



## **EQUALITY COMMISSION FOR NORTHERN IRELAND**

### **Report of the Commission's Investigation of a complaint made under Paragraph 10 of Schedule 9 of the Northern Ireland Act 1998**

#### **Complainant & Mid and East Antrim Borough Council**

**November 2019**

#### **1. Introduction**

1.1 Section 75 of the Northern Ireland Act 1998 (the Act) places a statutory duty on public authorities to pay due regard to the need to promote equality of opportunity between various categories of persons, including persons of different age. Designated public authorities are required by Schedule 9(2) of the Act to submit an Equality Scheme to the Equality Commission (the Commission) for approval. Equality Schemes are both a statement of the public authority's commitment to fulfilling the Section 75 duties and a plan for their performance. The Equality Scheme setting out Mid and East Antrim Council's (the Council) Section 75 commitments was approved on 25 March 2015. Schedule 9 Paragraph 10 of the Act empowers the Equality Commission to investigate complaints by persons who claim to have been directly affected by a public authority's alleged failure to comply with its approved Equality Scheme.

1.2 On 15 November 2018 the Commission authorised a Paragraph 10 investigation into part of the Complainant's complaint in order to consider whether the Council had complied with its Equality Scheme commitments in relation to its Indoor Leisure Pricing Policy (the Pricing Policy).

## **2. Background to the complaint**

2.1 The Complainant is a retired man (aged 62 at the time of complaint) living on a fixed income, who has been a member of his local Seven Towers Leisure Centre since 2013. He had enjoyed free membership of the Centre in the 'senior' concession category since 2015 and used the swimming pool facilities 5 or 6 days per week. However, this changed on the introduction of a new Indoor Leisure Pricing Policy in September 2017.

### *The Pricing Policy*

2.2 In 2016, following the 2014 reform of local government which had seen the number of councils in Northern Ireland reduce from 23 to 11, the Council developed a new Pricing Policy which replaced the separate policies of the 3 predecessor Councils (Ballymena, Carrickfergus and Larne) and was intended to align fees charged in leisure centres across its Borough.

2.3 The notification to service users, dated 25 August 2017, of the implementation of a new Pricing Policy in September stated as follows: *'Mid and East Antrim Borough Council Leisure, Arts and Culture Department have undertaken a review of pricing across the leisure provision within the Mid and East Antrim Borough. This process was carried out in an aim to harmonise the charges across Carrickfergus, Larne and Ballymena.'*

2.4 *A key objective for Council throughout the process was to improve and support the health and wellbeing of our people and communities and to enable Mid and East Antrim Borough Council to deliver a first class service.*

2.5 *In order to continue providing you with the level of quality service you expect from us, there was a requirement to adjust membership fee across some of our membership categories.'*

2.6 It is noted that the Council's service offering to fulfil its stated objective extends beyond the provision of indoor leisure facilities

alone. As the complaint made relates specifically to the pricing of indoor leisure facilities, and how the Council's Equality Scheme commitments have been applied, this is the focus of the investigation.

- 2.7 The Policy then set out the Membership Rates and continued *'These rates still remain most competitive with no joining fee or induction fee and offer excellent value for money. The new pricing structures come into effect from 1<sup>st</sup> September 2017.*
- 2.8 *A concessionary 30% discount will be applied to all activities with the exception of bookable activities, based on the following concessionary categories...* One concessionary category applied to those *'over the age of 60'*.

#### *Pricing arrangements*

- 2.9 The new Pricing Policy introduced an annual 30% concessionary membership fee for those aged between 60 and 64. Residents in Ballymena had previously enjoyed free membership, while residents in Carrickfergus and Larne had previously paid a concessionary rate for similar membership. The membership fee now ranged between £268.80 and £295.80<sup>1</sup> per annum for unlimited use and between £216.00 and £237.60<sup>2</sup> for off peak use. The Pricing Policy also introduced a limited use £10 membership fee for those aged over 65 years.<sup>3</sup>

#### *Concerns raised with the Council by the complainant*

- 2.10 The Complainant considered that the Policy change, i.e. the introduction of the 30% concession membership fee for those aged 60 to 64, would now impact negatively on his finances and potentially on his health. He believed that the Pricing Policy would

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<sup>1</sup> Unlimited use: aged 60 + paid by Direct debit £268.80 /pay monthly option £295.80

<sup>2</sup> Off peak use: aged 60+ paid by Direct debit £216.00/pay monthly option £237.60

<sup>3</sup> Off peak use: over 65 years-£10 per annum fee for use of swimming pool and health suite.

deter service users within this age group from using the local leisure facilities.

- 2.11 On 8 October 2017 the Complainant therefore engaged the Council's internal customer service complaints procedure. He wrote *"As of 1 September anyone aged 60 to 64 is required to pay £268 to use the facilities as a member at the same level.... This change has been a shock and has caused me, as a retired person, to consider if I can continue to afford this wellbeing activity... I view the changes as exorbitant..., and going against promoting the wellbeing of older citizens in the council area"*.
- 2.12 The Council replied to him on 23 October 2017 stating that it was committed *"to monitor and review the impact of the indoor pricing policy upon service users ... and will consider policy amendment if deemed necessary"*.
- 2.13 In his letter to the Council of 24 October 2017, the Complainant asked for a review and pointed out *"my expectation for further review is that the charge be withdrawn or introduced in a more gradual stepped manner"*. He also suggested that *"Individuals who were receiving the service for free should not now be charged. Your letter of 23 October states that you, 'will consider policy amendment if deemed necessary'. I believe an amendment is necessary at least for those individuals"*.
- 2.14 Following general feedback from a small number of service users, further amendments to the policy were made. These came into effect in November 2017 and introduced a new Family Membership concession, extended off peak hours to Sunday and allowed monthly cash payment for membership fees.
- 2.15 The Council wrote to the complainant on 5 December 2017 as follows: *"Mid and East Antrim Borough Council reviewed its indoor leisure prices and agreed a pricing policy with the aim of ensuring charges are fair and equitable across Ballymena, Carrickfergus and Larne Leisure Centres."*

- 2.16 *Mid and East Antrim Borough Council has a duty under s75, Northern Ireland Act 1998 to give due regard to the promotion of equality of opportunity for different groups of people, including age.*
- 2.17 *As part of the review of indoor leisure prices Council Officers identified, and considered, the impact on those Seven Tower Leisure Centre users aged over 60 who previously received a free of charge concession. Health inequality data and financial sustainability were also considered as part of this review. It was identified that activity levels dropped for over 65s and it was felt that free of charge concession for swimming and 30% concession for other services would promote health and wellbeing for our older citizens across the Borough.*
- 2.18 *Whilst I accept that this policy does impact you directly, Council agreed the current policy to promote equality of opportunity for all the Borough's citizens.*
- 2.19 *Mid and East Antrim Borough Council is committed, through the policy, to monitor and review the impact upon service users and will consider policy amendment if deemed necessary.*
- 2.20 *If evidence e.g. drop off in user rates demonstrates a need for further policy change this will be considered.*
- 2.21 *I appreciate that this may be of disappointment to you, but as a Council we must consider the wider impacts of policy change and to have expanded the previous Ballymena Borough Council policy of free of use concession for over 60s across the Borough would not have been financially sustainable and risked detrimental impact on services generally."*
- 2.22 *Dissatisfied with the Council's response, the Complainant wrote to the NI Public Services Ombudsman in February 2018, pointing out that the change to the fees now represented hardship for him "and more than a total loss for me of over £716 (my new fees from 1 September 2017 through to May 2020 when I turn 65)."*

2.23 The Ombudsman replied on 12 February 2018 advising of its determination that his principal complaint related to a failure to conduct an EQIA and directed the Complainant to the Equality Commission.

### 3. The Complaint

3.1 On 9 April 2018, the Complainant formally raised his complaint with the Council under Paragraph 10 of Schedule 9 to the Act. He set out the matters which concerned him, and related them to the Equality Scheme commitments which he considered had been breached by the Council. There were a number of allegations of the Council's failures, not all are subject to investigation. Those under investigation by the Commission are set out below.

3.2 The Complainant complained to the Council that it had failed to conduct an EQIA in respect of the Pricing Policy, in accordance with Paragraph 4.11 of its Equality Scheme, in spite of having identified in its equality screening that said Policy would have a major negative impact on the Section 75 'age' category, (i.e. on the "*small group of service users of the Seven Towers Leisure Centre who had enjoyed free access to pool, health suite and gym*").

3.3 Paragraph 4.11 of the Council's Equality Scheme states:  
*"If our screening concludes that the likely impact of a policy is 'major' in respect of one, or more, of the equality of opportunity and/or good relations categories, we will normally subject the policy to an equality impact assessment."* [author's emphasis].

3.4 The Complainant further alleged that, having identified a *major negative impact* for the subset of service users over 60 years old, the Council should either have mitigated the identified adverse impact of the Policy or adopted an alternative Policy in accordance with the commitments it had made in its Equality Scheme at paragraph 4.10.

3.5 Paragraph 4.10 states:

*“If our screening concludes that the likely impact of a policy is “minor” in respect of one, or more, of the equality of opportunity and/or good relations categories, we may on occasion decide to proceed with an equality impact assessment, depending on the policy. If an EQIA is not to be conducted we will nonetheless consider measures that might mitigate the policy impact as well as alternative policies that might better achieve the promotion of equality of opportunity and/or good relations.*

*Where we mitigate we will outline in our screening template the reasons to support this decision together with the proposed changes, amendments or alternative policy.”*

- 3.6 The Complainant also alleged that the Council had failed to comply with its approved Equality Scheme in relation to monitoring. He specifically alleged that it had **failed to monitor** the impact of the Pricing Policy; had **failed to collect, collate and analyse information** in relation to it, and had **failed to commission new information**, all contrary to its commitments as set out in paragraphs 4.28 and 4.29 of its Equality Scheme. The Complainant also alleged that the Council had **failed to publish the results of any monitoring undertaken** contrary to its commitments as set out in paragraph 4.32 of its Equality Scheme.

3.7 Paragraph 4.28 of the Equality Scheme states

*“We monitor any adverse impact on the promotion of equality of opportunity of policies we have adopted. We are also commit[t]ed to monitoring more broadly to identify opportunities to better promote equality of opportunity ... in line with Equality Commission guidance.”*

3.8 Paragraph 4.29 states

*“The systems we have established to monitor the impact of policies and identify opportunities to better promote equality of opportunity.... are:*

- *The collection, collation and analysis of existing relevant primary quantitative and qualitative data across all nine equality categories on an ongoing basis*
- *The collection, collation and analysis of existing relevant secondary sources of quantitative and qualitative data across all nine equality categories on an ongoing basis*
- *An audit of existing information systems within one year of approval of this Equality Scheme, to identify the extent of current monitoring and take action to address any gaps in order to have the necessary information on which to base decisions*
- *Undertaking or commissioning new data if necessary.”*

3.9 Paragraph 4.32 states:

*"Schedule 9 4. (2)(d)" [of the NIA 1998] "requires us to publish the results of the monitoring of adverse impacts of policies we have adopted. However, we are committed to monitoring more broadly and the results of our policy monitoring are published."*

*Council's response to the Complainant*

3.10 The Council wrote to the Complainant on 30 April 2018 stating that it had looked into each aspect of his complaint and refuted the allegations that it had breached its Equality Scheme.

3.11 In response to the allegation that it had failed to equality impact assess the Pricing Policy, the Council stated that *"Whilst screening did indicate a major negative impact when considering impacts on older people, this negative impact did not apply to all older people within the Borough, but to a limited number of Seven Tower Leisure Centre users aged 60 to 65 in relation to access to all*



*services, and over 65 to services other than swimming. This impact was identified and acknowledged.”<sup>4</sup>*

3.12 In response to the allegation that it had failed to mitigate the impact of the Pricing Policy or consider an alternative policy, the Council continued *“However for older people in general the policy was assessed as having a positive impact and given the wider policy aims neither mitigation nor an alternative policy was deemed as necessary.”*

3.13 It pointed out that in conducting the equality screening of the Pricing Policy it had *“held two workshops, one officer led and one with elected members. An independent equality advisor was in attendance at both. Consideration was given of statistical evidence for the borough as a whole and the desired outcomes of the policy. Commitment was made to monitor the impact of the policy to identify any further impacts other than those identified.*

3.14 The Council’s letter stated *“I am satisfied that Mid and East Antrim Borough Council has complied fully with its equality duties in relation to the indoor leisure pricing policy.”*

3.15 In response to the allegations on monitoring, the Council’s letter stated *“With regard to the Council’s arrangements for monitoring the implementation of policies, these arrangements remain in place. Service user information and customer comments, compliments and complaints will all form part of ongoing review.”*

3.16 The Council’s letter concluded, *“Whilst I appreciate the changes in policy may have impacted you directly, Council must consider the wider impacts for our Borough, and as previously communicated [,] to have expanded the previous Ballymena Borough Council policy of free of use concession to over 60s across the Borough would*

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<sup>4</sup> On 5 December 2017, the Council had provided the Complainant with a copy of an undated screening document which it later identified as having been completed on 11 April 2017.

*not have been financially sustainable and risked detrimental impact on service generally.”*

*Written Complaint to the Equality Commission*

3.17 On 12 May 2018 the Commission received the Complainant’s written complaint which enclosed the response he had received to his complaint to the Council. He requested that the matters of which he complained be investigated by the Commission under paragraph 10 of Schedule 9 to the Act.

*Information provided by the Council to the Commission*

3.18 The Commission wrote to the Council on 2 August 2018 to inform it of the written complaint received and requesting any information the Council wished the Commission to consider in relation to the complaint.

3.19 On 13 August 2018, the Council provided the following information to the Commission. This included:

- a copy of an equality screening document of 11 April 2017. This document noted that Council had decided that further formal equality impact assessment was unnecessary and that mitigation of the impact of the policy was also not required i.e. the policy was screened out without mitigation. The Council stated that the implementation of the Pricing Policy would bring “*opportunities to better promote equality of opportunity for people within the Section 75 [equality groups]*”.
- a copy of the evidence presented on 21 March 2017 to an Equality Working Group. This evidence set out equality implications and financial implications of the policy; local population information and a precis of research into physical activity of various groups and factors affecting participation in physical activity.

- a report entitled ‘Indoor Leisure Pricing Policy Review’ (the Review Report).<sup>5</sup> This Review Report outlined what the Council referred to as the “*robust and extensive process*” it had followed during the development and approval of the Pricing Policy. It was written shortly after the implementation of the Pricing Policy, and was presented to Council on 2 October 2017<sup>6</sup>.

3.20 The Review Report presented the financial implications for the Council of the changes made to the membership fees for older people in a section entitled “*Implications for the Council*”. It stated that:

*“As outlined to Policy & Resources in April 2017 the introduction to those over 65 for free use of swimming and health suite at off peak times only, is expected to generate an income of approximately £65, 000 <sup>7</sup>per year. This will offset some of the impact of providing free use of the swimming pool and health suite to those on Universal Credit and Carers allowance.”*

3.21 The Review Report recommended revisions to the Pricing Policy following feedback from service users and Elected Members within the first 3 weeks of implementation of the Pricing Policy. In response to this feedback, revisions included changes to off peak times, the introduction of a Family Membership Concession Fee, and the introduction of a non-direct debit Pay as You Go Monthly payment option. The Pricing Policy revisions were implemented on 1 November 2017.

3.22 The Council provided no evidence of equality screening of the revisions or equality assessment to inform decisions on the revisions, in this information.

3.23 The Review Report also recommended keeping the implementation of the Pricing Policy under review with a view to

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<sup>5</sup> The Review Report was dated 9 August 2017, however, Council later confirmed this was an incorrect date. It was written after the Pricing Policy was implemented in September 2017.

<sup>6</sup> A copy of Council Minutes provided by the Complainant confirm that this Report was presented to Council on 2 October 2017

<sup>7</sup> This amount was later corrected to **£6,500 per annum**; Council minutes of 2 October 2017

making further improvements as necessary. It was agreed that the Council would continue to review feedback received, review footfall, usage and opening hours in the Leisure Centres between September and November 2017 and also review models in place in neighbouring Councils.

#### **4. Paragraph 10 Investigation authorised**

4.1 On 15 November 2018, the Statutory Duty Investigations Committee considered the Complainant's complaint and all the relevant information and authorised investigation into parts of the complaint, as identified in Paragraphs 3.2 to 3.9 above, on the following basis:

- *“Paragraph 4.11 of the Equality Scheme, i.e. that the council did not consider conducting an EQIA even though it identified a major negative impact on a small group of people;*
- *Paragraph 4.10 of the Equality Scheme, i.e. there is no evidence that the council has considered mitigating action for that small group following the complaint.*
- *Paragraphs 4.28, 4.29 and 4.32 of the equality scheme, i.e. the council has committed to monitor the adverse impact of its Indoor Leisure Pricing Policy and to publish the results of monitoring. It is unclear at this stage, what information is being gathered and whether or not it will specifically monitor the adverse impact on the small group of people identified.”*

4.2 The Investigation commenced on 25 February 2019, as further authorised by the SDIC. The Council had indicated in December 2018 that it would request that SDIC review its decision to investigate. Despite correspondence with the Council, the Commission had not received a formal written request before its SDIC meeting on 13 February 2019, and the SDIC determined that the investigation proceed. The Commission received a letter requesting a review of the Committee's decision on 12 March 2019. At its next meeting SDIC confirmed the Chair's decision that there was no new evidence to warrant a change in the

Committee's decision and the investigation continued. However, this letter of 12 March 2019 provided information relevant to the investigation.

4.3 The relevant information is as follows:

- (i) The letter stated in the first instance that *“(k)ey personnel who were involved in the development of the policy, the screening and the management of the respective Council department are no longer with the organisation...”*
- (ii) In relation to the allegation that the Council had failed to conduct an EQIA in spite of it having identified a major adverse impact, i.e. Equality Scheme paragraph 4.11, the Council stated that it *“... recognises that there was an impact on a limited number of active users at one of the three leisure centres. The screening document recorded both positive and negative impact on the s75 grouping of age. The Council determined to exercise the discretion in 4.11 that “we will normally subject the policy to an equality impact assessment”. This decision was taken on the basis that the policy did not constitute a major impact when considered in context (i.e. the policy did not affect all 60-65 users within the Borough but a limited subset of users in Ballymena only).*

The letter went on to state that the Council believed that *“In light of the concessionary rate, the consideration and consultation with the Equality Working Group and our commitment to monitor any adverse impact, on this occasion it was determined that an EQIA was not required at that time.”*

- (iii) In relation to the allegation that the Council had failed to mitigate, i.e. Equality Scheme paragraph 4.10, the letter of 12 March 2019 stated *“Recognising the potential impact on equality of opportunity, the Council mitigated this by incorporating a 30% concessionary rate within the policy for those aged 60-65 years. Furthermore, the Council, committed to “monitor usage to identify policy impact on the group” as part of the mitigation.”*

This assertion was contradictory to the screening form of 11 April 2017 and correspondence of 30 April 2018 with the Complainant, both of which asserted that neither mitigation nor an alternative policy was deemed necessary.

- (iv) The letter of 12 March 2019 stated that the Council collected data from a range of sources during the development of the Pricing Policy, and when reviewing the Policy following its implementation. It also stated that the Pricing Policy was informed by statistical research into health and physical activity rates of various groups, and stated that this research showed that *“Over 65s were the least physically active group and had the highest obesity rate with those living in areas of social deprivation recorded as the least physically active.”*
- (v) In relation to the allegations in respect of monitoring the adverse impact of the Pricing Policy identified by the Council, the letter stated that the Council took account of feedback in relation to the Pricing Policy and made amendments in November 2017. It also stated that the Council undertook a further benchmarking exercise with both local authority indoor leisure provision and local private sector provision in order to ensure that neither price nor *“membership architecture”* was a barrier to participation, and also to encourage more people to be active more often. The letter confirmed that as a result of the review, further changes to the Pricing Policy would come into effect in April 2019 and that these were screened.
- (vi) The letter also stated that work was being undertaken in order to improve its ability to monitor the impact of the Pricing Policy. The request for review letter stated that *“The Council recognises that there is scope to improve the quality of monitoring and reporting significantly due to operation of three separate booking and reporting systems across the leisure centres. The Council is at an advanced stage of implementing a single system to manage front of house operations and deliver consistent reporting from April 2019”*.

## **5. Investigation meeting of 1 April 2019**

5.1 On 1 April 2019, the Investigation Team met with Council officials. Council Officers confirmed that the Council does not have a dedicated Equality Officer; that role is performed by the Policy Officer. It appeared from the meeting that there were limited records available showing what relevant equality considerations the Council took into account during the development of the Pricing Policy. Relevant information from the Council Officers' responses is set out below.

### *Pricing Policy Development*

5.2 Council Officers advised that leisure services run at a deficit and that adult memberships are heavily subsidised. Consequently, the Council must find ways to generate income. As a result the Council aimed to increase membership across its indoor leisure services and to encourage regular usage of facilities.

5.3 In response to questions about the aims of the Pricing Policy, Council Officers stated that, in terms of supporting health, wellbeing and accessible services, they did not see any conflict between the aims of its Pricing Policy and the Council's objectives. They believed that the Pricing Policy had made services accessible to all users. A Table was provided which reported that between 2016/17 and 2018/19 total user numbers in Ballymena of those aged between 61 and 65 had increased from 75 to 136 users. These figures, however, do not reflect whether those people who had free use of the leisure facilities in 2016 renewed their membership after the implementation of the Pricing Policy.

5.4 In respect of the decision to remove free of charge membership for service users aged 60-64 years the Council had stated in its letter of 5 December 2017 that maintaining this concession would not have been financially sustainable. Council Officers did not provide any financial information at the investigation meeting, although

they referred to a cost evaluation.<sup>8</sup> Council Officers also referred to the financial aim of aligning prices across the Borough and the benchmarking exercises with pricing in other Councils.

- 5.5 Council Officers advised that they did not consult as part of the policy development process, but that the Council had considered service user and membership information, quantitative and qualitative data collected for the purposes of the Council's Community Plan, and benchmarked fees and activities with other Councils. They also referred to a cost evaluation which Council believed confirmed that maintaining free of charge usage for those aged over 60 was unsustainable for the Council. They stated that the Council used this data to inform decisions which they stated lessened the impact for the over 60 age group, such as off peak times and free of charge swimming. They also stated that new systems in place would enable the Council to extract information about membership and activity in more detail to identify where usage is low allowing the Council to address the issue.
- 5.6 In response to a question about whether or not the Council, when developing the Pricing Policy, had identified a need to promote equality of opportunity specifically for those aged over 65, Council Officers referred to the Council's Community Plan (launched June 2017). They stated that the Community Plan targeted **older and vulnerable people** to be supported based on evidence that over 65s were the most physically inactive group. Council Officers also stated that the Council did not have a definition for "older people". This concurred with the information provided in the review request letter and referred to in paragraph 4.3 (iv) above.

*Allegation- failure to conduct an EQIA*

- 5.7 The Council Officers stated that the actions which the Council took showed consideration of the equality implications for the small

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<sup>8</sup> Following the meeting the Council submitted a report which detailed senior citizen leisure centre current usage, income from the Council's 3 leisure centres and projected income with a 30% concession charge (see paragraph 6.18 below).



group of service users affected by the Pricing Policy. They cited the screening process, the involvement of an independent equality adviser and the Elected Member discussions around policy options and particularly charges for older people, as evidence of this. Council Officers also stated that it was the Council's view that the Pricing Policy, as a whole, promoted equality of opportunity across the borough and that the positive aspects of the policy counteracted the negative impact on the small group.

- 5.8 Council Officers were asked why the Council decided not to conduct an EQIA when paragraph 4.11 of the Council's Equality Scheme states that it will "*normally*" subject the policy to an EQIA where a major impact is identified for one or more S75 groups. They re-stated the reason given in the letter of 12 March 2019 (see paragraph 4.3 (ii) above) and they provided a Table provided at the investigation meeting showed this small subset as 87 people aged 61 to 65. This Table used the age groupings 61-65 and 66+ and not the 60-64 and over 65 age groupings referred to in the equality screening document.
- 5.9 Council Officers were also asked how, in the absence of an EQIA, the Council thought it could determine specifically what the major adverse impact on the small group was. Council Officers stated that the *financial* impact was clear without conducting an EQIA, as was the potential to impact access to leisure services. They provided new evidence that, in order to counteract this, the Council allowed the pricing changes to commence on renewal of membership. They also advised that the over 60 age group were able to avail of other means of exercise subsidised by the Council.
- 5.10 Although Council Officers had identified a financial impact on the over 60 age group they were unable to confirm that the Council had considered the potential equality impacts of the economic status of service users in the Borough aged between 60 and 64

when making policy decisions<sup>9</sup>. They had previously confirmed that the Council did not commission any new data collection for the equality screening exercise.

*Allegation- Failure to mitigate/adopt an alternative policy*

5.11 Council Officers were asked why the Council had considered neither mitigation nor an alternative policy necessary, given the Equality Scheme commitments to consider these. Council Officers were unable to provide reasons nor were they able to explain why the relevant section of the screening document was left blank. However, they re-stated a number of points evidenced elsewhere in this report as mitigation, for example, they believed that lower fees during off peak hours and the availability of other activities through other programmes lessened the impact for service users aged between 60 and 64.

5.12 In response to questions regarding Council consideration of the mitigation/alternative policy suggestions made by the Complainant,<sup>10</sup> (see paragraph 2.15 above) Council Officers stated that implementing the suggested mitigation would have been unfair to other service users. However, they believed that the suggestions were partially considered as the new membership fees for current members were phased in over a twelve month period i.e. not imposed until membership renewal date.

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<sup>9</sup> Free of Use Report dated November 2016 presented information to Elected Members about the economic situation of UK pensioners generally referred to later at paragraph 6.23 below.

<sup>10</sup> *“My expectation for further review is that this charge be withdrawn or be introduced in a more gradual stepped manner. At the very least be applied to those specifically/directly impacted;” senior citizens aged between 60 and 65 who were members Seven Towers Leisure centre on 1 September 2017 when the new policy was implemented. Individuals who were receiving the service for free should not now be charged.”*

*Allegation: failure to monitor, collect data and to publish the results of monitoring.*

- 5.13 Council Officers were asked about the Council's equality monitoring arrangements, i.e. the systems in place and the data collected. They stated that the impact of the Pricing Policy has been monitored since its implementation and that the Council has various monitoring systems in place. These systems included monitoring service user queries, complaints and feedback at the point of service delivery and other service points, and data of service user numbers. The Table provided at the meeting showed that membership number data was broken down according to age group.
- 5.14 In relation to the Complainant's allegation regarding the collection of data, Council Officers stated that they had collected user data since 2015/16, including membership numbers and user feedback. They advised that the Council collected data relating to the Section 75 categories where the individual voluntarily provided the information, but that in future, they intend to introduce a mandatory age category. Council Officers advised that the Council was putting in place a new single system to collect service user data across all 3 of the Borough's leisure centres.
- 5.15 In relation to the allegation of failure to publish the results of monitoring the Council Officers agreed that Council arrangements for publishing the results of monitoring were a "gap" and could be improved. They stated that the Council's focus was now on outreach and engagement and that a recent survey has identified the best ways to communicate with various groups of people including older people.

## 6 Council's Further Documentary Evidence

6.1 Following the investigation meeting the Council submitted further documentary evidence. This included copies of documents hitherto unseen by the Commission containing matters considered by the Council during the development of the Indoor Leisure Pricing Policy (Pricing Policy). Documents containing relevant evidence are referred to below. The evidence also presented a chronology for the policy development, which is also set out below.

### *Corporate Pricing Policy Framework Document and cover paper*

6.2 Prior to the Pricing Policy, in August 2016 the Council's Policy and Resources Committee approved a general *Corporate Pricing Policy Framework* (Framework Document) and subsequent amendments in November 2016. The Framework Document set out "*the overarching corporate principles in respect of the pricing of Council services.*"

6.3 The purpose and aim of the Framework Document was to "*assist the development of a suite of individual service area policies which harmonise pricing decisions based on delivering value for money for ratepayers and delivery of outcomes identified within the Council's plans and strategies.*"

6.4 Through its implementation, the Framework Document was intended to:

- "*Ensure a consistent and transparent approach to pricing is taken in all services whilst acknowledging that a 'one size fits all' approach is not appropriate or achievable;*
- *Ensure that charges, where relevant, are competitive within the context of existing market conditions;*
- *Enable Service managers, with the approval of the Director and Head of Service, discretion to target specific market segments where appropriate (e.g. to maximise usage of facilities at time/seasons when general usage is traditionally low);*
- *Establish an annual pricing review process for all Council services.*"

- 6.5 A further stated aim of the Framework Document was to ensure that *“all decisions in relation to pricing of Council services and facilities are taken within the context of the Council’s stated objectives”* as contained in its Corporate Plan 2015-2019 and the upcoming Community Plan which was being developed at that time.
- 6.6 It is noted that the Council’s pricing priorities referred to Corporate Plan objectives in relation to Delivering Excellent Services, Building Stronger, Safe and Healthy Communities and the Council’s statutory duties under Section 75 of the Northern Ireland Act 1998.
- 6.7 The Framework Document identified various groups for whom **concessionary rates or free access might** be considered during the development of individual service pricing policies, such as the Indoor Leisure Pricing Policy. These groups were:
- *“60 years of age or above;*
  - *Children/Youth (under age of 18);*
  - *Those in receipt of Universal Credit [or Carers Allowance;<sup>11</sup>]*
  - *Persons with a disability and carers who enable that person to avail of a service (e.g. a swim).*
  - *Students in full time education”*
- 6.8 At its meeting in August 2016 Council staff advised the Policy and Resource Committee<sup>12</sup> was advised that the *“new approach to Corporate Pricing [,] including the possible implementation of concessionary pricing [,] could have potential equality and financial implications.”*
- 6.9 It is noted that the Council’s statutory obligation under Section 75 of the Northern Ireland Act 1998, to have due regard to the need to promote equality of opportunity was reflected at paragraph 6 in the Framework Document, which outlined the Council’s intention to:

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<sup>11</sup> Those in receipt of Carers Allowance was added by amendment proposed November 2016)

<sup>12</sup> Cover paper. Framework document approval date is 1 September 2016

- “Develop a Corporate Pricing Policy which supports equality of opportunity to access of Council services and facilities: to improve equality of access to Council services and facilities;
- Put in place the systems necessary to capture Section 75 information about citizens and service users: to enable Council to make fully-informed decisions in relation to promotion of equality and good relations.”

6.10 Proposed amendments to the Framework Document, most notably, to add those in receipt of Carers Allowance to the concessionary groups, was presented to the Policy and Resource Committee of 22 November 2016. The cover paper accompanying the amended Framework Document stated that the Framework Document had been “equality screened with no adverse effect identified on any of the section 75 groupings and the minor amendments proposed in this report will not change that.” However, no screening form for the Framework Document was appended to the documents submitted in evidence to this investigation, nor is there any evidence to suggest that a screening form accompanied papers presented at the meeting on 22 November 2016.

6.11 At paragraph 5.4, the Framework Document sets out the Council’s intention to monitor and annually review the impact of its pricing policies stating “Council will also want to gather evidence from service users to evaluate if our pricing policies across all service areas are **promoting equality of opportunity, good relations and social inclusion to support better quality of life for all.**” The “Monitoring, evaluation and review” section of the Framework Document stated that service managers were to consider customer feedback surveys to assist with “tracking the demographics of users, impact of policies, satisfaction levels etc.”

#### *Indoor Leisure Pricing Policy*

6.12 On 22 November 2016, the Council’s Policy and Resource Committee also considered a report entitled “Indoor Leisure Pricing Policy – Free Use for Senior Citizens” (Free of Use Report) and a proposed *Draft Indoor Leisure Pricing Policy* for approval.

- 6.13 It is noted that the Free of Use Report set out the implications of granting free use of indoor leisure facilities to Senior Citizens (over 60s) across the Borough.<sup>13</sup>
- 6.14 The Free of Use Report recommended that Elected Members approve the draft Pricing Policy. At that time, the Pricing Policy proposed a **30% discount on full rates** to the concessionary groups identified in the Framework Document [see paragraph 6.7 above], and **free of charge usage** for those aged 5 years and under, and for carers accompanying a person with a disability. Therefore, at this stage those aged 60 and over were included in the 30% discount Concessionary groups, with no free of use proposals for the older ages.
- 6.15 The draft Pricing Policy appended to the Free of Use Report stated the purpose of concessionary rates as being “...to better assist and encourage those groups of people who are less likely to use leisure facilities provided by the Council as a result of having less disposable income or as a group are at risk of poorer health outcomes.”
- 6.16 In the draft Pricing Policy it is also recorded that it had been “equality screened with no adverse impact identified and therefore and [sic] Equality Impact Assessment is not required”. There is, however, no evidence that the screening form itself was provided in papers to the Policy and Resources Committee, nor was it provided for the investigation.
- 6.17 The Free of Use Report set out the implications for the Council of providing free usage for Senior Citizens (over 60s) and provided recommendations. These implications were threefold i.e. (i) “Financial”, (ii) “Corporate Plan” and (iii) “Equality” and considerations included the following:
- 6.18 (i) *Financial*: The Policy and Resources Committee was advised what the financial impact on the Council would be if free use of Indoor Leisure facilities was granted to Senior Citizens across the

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<sup>13</sup> The Council have confirmed by email dated 4 July 2019 that the term Senior Citizen refers to those aged 60 and over

Borough. The resulting loss of income to the Council was estimated as £84,438.00 per annum; £60,398 of this figure would be from loss of membership fees. The annual income after imposing a 30% concession on the membership fee was projected to be £71,720; a reduction of “£12,734” per annum<sup>14</sup>. A financial analysis was not provided for the age groups 60-64 and over 65 at this stage.<sup>15</sup>

- 6.19 The Free of Use report advised the Committee that the Framework Document committed the Council “*to delivering excellent value for money services but with a caveat, that an excessive undue burden is not placed on the ratepayer.*”
- 6.20 (ii) *Corporate Plan*: The Policy and Resources Committee was presented with relevant background information, including that the proposed Pricing Policy was drafted within the context of the Council’s Corporate Plan commitments in relation to “*building strong healthy communities*” and seeking to “*promote equality of opportunity and social inclusion to support a better quality of life for all.*”
- 6.21 The Committee was advised that “[Council] *Officers have not been able to identify any policy objective which requires over 60’s above (sic) to be provided with free use and cannot therefore identify any objective justification in giving those over 60 free usage of indoor leisure facilities in preference to other service users.* (author’s emphasis)
- 6.22 (iii) *Equality*: The Free of Use Report addressed the matter of equality of opportunity stating that “*From an equality perspective, if Council decides to give free usage to one of the identified groups and not the others then a full Equality Impact Assessment (EQIA) will be required. Citizens over 60 are only [one] of the groups identified within the corporate pricing policy framework.*” (author’s emphasis) This does not accord with the

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<sup>14</sup> On these figures the correct reduction is £12,718 per annum

<sup>15</sup> The cost implications of providing free usage of leisure services to those aged over 65 only was reported as £65k to the Policy and resources Committee in April 2017



Commission's advice on when an EQIA should be considered and undertaken.<sup>16</sup>

- 6.23 As part of its equality considerations, in paragraph 3.2, the Free of Use Report referenced research from secondary sources undertaken in 2014 to inform the Policy and Resources Committee about the general economic situation of “*pensioners*” in the United Kingdom. It is noted that although the research was actually into the Concessionary Travel Scheme (Free Travel Pass),<sup>17</sup> the Free of Use Report recorded that the Scheme “*disproportionately benefits wealthy pensioners, as the vast majority of pensioners could afford to pay for their own travel. The research also showed today’s pensioner generation are much wealthier than was the case in previous eras; pensioner households have seen their incomes **rise faster than any other group** over the past 30 years. Of the ten million pensioners (over 65s) in the UK, 1 million are still in paid employment with only 18% of pensioners solely reliant on the state pension.*”
- 6.24 The Free of Use Report identified that the Council had “22,300 over 65s and 30,300 over 60s living in the Borough (Census 2011) and it is highly likely that [a] significant proportion of those between 60 and 65 are in some form of paid employment.”<sup>18</sup>
- 6.25 On this basis it concluded that “***It would therefore be disproportionate and unreasonable to provide this particular grouping with free usage over and above the other groups defined within the Corporate Pricing Policy Framework and the objectives within our Corporate Plan.***” (author’s emphasis)
- 6.26 It is noted that none of this information and assessment of potential equality impact on age were referenced in the screening document of 11 April 2017.

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<sup>16</sup> Page 41, Section 75 A Guide for Public Authorities, April 2010

<sup>17</sup> Research undertaken by the Intergenerational Foundation on behalf of the Local Government Association

<sup>18</sup> Explanatory note: There were 30,300 residents in the Borough aged over 60, of which 22,300 were aged over 65 i.e. 8000 residents aged 60-64.

6.27 The recommendation from the meeting on 22 November 2016 was that a workshop be arranged for all Elected Members in order to discuss the issues raised in the Free of Use Report.<sup>19</sup> The resulting Equality Working Group subsequently met on 21 March 2017.

*Notes and Actions of the Equality Working Group of 21 March 2017*

6.28 The Notes and Actions of the Equality Working Group paper (EWG Actions Paper) records the discussion of the Equality Working Group. It notes the discussion of Pricing Policy options; the evidence presented to the Equality Working Group by Council Officers; equality considerations presented by an independent Equality Adviser; and the discussion of Financial implications for the Council. The EWG Actions Paper also notes that the Elected Members were guided through “*the thinking process adopted at the [previous] staff workshop*” which had also been attended by the Equality Adviser.

6.29 The Council later confirmed by email dated 3 June 2019 that it had delivered equality and good relations training to members of the Equality Working Group in February 2016.

6.30 Paragraph 4 of the EWG Actions Paper noted that the Equality Working Group was advised that the Policy and Resources Committee had considered a draft Pricing Policy on a number of occasions and that “*there had been very clear direction that [Elected] Members wished to see a specific Policy relating to older people and their access to leisure services*”.

6.31 Following the Council staff workshop (February 2017), the Pricing Policy options presented to the Equality Working Group now included “... ***free use of the swimming pool and health suite only at off peak times for those aged over 65 and those in receipt of Universal Credit and Carers. Those under 5 would be***

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<sup>19</sup> Noted in report to Policy and Resources Committee dated 20 April 2017.

*able to swim for free at all times. Concessionary rates for all other services would be applicable in line with the Corporate Pricing Policy Framework...*” (author’s emphasis). It is noted that the Commission has no evidence from this Council staff discussion to show how the policy options changed or any equality assessment of them.

6.32 The EWG Paper noted that the Equality Working Group considered the local population statistics and the research information presented about health and physical activity of certain groups, including those aged over 65 years, (see paragraph 3.20 above). The paper referred to the Borough’s increasing elderly population and advised that “[o]ver 65’s [sic] were the least physically active age group and had the highest obesity rate with those living in areas of social deprivation being recorded as the least physically active.”.

6.33 The EWG Paper also recorded that Elected Members had raised concerns about the financial sustainability of leisure services, particularly with regard to “*making services free of charge as it may result in some leisure services having to be withdrawn through time.*”

6.34 The EWG Paper records that the Equality Working Group was presented with “*the policy considerations, including financial sustainability and equality considerations.*” Equality considerations included “*the equality considerations and statutes which required consideration including sex discrimination gender recognition disability discrimination race relations fair employment and treatment equality act (sexual orientation) and employment equality (age) and the requirement to be fair, reasonable and proportionate.*” There was no discussion recorded around these equality considerations.

6.35 The EWG Paper did note, however, discussion around the financial implications of the proposed Pricing Policy. Council Officers highlighted that it “*should result in an overall increase in usage and*

*income although the financial implications of free use for those on Universal Credit was unknown.*” It noted that this usage was to be monitored.

- 6.36 The Equality Working Group recommended the proposed Pricing Policy, as presented, with the concessionary rates for those aged over 60 and free access to leisure services for those aged over 65 for approval by the Policy and Resources Committee. In addition, the Equality Working Group also recommended some amendment, i.e. broadening the concessionary groups to include part time students. It is noted that there is no evidence of an equality assessment by way of an equality screening form at this point.

*Report to Policy and Resources Committee dated 20 April 2017:  
Report to PRC*

- 6.37 This Report to PRC was prepared following the Equality Working Group’s meeting in March 2017 and states its purpose as seeking *“Elected Members’ approval of the Working Group’s recommendations on the concessions to be applied within the Indoor Leisure Pricing Policy and to approve the draft Indoor Leisure Pricing Policy attached...”*
- 6.38 The Report to PRC also advised Elected Members of the outcome of equality screening of the proposed Pricing Policy on 11 April 2017 i.e. that no EQIA was required and that the proposed policy would provide opportunities to better promote equality of opportunity for the Section 75 groups. The Pricing Policy was approved by the Policy and Resources Committee at this meeting.
- 6.39 There is no evidence that the equality screening form referred to was presented to the Policy and Resources Committee or included in its papers.
- 6.40 The only completed screening form presented in the evidence for this investigation is the one referred to above and also at

paragraphs 3.11 and 3.19 above, and notified by the Council as being dated 11 April 2017.

## **7. Assessment of Evidence**

- 7.1 It has required considerable effort on the part of the Commission to establish the facts in relation to this matter in order to assess the compliance or otherwise of the Council with the Equality Scheme commitments subject to this investigation. This is due to a number of factors not least of which are that it was unquestionably a significant and multifaceted undertaking on the part of the Council to align the legacy pricing regimes across the Borough, and the lengthy developmental history of the Pricing Policy itself. However, the lack of records in relation to equality considerations and equality assessment at the earliest opportunity in the policy development process has also played a part.
- 7.2 It is not the Commission's role to assess the appropriateness of the pricing regime decided upon by the Council nor the policy aims of the Pricing Policy under consideration. The Commission's task is to consider whether the Complainant's allegations of non-compliance with the Equality Scheme commitments are established and this requires consideration of whether there was observance of the Equality Scheme processes in the circumstances.
- 7.3 The Council refutes the allegations of failure to comply with its Equality Scheme and asserts that the Council has fully complied with its statutory equality duties (see paragraph 3.11 above).

### ***Pricing Policy development***

- 7.4 In order to assess the Council's compliance with its Equality Scheme commitments in paragraphs 4.10 and 4.11, some consideration is needed of its approach to equality assessment and screening throughout the development of the Pricing Policy.

The Commission's Guidance recommends that the equality assessment and screening relates to the policy's aims.<sup>20</sup>

### *Financial Factors*

- 7.5 The development of the Pricing Policy was assisted by the Council's Framework Document, which was designed to deliver value for money services and to ensure that the Council delivered its stated priorities and objectives.
- 7.6 The information provided by the Council has highlighted its need to generate income from leisure services, which are heavily subsidised, by making its prices competitive and to increase regular usage of its leisure services. However, the screening form (11 April 2017) as the Council's only formal assessment evidenced anywhere stated the Pricing Policy's aims as "*to provide an appropriate pricing framework for Indoor Leisure that will ensure services are accessible and affordable to all our citizens.*"
- 7.7 The Council sought to justify its decisions around concessionary pricing based on the financial implications for the Council. These were considered over a lengthy timescale and in considerable detail. The Council did pay particular attention to concessionary pricing for older people, and judged extending free use of leisure facilities across the Borough for the over 60 age group to be unsustainable. However, the Council also added new concessionary groups, including a group not identified by its Corporate Pricing Policy Framework, in order to ensure that its leisure services were competitive with other Council services and local private facilities, and the income generated by the over 60 age groups was viewed as offsetting this cost.

### *Strategic factors*

- 7.8 The Council considered its strategic objectives as contained in its Corporate Plan and its Community Plan. These objectives included encouraging the use of leisure services by those at risk of poorer health outcomes and included the over 60 age group. The groups

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<sup>20</sup> Page 60, Section 75 A Guide for Public Authorities, April 2010

identified by the Framework Document for concessionary fees or free usage related to these strategic objectives, i.e. including the over 60 age group with no differentiation between those age 60-64 and those aged over 65. The Framework Document had reportedly been equality screened on this basis.

- 7.9 When developing the Pricing Policy the Council considered that there was no policy objective which justified the free use of leisure facilities for those aged over 60. It did however consider that the over 65 age group was at risk of poorer health outcomes and this view then was the strategic justification for the Pricing Policy differentiating between those aged 60-64 and those aged over 65, allowing over 65s only free use of limited leisure services.

#### *Data collection*

- 7.10 The Commission's Guidance on screening advises that data will be presented in order for the equality assessment of the policy aims.<sup>21</sup> Data collection systems at the time of the policy development between the 3 leisure centres differed and this, coupled with differences in fees and types of memberships, made direct comparisons difficult. In its own data tables the Council referred to the over 60 age group alternatively as senior citizens, over 60s and those aged between 61 and 65/66+. The number of service users in the small group adversely impacted by the policy differed across various data tables presented. Although the Council had data about the small group of service users impacted in a major adverse way, this information was not presented in the screening form.
- 7.11 Other information used by the Council to inform decisions was largely gleaned from external research and Census 2011 data. This data was not based on Section 75 groups and the data presented to the Equality Working Group did not relate specifically to the over 60 age group.
- 7.12 Local demographic information, which predicted an increase in the Borough's over 65 population, and local information about the economic status of that age group, were presented to the Equality

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<sup>21</sup> Page 40 and Appendix 1, Section 75 - A Guide for Public Authorities, ECNI (2010)

Working Group. It appears from the information provided by the Council that decision makers were not, however, provided with local data outlining the ability of those aged 60-64, the group most impacted by the Pricing Policy, to afford the newly imposed fees.

- 7.13 Rather external research information about the ability of those aged over 60 in the UK to afford to pay for their own *travel* costs appears to have been considered in justifying the removal of free of use concession from this age group.
- 7.14 In the investigation meeting Council Officers recognised that the Council could improve its data collection systems and that consultation with service users would have better informed its consideration of the impact on equality of opportunity. Council stated in its letter of 12 March 2019 that it now has a new single system of data collection across its leisure centres.
- 7.15 It can be seen from the available material that the Council recognised that there were equality of opportunity implications in the changes to its Pricing Policy and it maintained that it had put in place arrangements to consider the equality impacts of its Pricing Policy. Evidence submitted shows that it had engaged the services of an independent advisor, it formed an Equality Working Group to discuss the information presented to it which included equality considerations, and an equality screening exercise reportedly took place. However it would appear, from the documents submitted, that although there was extended discussion around concessionary fees for older people, this discussion centred mainly around the financial impact on the Council.
- 7.16 The Council referred to equality screening at several stages prior to the complaint, however, the only screening form supplied in evidence was the one which the Council presented as dated 11 April 2017. This form reflected the final policy proposals for approval. It does not present any details of the equality assessments undertaken generally to inform the Council's approach to setting concessionary fees, and particularly for those aged 60-64, but the form states the major adverse impact complained of.



***Allegation of failure to conduct an EQIA – Equality Scheme paragraph 4.11***

7.17 The Council has throughout stated that it believed that the Pricing Policy provides opportunity for greater equality of opportunity for all the section 75 categories. It has argued that, for the age category in particular, the new Pricing Policy had provided equality of opportunity by treating service users of different ages the same across the Borough. The Council did not consider there to be any conflict between its commitment to improving the health and wellbeing of its citizens, particularly those with less disposable income and /or at risk of poorer health outcomes, and the removal of free use of all leisure facilities to the over 60 age group.

*Circumstances under which an EQIA may be required*

7.18 The Commission notes that the Council had conducted an equality screening of the Indoor Leisure Pricing Policy in April 2017, which reflected the final policy proposals for approval. The complaint refers to the screening form’s identification of the major adverse impact on the small group of services users and that this should “normally” prompt an Equality Impact Assessment.

7.19 The purpose of screening is to identify those policies that are likely to have an impact on equality of opportunity/and or good relations<sup>22</sup> and involves consideration of a policy by a Public Authority in relation to any of 9 statutory groups – ‘age’ being one such group.

7.20 The Commission’s guidance also recommends not only the processes of screening and EQIA, but also provides detailed advice on how to undertake these processes and work through equality assessments. The Commission’s guidance recommends that screening should be completed *at the earliest opportunity in the policy development process*<sup>23</sup>, as well as advising “to undertake screening after policy proposals have been developed may be inefficient in terms of time and may be ineffective if policy

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<sup>22</sup> Equality Commission “Section 75 – A Guide for Public Authorities” (2010) p40

<sup>23</sup> P51

*makers are reticent to make changes at a later stage. It may also duplication policy development processes.”<sup>24</sup>*

- 7.21 The Council’s Equality Scheme arrangements set out, in accordance with the Commission’s advice, that in circumstances when impacts are identified, a more detailed Equality Impact Assessment (EQIA) may be undertaken. In certain circumstances, the Public Authority may have to consider mitigating<sup>25</sup> the adverse effects of the policy or even consider implementing an alternative policy, which would not have that adverse effect.
- 7.22 It is clear that when the Council discussed the Pricing Policy aims, concessions and data at the various committees and working groups there were many and varied equality issues (for example, concessionary pricing and its impact for people of different ages). At no stage is there evidence that the Council presented these in a screening to aid their decision making or that it considered an EQIA for the purposes as stated in the Commission’s guidance.<sup>26</sup>
- 7.23 Commission guidance states that the *“primary function of equality impact assessment is to determine the extent of any differential impact of a policy upon the Section 75 categories and to determine if the differential impact is an adverse impact. An equality impact assessment can assist in decision-making and improve policy making by adding to the evidence base available”*
- 7.24 The equality screening assessment of 11 April 2017 identifies the *result* of all the considerations undertaken rather than aiding or informing them. It presents the finalised Pricing Policy concession arrangements and notes the major adverse impact on one group. The screening form presents no rationale for the equality assessments in it, and does not cover all the considerations evidenced in this investigation. It presents no information on mitigation. The screening process, when considered against its

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<sup>24</sup> P52

<sup>25</sup> Council’s Equality Scheme states: “Mitigation – Where an assessment (screening in this case) reveals that a particular policy has an adverse impact on equality of opportunity ....., a public authority must consider ways of delivering the policy outcomes which have a less adverse effect on the relevant Section 75 categories

<sup>26</sup> Practical Guidance on Equality Impact Assessment February 2005

purpose, was flawed. There is also no evidence that it was actually presented to decision makers as an equality assessment to inform their decisions on the Pricing Policy, rather its outcome was presented with the final Pricing Policy for approval.<sup>27</sup>

7.25 For the reasons given above, the Commission concludes that the Council has failed to comply with paragraph 4.11 of its Equality Scheme.

***Allegation of failure to mitigate or consider an alternative policy – Equality Scheme paragraph 4.10***

7.26 The Council acknowledged that there was a *major* impact on the small group of people who had lost free access to Council leisure services, but decided that it would not conduct an EQIA. In such circumstances, the Council’s Equality Scheme commits it to “*consider measures that might mitigate the policy impact as well as alternative policies.*”

7.27 At the time of his complaint to the Council, the Complainant had put forward his own suggestions for mitigation for the small group impacted in an adverse way. The Council did not respond to the Complainant directly in relation to these. In this instance, the Council’s initial response was that given the wider aims of the policy neither mitigation nor an alternative policy were considered necessary. The screening document of 11 April 2017 provides no information in the relevant section. This is inconsistent with the Council’s later position that it did take mitigating action.

7.28 The documentary and the oral evidence presents a number of points as mitigation for the adverse impact of the Pricing Policy identified in the screening document. Although the Council’s Equality Scheme, at Paragraph 4.10, commits it to record the reasons for mitigation on the screening form, the screening form does not document any of these mitigations, nor do any of the

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<sup>27</sup> Referred to at paragraph 6.39 above. The investigation has no evidence that the screening form itself was presented to the Policy and Resources Committee at its meeting of 20 April 2017

meetings record mitigation in the context of Equality Scheme commitments.

- 7.29 As a result of the investigation evidence presented it is clear that mitigation occurred, albeit not that suggested by the Complainant. However, none of this was communicated to the Complainant nor was it presented in the screening form.
- 7.30 For the reasons given above the Commission concludes that the Council has failed to comply with its Equality Scheme commitment contained at paragraph 4.10.

***Allegation- Failure to monitor the adverse impact of the policy, to collect data and to publish the results of monitoring. Equality Scheme paragraphs 4.28, 4.29 4.32.***

- 7.31 The Complainant's third allegation was of failure to (a) monitor the impact of the policy, (b) to collect, collate and analyse information, to collect new information and (c) failure to publish the results of monitoring. The Council states that it has monitored the impact of the Pricing Policy since its implementation through the collection of service user information and feedback and reportedly allowing breakdown and analysis by equality group. It accepts that the systems in place at the time of the complaint needed to be updated, but also states that they cannot guarantee to collect all section 75 information for each service user. The Council also accepts that there is a gap in its systems for the publication of monitoring results, but states that it is addressing this issue.
- 7.32 Paragraph 4.28 of the Council's Equality Scheme commits to "*monitor any adverse impact on the promotion of equality of opportunity of policies we have adopted.*" The Council noted its commitment to monitoring on the Pricing Policy equality screening document and it has stated that the Pricing Policy has been under "*active consideration and review*" since its implementation. The Council provided evidence of monitoring membership numbers by age to the investigation. The investigation of the allegation sought to establish what information the Council collected and whether it

monitored the adverse impact on the identified group (see paragraph 4.1 above).

- 7.33 It is noted that, as result of monitoring, the Council was able to amend its Pricing Policy after 2 months of operation to include a Family Membership concession and to introduce further off peak hours.
- 7.34 The Commission also notes that although further changes were introduced in April 2019, which reduced the individual membership fee, these were not in place at the time of the complaint.
- 7.35 Paragraph 4.29 of the Council's Equality Scheme sets out the systems by which the Council will monitor the impact of its policies. These commitments relate mainly to the collection of relevant data.
- 7.36 The Council was able to evidence an increase in membership *numbers* of those aged over 61 and a consistently higher membership aged over 66. At the investigation meeting Council Officers stated that they believed this indicated that the mitigating measures referred to in paragraph 5.11 above have lessened adverse impact of the Pricing Policy on the over 60 age group.
- 7.37 Since the complaint was made, the Council stated that it recognised that there was scope to improve significantly the quality of monitoring and reporting. It has worked to establish a single system across the Borough to manage front of house operations and to deliver consistent reporting from April 2019. Council Officers have also confirmed that it aims to collect data by Section 75 group.
- 7.38 It is noted that, in 2018, the Council commissioned a residents' survey about a number of aspects including health and wellbeing, and 74% of those surveyed agreeing that the Borough has health equality for all. The Council does not provide clarification as to whether or not this survey included questions specifically about the Pricing Policy or whether it formed part of the monitoring process in respect of said policy.
- 7.39 The Commission accepts that the Council has collected data to monitor the impact of the Pricing Policy on service user numbers

and activities which provides some indication of the impact of the Pricing Policy on various groups, including the group identified in the equality screening form. The Commission also notes that the Council was gathering information across three different systems and the related challenges this presented.

- 7.40 In addition, the Commission notes that the Council is addressing its data collection issues, as discussed, thereby improving its ability to monitor the adverse impact of policies on equality of opportunity of the Section 75 age group.
- 7.41 Paragraph 4.32 of the Council's Equality Scheme commits the Council to publishing the results of its policy monitoring.
- 7.42 Commission Guidance anticipates that public authorities will publish the results of policy monitoring annually and recommends reporting on these matters in the annual progress report<sup>28</sup>. At the Investigation meeting, Council Officials accepted that they have not published the results of monitoring of the Pricing Policy since its implementation in September 2017. They stated that the Council's arrangements for publishing the results of monitoring the adverse impacts of policies is a "gap" (see paragraph 5.18 above).
- 7.43 At the time of the written complaint to the Commission (May 2018) the Pricing Policy had been in operation for 9 months only. Insufficient time had elapsed to allow the Council to fulfil its commitment in its Equality Scheme. The Council has, however, acknowledged that improvement is required in respect of its arrangements for publishing the results of monitoring the impact of policies it has adopted.
- 7.44 For the reasons given above the Commission concludes that the Council has not failed to comply with its Equality Scheme commitment contained at paragraphs 4.28, 4.29 and 4.32.

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<sup>28</sup> Equality Commission "Section 75 – A Guide for Public Authorities" (2010), p42-43 & 36

## **8. Findings**

- 8.1 In relation to the allegations made by the Complainant, the Commission finds that the Council has failed to comply with its commitments contained in its Equality Scheme at paragraphs 4.10 and 4.11 as a result of the Council's flawed approach to undertaking equality assessments.
- 8.2 In relation to the allegations relating to monitoring, the Commission finds that the Council has not failed to comply with its commitments contained in its Equality Scheme at paragraphs 4.28, 4.29, and 4.32 as it had some monitoring data for the policy and it would have been expected to publish results annually and the complaint was made after 9 months of the policy having been implemented.

## **9 Recommendations**

- 9.1 In light of the findings, the Commission recommends that:
- relevant Council staff, specifically those tasked with policy development, receive appropriate training in applying their Equality Scheme processes of screening and Equality Impact Assessment to the policy development process.
  - the Council ensures and can evidence that adequate records are kept of its application of its Equality Scheme arrangements, i.e. through the use of the screening forms from the earliest opportunity in the policy development process.
  - the Council applies the screening and EQIA processes in accordance with its Equality Scheme arrangements and the Equality Commission's guidance, in order to provide those who are decision makers on a proposed policy with an assessment of the potential equality impacts of that policy, and therefore identifies at an early stage of considering policy options/aims that a potential major impact should prompt a full equality impact assessment against the options/aims under consideration.

- the Council ensures that its decision makers are provided with appropriate equality assessment information in order to inform their decisions on policies throughout the development process, in accordance with Paragraph 4.2 of its approved Equality Scheme. It is not sufficient to simply notify decision makers that a policy has been “screened and screened out”.
- the Council publishes its equality monitoring information for the Pricing Policy in accordance with its commitments at paragraph 4.32 of its Equality Scheme. This will not only enable it to keep the equality impacts of the current policy under review, in accordance with its Equality Scheme commitments at paragraph 4.30, but also inform its further considerations and policy development processes, as data for future equality assessments (screening and EQIA as appropriate) of related policies.
- Any further consideration of or planned changes to the Pricing Policy by the Council is informed by an equality assessment, by way of at least a screening form that sets out the Council’s equality assessment of the potential impacts.

9.2 The Council should provide a report to the Commission of the evidence of changes it has made to its policy development processes and implementation of these recommendations within six months of the date of issue of the Investigation Report.

**November 2019**