poverty Act 2010 and Rural Needs Act;</li> <li>• recommends that ECNI adopts a “<i>proactive approach to data collection/data monitoring</i>”; provides associated guidance to public authorities and recommends that a standard protocol for the collection, maintenance and analysis of data is implemented across the public sector;</li> <li>• welcomes the draft Report’s recommendations and proposed actions, as well as the ECNI’s commitment to review its approach to investigations;</li> <li>• concludes with recommending a stronger emphasis on enforcement.</li> </ul>
11.	USEL	<ul style="list-style-type: none"> <li>• <i>No specific comments made.</i></li> </ul>
12.	Individual	<ul style="list-style-type: none"> <li>• ECNI should ensure accountability and not focus so much on public authorities completing EQIAs.</li> </ul>
13.	individual	<ul style="list-style-type: none"> <li>• Action must be taken without fear or favour – some organisations seem untouchable.</li> </ul>

	<b>Organisation</b>	<b>Summary of points made on issues, recommendations and actions</b>
14.	individual	<ul style="list-style-type: none"> <li>• <i>No specific comments made.</i></li> </ul>
15.	FOCUS: The Identity Trust	<ul style="list-style-type: none"> <li>• Endorsement of the Equality Coalition report as their response;</li> <li>• ECNI should amend the terminology used in its model equality scheme to replace current references with “transgender individuals”.</li> </ul>

**Appendix two**

**Commission consultation document**



**Public Consultation on the Report:**

**Section 75 - Acting on the evidence of public authority practices**

**Closing date for responses: Wednesday 31 January 2018**

**Published: November 2017**

## **Background**

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 NI. 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.

## **Report for Consultation**

The Equality Commission has been considering evidence of public authorities' practices in implementing their Section 75 duties. We now present the evidence gathered with a focus on the issues, recommendations and proposed actions identified for public authorities to address as a matter of priority, and on the delivery of our statutory remit relating to the S75 duties

The report and other related materials can be found on the Commission's website:

<http://www.equalityni.org/Employers-Service-Providers/Public-Authorities/Section75/Section-75-consultation>

## Seeking your views

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

We are consulting until **Wednesday 31 January 2018** and would welcome your response by this date.

This document provides a number of questions and the opportunity to comment on the issues, recommendations and actions contained in the report.

You can submit written comments on this form as a Word document, or online by completing the questions in our survey here:

<https://www.surveymonkey.co.uk/r/section75consultation>

## To submit your response, or for further information

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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## Consultation questions

Question 1: Does the evidence presented in chapters 2-7, in your view, support the issues identified?

Yes

No

Don't know

Question 1a: Please provide any further comments –

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Question 2: Are there other issues in public authority practices you would like to highlight?

Yes

No

Don't know

Question 2a: Please provide details, and the evidence base, from which you have drawn the issues –

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Question 4: Do you have any other suggested recommendations that are supported by the evidence presented?

Yes       No       Don't know

Question 4a: Please provide any further comments –

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Question 6: The Commission is interested to receive any comments on its proposed actions as set out in paragraph 9.8 –

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## Equality Commission

FOR NORTHERN IRELAND

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