

Belfast City Council
Consultation Report on
Draft Revised Equality Scheme and Draft Disability Action
Plan

DRAFT - 14.11.14

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1. INTRODUCTION

- 1.1 Belfast City Council prepared a Draft Equality Scheme which set out how the Council will promote equality of opportunity and good relations in its day to day work. The Draft Disability Action Plan sets out how Belfast City Council intends to improve the quality of life for all people with disabilities, who live in, work in or visit our city.
- 1.2 Belfast City Council ran a consultation process to seek views on the content of the Draft Disability Action Plan and Draft Equality Scheme. The consultation period ran for a 12 week period, from August 2014 to 21st November 2014 and 5 responses were received.
- 1.3 The summary in Section 3 provides an overview of the issues raised during the consultation process together with detail on the Council's response to the recommendations including the proposals which are outside the scope of the Consultation process.

2. Consultation Process and Responses

- 2.1 To facilitate an inclusive consultation process, the following actions were taken:
 - i. All consultees received notification of the consultation process regarding the Equality Scheme and the Disability Action Plan.
 - ii Documents were advertised and placed on the Council website.
 - iii. Officers attended a Regional Consultation event on 24 September 2014 at Lagan Valley to consult with regional umbrella groups

3. Record of Comments Received and Council Response

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Consultation on the Draft Equality Scheme and Draft Disability Action Plan

A. CAJ The Committee on the Administration of Justice

1) Define 'good relations' in the Equality Scheme (taking definition from S149 (5) Equality Act 2010)

Although the Legislation only provides that many key elements of an Equality Scheme relate to the S75 (1) 'equality of opportunity' limb of the duty only some elements also apply to the S75(2) 'good relations' duty. This includes the Equality Scheme showing how the public authority proposes to fulfil the duties in general. The CAJ research and other commentary have drawn attention to a lack of legal certainty and scope for vague and subjective implementation of the good relations duty given the absence of a clear definition of the concept. Considerable concern has also been highlighted about misuse of 'good relations' to thwart equality initiatives in this context. From 2007 the Equality Commission has recommended public authorities adopt a definition, and has not been prescriptive about what that should be. CAJ advocates that the Council includes in its Equality Scheme a definition of 'good relations' adapted from that already provided for in law in Great Britain and consistent with the formulation of Section 75(2), namely that: 'good relations' means, in particular having regard to the desirability of a) tackling prejudice and b) promoting understanding. We feel this definition would not only help prevent misinterpretation of the duty but would also assist in supporting a framework for existing Council good relations work. In being 'in particular' (i.e. not exclusively but primarily) about tackling prejudice and promoting understanding provides a focus for combating sectarianism and other forms of racism (tackling prejudice) as well as a framework for work on reconciliation and dialogue (promoting understanding). Should 'good relations' be clearly defined as above we would also suggest consideration of going beyond S75 (2) in relation to the categories it covers and also including matters such as a commitment to tackling homophobia as general element of the Equality Scheme.

2) Separate 'good relations' from EQIAs and screening (consistent with the existing legislation) It is important to note that neither the Belfast/Good Friday Agreement nor the legislation envisage or require 'good relations' considerations being part of equality impact assessments. Duties under schedule 9 to assess the impact of policies, monitor 'adverse impacts', consider mitigating measures against adverse impacts or alternative policies, apply to the S75 (1) equality of opportunity limb of the duty only. Although the Equality Commission since 2007, and in its current model scheme, suggests public authorities could also include good relations questions in screening and equality impact assessment methodology in a similar manner as equality considerations, our research has found that this approach has been fraught with difficulties. This is not least as applying defined equality concepts such as 'adverse impact' to a more subjective concept of 'good relations' has had perverse outcomes. We have identified instances whereby measures actually taken to further rights and equality have been classified as 'adverse impacts' on good relations grounds, due to objections to them. The situation has also led, in practice, to a blurring of the primacy the equality duty is to take over good relations considerations. We would therefore recommend that the current good relations impact questions are removed and hence decoupled from screening and equality impact assessment exercises. We would recommend that any consideration of good

relations in the context of policy appraisal is limited to following an EQIA, provision to explore whether there is an opportunity for complimentary 'good relations' measures to tackle prejudice and promote understanding. This, being limited to questions of screening and EQIAs, would not impact on the broader 'good relations' work of a Council, but would address the issues which have arisen in relation to impact assessment.

3) In addition to the above matters on 'good relations' CAJ would also recommend that the new equality schemes also contain commitments to: publish Council screening templates online and take reasonable steps to inform consultees of same; and that audits of inequalities will be consulted on and also published.

Draft Recommended Response:

The response from CAJ has been given to all the new Councils. A request for clarification on the issues contained was made to the Equality Commission. A copy of their response is included at the top of Page 6.

The ECNI model scheme includes a definition of good relations based on 2007 Good Relations guide:

'the growth of relations and structures for Northern Ireland that acknowledge the religious, political and racial context of this society, and that seek to promote respect, equity and trust, and embrace diversity in all its forms'.

We have been advised by the ECNI that they are recommending a definition in legislation in the context of the NI Good Relations Strategy, "Together: Building a United Community (TBUC). The Council does not propose to change the definition at present and will await the legislative definition, if brought forward in TBUC.

Our arrangements for screening and EQIA are as per the ECNI model screening and EQIA guidance. Any alternative arrangements would be subject to review by the ECNI to determine if they meet the requirements of the statutory duties.

The ECNI have advised that in their view it may be cumbersome to decouple and introduce alternative Good Relations arrangements due to the interdependence of the two Section 75 duties.

The Council does not propose to change its arrangements for screening and EQIA at present.

The Council draft equality scheme gives a commitment to make screening templates available on the website (**para 4.13**) All consultees will be advised of the availability of these via email unless they have indicated they wish to receive notification by post.

Wording is as the ECNI model scheme which does not include consultation on the Audit of Inequalities. However, we will consult on our Audit of Inequalities and Action Plan.

ECNI Response:-

A number of Councils raised with the Commission the response to the consultation that they had received from CAJ/Equality Coalition and asked the Commission position regarding this.

Commission Officers advised that the Commission's position remains the same i.e. in summary that:

1. Definition of GR – there is one in ECNI model scheme based on 2007 Good Relations's guide. The Commission (in context of TBUC) is recommending a definition in legislation. It is up to the Council to decide if it wishes to change definition in current context or await legislative definition, if brought forward in TBUC
2. Decoupling GR from screening questions – Commission's position remains the same as per model screening and EQIA guidance. Should an authority decide to present alternative arrangements the Commission will review this and determine if this is sufficiently equivalent to meet the duties. The interdependence of the duties should be remembered and may be cumbersome to decouple and introduce alternative Good Relations arrangements. However, this is completely up to the authority to determine.

B. Equality Coalition

1: Define 'good relations' in the Equality Scheme (taking definition from s149(5) Equality Act 2010)

Although the legislation only provides that many of the key elements of an Equality Scheme relate to the S75(1) 'equality of opportunity' limb of the duty only some elements also apply to the S75(2) 'good relations' duty. This includes the Equality Scheme showing how the public authority proposes to fulfil the duties in general. Through research carried out by CAJ and other commentary it is clear that there is a lack of legal certainty and scope for vague and subjective implementation of the good relations duty given the absence of a clear definition of the concept. Considerable concern has also been highlighted about misuse of 'good relations' to thwart equality initiatives in this context within the CAJ research. From 2007 the Equality Commission has recommended public authorities adopt a definition, and has not been proscriptive about what that should be.

The Equality Coalition advocates that the Council includes in its Equality Scheme a definition of 'good relations' adapted from that already provided for in law in Great Britain and consistent with the formulation of section 75(2), namely that:

'good relations' means, in particular, having regard to the desirability of a) tackling prejudice and b) promoting understanding

We feel this definition would not only help prevent misinterpretation of the duty but would also assist in supporting a framework for existing Council good relations work. In being 'in particular' (i.e. not exclusively but primarily) about tackling prejudice and promoting understanding provides a focus for combating sectarianism and other forms of racism (tackling prejudice) as well as a framework for work on reconciliation

and dialogue (promoting understanding). Should 'good relations' be clearly defined as above we, as a membership organisation representing all 9 categories, would also suggest consideration of going beyond S75(2) in relation to the categories it covers and including matters such as a commitment to tackling homophobia as a general element of the Equality Scheme.

2: Separate 'good relations' from EQIAs and screening (consistent with the existing legislation)

It is important to note that neither the Belfast/Good Friday Agreement nor the legislation envisage or require 'good relations' considerations being part of equality impact assessments. Duties under schedule 9 to assess the impact of policies, monitor 'adverse impacts', consider mitigating measures against adverse impacts or alternative policies, apply to the S75(1) equality of opportunity limb of the duty only.

Although the Equality Commission since 2007, and in its current model scheme, suggests public authorities could also include good relations questions in screening and equality impact assessment methodology in a similar manner as equality considerations, our research has found that this approach has been fraught with difficulties. This is not least as applying defined equality concepts such as 'adverse impact' to a more subjective concept of 'good relations' has had perverse outcomes. We have identified instances whereby measures actually taken to further rights and equality have been classified as 'adverse impacts' on good relations grounds, due to objections to them. The situation has also led, in practice, to a blurring of the primacy the equality duty is to take over good relations considerations.

We would therefore recommend that the current good relations impact questions are removed and hence decoupled from screening and equality impact assessment exercises. We would also recommend questions are included on complimentary opportunities to promote good relations by tackling prejudice and promoting understanding and also the similar questions provided under the DDA (promoting positive attitudes to persons with disabilities and participation in public life) are included. These amendments can be seen in the attached model equality scheme.

We would recommend that any consideration of good relations in the context of policy appraisal is limited to, following an EQIA, provision to explore whether there is an opportunity for complimentary 'good relations' measures to tackle prejudice and promote understanding.

This, being limited to questions of screening and EQIAs, would not impact on the broader 'good relations' work of a Council, but would address the issues which have arisen in relation to impact assessment.

In addition to the above matters on 'good relations' the Equality Coalition would also recommend that the new equality schemes also contain commitments to: publish Council screening templates online and take reasonable steps to inform consultees of same; and that audits of inequalities will be consulted on and also published.

Response:

The ECNI model scheme includes a definition of good relations based on 2007 Good Relations guide:

‘the growth of relations and structures for Northern Ireland that acknowledge the religious, political and racial context of this society, and that seek to promote respect, equity and trust, and embrace diversity in all its forms’.

We have been advised by the ECNI that they are recommending a definition in legislation in the context of the NI Good Relations Strategy, “Together: Building a United Community (TBUC).

The Council does not propose to change the definition at present and will await the legislative definition, if brought forward in TBUC.

Our arrangements for screening and EQIA are as per the ECNI model screening and EQIA guidance. Any alternative arrangements would be subject to review by the ECNI to determine if they meet the requirements of the statutory duties. The ECNI have advised that in their view it may be cumbersome to decouple and introduce alternative Good Relations arrangements due to the interdependence of the two Section 75 duties.

The Council does not propose to change its arrangements for screening and EQIA at present.

The Council Draft Equality Scheme gives a commitment to make screening templates available on the website (**para 4.13**). All consultees will be advised of the availability of these via email unless they have indicated they wish to receive notification by post.

Wording is as the ECNI model scheme which does not include consultation on the Audit of Inequalities. However, we will consult on our Audit of Inequalities and Action Plan.

ECNI Response:

– a number of Councils raised with the Commission the response to the consultation that they had received from CAJ/Equality Coalition and asked the Commission position regarding this.

Commission Officers advised that the Commission’s position remains the same: i.e. in summary that:

1. Definition of GR – there is one in ECNI model scheme based on 2007 Good Relation’s guide. The Commission (in context of TBUC) is recommending a definition in legislation. It is up to the Council to decide if it wishes to change definition in current context or await legislative definition, if brought forward in TBUC.

2. Decoupling GR from screening questions – Commission’s position remains the same as per model screening and EQIA guidance. Should an authority decide to present alternative arrangements the Commission will review it and determine if it sufficient equivalent to meet the duties. The interdependence of the duties should be remembered and may be cumbersome to decouple and introduce alternative Good Relations arrangements. However, this is completely up to the authority to determine.

C. Regional Event

Discussions were held with representatives from Disability Action, RNIB, the British Deaf Association and the Equality Coalition, all of whom were keen to work with the Council to improve both communication and consultation channels.

Draft Recommended Responses: The Council thanks the various organisations which took the time to attend the consultation event. The Equality and Diversity Office will be in contact with all these organisations to discuss opportunities to improve our services.

D. Disability Action

SPECIFIC COMMENTARY

1. In relation to the Disability Action Plan Disability Action would make the following comments:-
 - Actions should be numbered for ease of reference
 - Many of the actions are process functions rather than outcome based measures.
 - Approved list of alternative format providers should have been long established as DDA 1995 and Section 75 legislation were introduced in 1995 and 1998 respectively.
2. Belfast City Council is asked to outline measures to promote public life opportunities which are not confined simply to the public appointment process. The Council should highlight measures for which it has responsibility within its action plan, or at the very least, identify those public life opportunities that it may influence to increase the number of people with disabilities in public life.
3. Additionally, the definition of public life within the Equality Commission for Northern Ireland DDO Guide is much broader than public appointments therefore it is not appropriate to exonerate the responsibility in this area.
4. Disability Action has noted that 13 of the 22 actions are ongoing. Disability Action would advise that ongoing timescales are vague and make it difficult to determine what has been achieved to date and to identify new or next step actions. Have these actions been carried over from the last DAP? Disability Action would

recommend that ongoing timescales be replaced by specific actions, dates, clear performance indicators.

5. Disability Action has found it difficult to identify what is actually new or carried over from the last DAP? If so, have these actions been monitored and evaluated and what has been the success to date?

6. Disability Action finds no evidence of a specific action detailing how the Council intends to involve people with disabilities in the implementation, monitoring and review of the Action Plan as referred to at paragraph 7.1.

7. Regarding performance indicators/targets Disability Action believes it would be more beneficial if Action Plans establish outcome driven measures which are specific, measurable, achievable, realistic and time-bound. (SMART) This will enable Action Plans to be attainable and measured rather than creating unachievable, aspirational goals which although commendable rarely achieve real change.

8. Whilst recognising the efforts to prepare this plan, Disability Action believes that it requires significant redrafting and to support this Disability Action encloses its generic response for public authorities regarding the two new duties.

9. Disability Action has welcomed the opportunity to respond to this important draft Plan and looks forward to seeing the comments above incorporated into the revised Plan.

Draft Recommended Response: The Equality and Diversity Officer met Disability Action and discussed the issues raised in the consultation response. Belfast City Council is in the unusual position of not merging with another council and therefore the already existing Disability Action Plan remains current. We did not submit new action measures for consultation but indicated that we would use the Audit of Inequalities as a method of gathering new items to include in our new action plan to be developed in 2015- 2016.

We are delighted to have had confirmation from Disability Action that they are organising a meeting on December 3rd to discuss and develop meaningful actions for future Disability Action Plans.

E. NIACRO

Equality Scheme.

2.1 People with a Police Record and Section 75 Groupings

NIACRO welcomes the opportunity to comment on the new Council's draft Equality Scheme. Whilst NIACRO accepts the importance of ensuring appropriate representation of Section 75 groupings, it is also important to note that people do not fit neatly into any one of these groups.

People with a police record often face additional barriers (structural, attitudinal and legislative) when trying to access education, training and employment opportunities or accessing financial services. We believe there is clear potential for adverse impacts in the appointment of staff to Councils. Referring back to Section 75 of the Northern Ireland Act 1998, previous convictions may give rise to differential impacts in the following ways.

- People may experience discrimination on the grounds of previous involvement with a particular paramilitary group: **grounds of political opinion.**
- Most people who have been convicted of an offence are male; in 2012, of the people convicted in court in Northern Ireland, 84 % were male¹: **grounds of gender.**
- 30% of those convictions related to people aged 25 and under²: **grounds of age.**
- Families, spouses and dependants of people with a criminal conviction are likely to experience adverse impact in relation to equality of opportunity: **grounds of people with dependants.**

We recommend that the Council considers the additional barriers faced by people with a police record before submitting its final Equality Scheme.

Response: The Council recognises that people do not fit neatly into one S75 grouping and consider impacts on Multiple Identity Groups as part of the Screening process.

1.2 People with Conflict Related Convictions

It is estimated that approximately 40,000 people are convicted through the courts in Northern Ireland each year. This represents a significant proportion of the population who should not be denied access to the labour market and other opportunities to engage in employment and public life. It is further estimated that some 30,000 people have received lengthy sentences as a result of conflict related convictions, and the Employers' Guidance issued by OFMDFM on Recruiting People With Conflict Related Convictions clearly states that "a conviction arising from the conflict should not bar an applicant from obtaining employment, facilities, and goods or services unless that conviction is manifestly incompatible with the job, facility or service in question", and furthermore that "a conflict related criminal record should

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not play a part (in a recruitment process) until the individual has successfully gone through a selection process”.

NIACRO would therefore recommend that Councils give due consideration to this guidance when making decisions about suitability of those with conflict related convictions.

Response: Belfast City Council has developed recruitment procedures based on legislative requirements and taking advice and guidance from NIACRO. We will build upon the existing good practice in this regard.

2.3 Disclosure and Checks

NIACRO recommends that, for the purposes of confidentiality, applicants should be able to disclose conviction related information confidentially; similar to the process used for equal opportunities monitoring.

The Council should explain in any guidance it issues if the post will be subject to disclosure under either:

- the Rehabilitation of Offenders (NI) Order 1978, which requires only unspent conviction to be disclosed; or
- the Rehabilitation of Offenders (Exceptions) Order NI 1979, as amended which provides for the disclosure of spent and unspent convictions, and non-conviction information - not subject to filtering.

Once this determination has been made, it is recommended that the ‘conviction’ question is worded clearly to ensure applicants are aware of their disclosure responsibilities. There should also be clear guidance given to applicants that a criminal record check, or an AccessNI disclosure check, is a requirement before appointment. It is therefore important that the Council states clearly what type of check the applicant will be subject to and amount of conviction information an applicant would be required to disclose for that level of check.

A fact sheet on the relevant Rehabilitation of Offenders legislation, and criminal record or disclosure check, should be issued to applicants at this stage, along with the details of associated policies and procedures, including appeals mechanism, which exists in the event of a refusal on the grounds of previous convictions. We have attached further information on filtering and would be happy to discuss this further.

Response: Belfast City Council has developed recruitment procedures based on legislative requirements and taking advice and guidance from NIACRO. We will build upon the existing good practice in this regard.

2.4 NIACRO Disclosure Support

In its commitment to enhancing education, training and employment opportunities for people with a police or criminal record, NIACRO offers support to organisations to address structural, legislative and attitudinal barriers faced by this group.

NIACRO's equity work focuses on targeting recruitment and selection processes and has sought to change the systems so as to take account of the needs of organisations and prospective applicants with a criminal record. We operate a free, confidential, advice service to organisations and applicants on the area of disclosure and legislative requirements.

A half day training workshop is delivered each month, which is a guide to good practice relating to the fair recruitment of people with police or criminal record. The objective of the training is to give employers and organisations an opportunity to consider the benefits of having fair recruitment practices in relation to people who have police or criminal record. It covers:

- background information;
- the rehabilitation of offenders and other associated legislation;
- Access NI - procedures and requirements;
- facilitating disclosure of conviction;
- risk assessment; and
- handling and retaining conviction information.

Training is supported by NIACRO's publication "Working with Conviction - A Guide for Employers", which is a guide for employers on best practice. We would the opportunity to provide advice and training to the new Council and its members of staff.

2. Conclusion

We welcome the opportunity to share our comments on the Council's draft Equality Scheme, and would welcome further opportunity to discuss these matters in more detail. We look forward to the outcome of this consultation process.

Response: Belfast City Council will build upon the existing good practice and commits to ongoing dialogue with NIACRO.

F. Equality Commission for Northern Ireland

Chapter 1

References to 'shadow' will need to be removed and the 'who we are and what we do' paragraphs updated once the new Council is fully operational and its full range of powers, functions and responsibilities confirmed.

Paragraph 4.31

The Commission recommends that the Council includes specific timescales for when 'other' information on monitoring is reviewed.

Paragraph 6.6

The Commission recommends that the Council includes a specific timescale for monitoring across all functions rather than just 'on an ongoing basis'. This should be at least annually.

Appendix 4 - Timetable for measures proposed

The Commission recommends that the Council includes a measure relating to the publication of monitoring information in its timetable for measures as per paragraphs 4.33 and 4.34 of your equality scheme.

DAP

We understand the Council has a current disability action plan which runs from 2013-2015 and that it is currently liaising with Disability Action to develop meaningful measures for inclusion in a new plan which it will develop in 2015. The Commission will be engaging in this process and providing feedback on a new draft Disability Action Plan when the consultation takes place next year.

Draft Recommended Response:

1. References to 'shadow' will be removed and the 'who we are and what we do' paragraphs updated once the new Council is fully operational and its full range of powers, functions and responsibilities confirmed.
2. The Council has included specific timescales for when 'other' information on monitoring is reviewed in Para 4.31.
3. Paragraph 6.6 The Council included a specific timescale for monitoring across all functions.
4. Appendix 4: The Council included a measure relating to the publication of monitoring information in its timetable for measures as per paragraphs 4.31 and 4.33, of our equality scheme.

Disability Action Plan (DAP)

The Council looks forward to engaging with the Commission on the new DAP action measures next year.