



# SECTION 75

## Keeping it Effective

Reviewing the Effectiveness of  
Section 75  
of the Northern Ireland Act 1998

Equality Commission

FOR NORTHERN IRELAND

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## Foreword

Sometimes the new can quickly become familiar and sometimes, too, we can fail to appreciate the importance of that which has become familiar to us in our daily work. That is as true in respect of legislative provisions as it is in any other respect. And, perhaps, because those of us for whom issues of public policy are part and parcel of the daily round consider and deal with the requirements of Section 75 of the Northern Ireland Act on a constant basis, we may not fully appreciate its significance. That in itself, if true, would be sufficient reason to look closely at this key element in the institutional arrangements of Northern Ireland. An even stronger reason is the ambitious purpose of its introduction in the first instance.

The intention of Section 75 was radically to overhaul the process of policy-making and to create profound change in the administration of government and of public authorities. It was meant to make a difference to public life and to the lives of people. That is the simple reality at its heart and it is well for us to keep it constantly in mind when considering the effectiveness of the legislation.

The Section 75 provision was introduced to ensure that equality of opportunity and good relations were placed at the core of public policy-making. Its intention was, and remains, that every policy action by designated public authorities would, in its development, take account of its impact on equality of opportunity and good relations. To the extent that such impact was thought likely to be adverse, measures should be taken to mitigate that impact or to identify alternative and more effective policies. These simple sentences capture a radical intent designed to provide:

- Better policymaking
- Real consideration for the needs of all the people of Northern Ireland
- A process, not of bureaucratic cumbersomeness, but of openness to learning from the reality of the lived experience of the people
- A willingness to embrace new ways
- A change in how the public life of Northern Ireland is conducted.

Here was a development that was not quite revolutionary but radically different; challenging but not impossible; different but desirable; never intended to be easy but always expected to be effective.

That Section 75 has had an impact is beyond question. What is less clear is whether that impact has been universal, in terms of extending across the entire public service, and consistent, in terms of being applied with equal energy in all cases. What is also unclear is whether the application of Section 75 has had results as positive as might have been expected. What seems certain is that there is unrealised potential for good within the legislation as currently framed.

At its centre is a challenge to everyone involved in public life. That challenge calls on those in whose hands the making and implementation of policy rests to see this legislative device in positive ways:

- To recognise the creative potential of the provision
- To see how it can contribute to more effective policy-making
- To recognise that the relatively modest investment of effort can yield considerable dividends – in policy and practice
- To recognise that Section 75 is not an optional extra but a binding obligation; not a burden but a means to a better end
- To ensure that its implementation is not dependant on individual goodwill but is internalised and embedded in every stage of policy.

The Commission carefully considered, as part of this review, whether the law required to be changed, the duties re-balanced, the categories extended or the structures amended. In the last analysis, it took the view that, for now, the primary requirement is to ensure that the full potential of the provision as it stands be realised through greater commitment, clearer guidance, effective monitoring, regular evaluation and through a shift in equality schemes to highlight the issues that the application of Section 75 in respect of each public authority is intended to address and improve.

At a time of enormous change and of great hope in Northern Ireland no part of its public life or public service can be unaffected by the restoration of devolved government and by the spirit of

shared responsibility that will animate that process. No element of public policy-making should forego the potential that the changed environment will bring to secure improved circumstances for all. Section 75 has an important part to play and it is entirely appropriate, if fortuitous, that this review comes at this time of change. I spoke earlier of challenge and that challenge is there for all; for Government, for public authorities, for the Commission, for the voluntary and community sectors and for individuals. Each has a role to play, a position of leadership to adopt so as to use the law that Parliament has given us to make a real difference to the lives of the people – all the people – of Northern Ireland.

**Bob Collins**  
**Chief Commissioner**  
**May 2007**

## **Executive Summary**

Section 75 was intended to be transformative; to change the practices of government and public authorities so that equality of opportunity and good relations are central to policymaking and implementation. It formalised the role of the public sector in their promotion, and ultimately was aimed at improving lives. In carrying out this strategic review, the Commission assessed the effectiveness of the legislation in terms of its impacts and outcomes on individuals.

Section 75 has been effective in a number of key areas. Over a relatively short period, it has effected substantial change in how policy is made. The result is more informed and evidence-based policy that reflects the needs of individuals, in terms of equality of opportunity and good relations. Effective consultation has been a particular success, giving rise to an inclusive policymaking process.

However, there is less evidence that the legislation has had the intended impacts and outcomes for individuals. A shift in gear now needs to take place within public authorities; away from concentrating primarily on the process of implementing Section 75, towards achieving outcomes. The Commission has made a series of conclusions and recommendations below for change to re-direct energies to the duties to promote equality of opportunity and good relations. It is the Commission's view that the changes proposed should be allowed to have effect before consideration is given to amending this relatively new piece of legislation. It is hoped that this report will encourage debate and inform the strategic direction of Section 75 in the coming years.

### **Action to Achieve Outcomes**

Successfully to meet the objectives or intentions of the legislation, public authorities should consider their individual roles in the promotion of equality of opportunity and good relations. This should be done by authorities taking a systematic approach to examining their functions, and how these relate to the promotion of equality of opportunity and good relations. They should outline actions for the promotion of equality of opportunity and good relations, in the context of their functions and policies. These actions should be based on an analysis of the inequalities that

exist in society, and of the experience of inequality amongst service users.

Future guidance from the Commission will require public authorities to include, within their equality schemes, actions that require a particular focus in that public authority to promote equality of opportunity and good relations; targeting particular areas. There should be read across with Corporate Plans so that promoting equality of opportunity and good relations is central to the business of the organisation. They should be linked to the outcomes that public authorities wish to achieve, with targets set to measure progress in achieving these outcomes.

The priority for public authorities in the coming years is to be able to measure the impact of these actions on individuals. This will enable the Commission more effectively to measure the overall impact of the legislation in the future. The Commission recommends that work is undertaken by government to develop baseline data and indicators to help public authorities to identify and measure outcomes; this would include data to allow comparisons of the potential impact of the legislation across the groups; and would help identify any groups not sufficiently benefiting from the legislation.

## **Equality Schemes**

Equality schemes have been recognised as an effective framework within which public authorities work to meet their obligations. However, changes are required to ensure that schemes reflect the corporate planning cycle with public authorities, and to enhance their flexibility as working documents. Commission guidance will be amended to allow for changes to be made to a scheme within its lifetime. Commission guidance will be amended to permit public authorities to develop equality schemes for a period of three years. The aim is that the timeframe for a scheme coincides with corporate plans and disability action plans. Guidance will also recommend that scheme reviews take place every three years, and no less often than every five, as required by the legislation. The Commission will work with the existing Commissions in Britain, and with the forthcoming Commission for Equality and Human Rights (CEHR), to agree a streamlined approach to reporting progress on equality scheme implementation, to reduce duplication of work, and enhance the effectiveness of progress



reporting for UK public authorities. The Commission will work closely with OFMDFM in the development of guidance on equality schemes to manage the development, implementation and measurement of actions to promote equality of opportunity and good relations to ensure effective crossover between equality schemes, and actions committed to under cross-departmental strategies such as *A Shared Future*.

## **Mainstreaming Equality of Opportunity In Public Policy**

The process of mainstreaming equality of opportunity in public policy should be streamlined. The emphasis should be on prioritising policies to promote equality of opportunity, assessing the impact of policies, engaging in effective consultation, and robust monitoring.

The Commission will make changes to the policy appraisal process to maximise the opportunities provided by Section 75 to promote equality of opportunity and good relations. The Commission's guidance on screening for proposed policies will be amended to make screening a more efficient and effective 'filter' in early identification of equality considerations, thus allowing public authorities quickly to see whether a policy is pertinent for the promotion of equality of opportunity and good relations. The equality impact assessment process should continue to be the primary method of assessing the impact of policies on equality of opportunity and good relations, with public authorities carrying out impact assessment as they develop policies rather than afterwards.

Given the potential impact of 'high level' policies or strategies on equality of opportunity and good relations, visible evidence of screening and EQIA by government departments in this area is required. The Commission will, as a matter of priority, provide targeted and detailed advice across government departments to promote clarity on an approach to high-level impact assessment.

Future improvements to the consultation process must ensure that public authorities seek the views of the public and those directly affected by the policy, rather than focusing wholly on representative organisations. It should also ensure a more effective assessment of the impact of policies, and better reporting of the impact of consultation on policy outcomes, and encourage a

greater emphasis on targeted consultation and a wider range of consultation mechanisms used. Generally, a fresh approach to consultation is required to ensure it achieves its aims; i.e. hearing views on the likely impact of policies.

## **The Commission's Role**

The Commission has a critical role in ensuring the effectiveness of the legislation. This is done through the provision of advice, monitoring and reporting on compliance and by investigating alleged breaches of schemes. The focus of the Commission's advice in the early years was aimed at supporting public authorities in understanding and implementing the new duties. Given the relative familiarity with the duties among public authorities, the Commission's attention will turn to sharing practice and providing accessible advice to the public and others so that they better understand their potential impact on people's lives, and they know of their right of redress where an authority breaches their equality scheme.

Promotion of the duties in the coming years is critical. The Commission considers the promotion of the Section 75 duties as an integral element of its continuum of powers and duties, from advice through to monitoring and enforcement of the duties. On that basis, Commission will consider how best to focus on promotion of the Section 75 duties, with two aims:

- to increase public awareness of Section 75, its benefits and what it should achieve;
- to ensure public authorities identify the inequalities that exist, so as to enable them to introduce policies to promote equality of opportunity

The Commission will review its current procedures to ensure its advice to individuals and organisations is fully accessible. We will, as a matter of priority, work with public authorities to ensure compliance with the duties regarding issues of accessibility.

We will monitor and enforce compliance in a more strategic way by establishing a standard or 'baseline' of compliance. This will provide clarity for public authorities and others on required practice. It will help public authorities to monitor their own compliance while also supporting public authorities to improve practice over time. We will more effectively audit the information

on progress received from public authorities. Our aim will be to ensure compliance and build on practice over time. More strategic monitoring of compliance will aid the Commission to identify potential breaches more effectively, and in a timely manner. The Commission has concluded that work is required to enhance the timeliness of Commission intervention regarding enforcement of the duties. The Commission will consider a range of issues to ensure its interventions are timely and effective.

## **Promoting Good Relations**

The duty to promote good relations among public authorities must be a priority in the coming years. Enhancing implementation of the legislation has the capacity to ensure the interdependence of equality of opportunity and good relations. For now, this approach is preferable to a change in the law.

In the context of the Commission's statutory remit on good relations, the Commission recommends to government that, as part of its consideration of single equality legislation for Northern Ireland, the Commission's duties under Article 42 of the Race Relations (NI) Order 1997 to promote equality of opportunity and good relations between people of different racial groups apply also in respect of other categories. This would reflect the new duties on the CEHR in Britain.

## **The Roles of the Voluntary and Community Sectors**

The roles of the voluntary and community sectors in contributing to the policymaking process and in raising awareness of the legislation are critical. However, work is required to ensure that organisations, particularly at community level, have the capacity to engage with Section 75. To ensure a consistent level of awareness across the sectors, larger voluntary organisations should play a greater role in raising awareness of Section 75 among small voluntary and community organisations. The sectors should also build a more effective approach to co-ordination, to maximise the opportunities presented by Section 75 in terms of influencing public policy outcomes.

The Commission will further consider its role in the promotion of the duties, by working with public authorities and the voluntary and community sectors to ensure sufficient capacity amongst

individuals and organisations who wish to engage with the process.

## **Cultural and Institutional Change**

Enhanced cultural and institutional change is required to enhance the effectiveness of the legislation. The role of departments in driving change is critical; in particular in driving compliance among public authorities which they sponsor. The Commission will specifically monitor the role of government departments in driving compliance with the duties by their associated public authorities.

To ensure commitment to the principle of good relations by leaders across local government, the Commission recommends that training on equality and good relations is placed on a mandatory footing for all elected representatives, and that adherence to the principles of equality of opportunity and good relations is enshrined in Codes of Conduct.

## **The Section 75 Categories**

Public authority are required to promote equality of opportunity and good relations in respect of particular 'categories' or groups. The review considered the potential for change to the legislation to include further groups. While there is a level of support for amendment to Section 75 to include other groups in the future, the general view from contributors to the review is that priority should be given to making the legislation, in its current form, more effective, rather than considering amendments at what is still considered a relatively early stage in the implementation of Section 75. The Commission will consider the extension of the equality of opportunity and good relations categories in the coming period of implementation of the duties.

## **Section 75 and the Private Sector**

The pursuit of public policy in respect of equality of opportunity and good relations no longer concerns only the public service. By extension, the application of Section 75 cannot be confined 'within the walls' of public authorities. The effectiveness of Section 75 depends, not just on how public authorities comply with the duties in direct provision of services, but in how they ensure the private sector, through public procurement, promotes equality of

opportunity. The Commission has concluded that the Section 75 framework is sufficiently robust to ensure that equality of opportunity is at the heart of public sector procurement and is not at this point recommending that a specific obligation on public authorities is required.

## Summary of Conclusions and Recommendations

- The Commission will require public authorities to outline actions in their schemes for the promotion of equality of opportunity and good relations. Actions must be linked to outcomes, and indicators identified with which to measure progress.
- The Commission recommends to government that work is undertaken to develop baseline data and indicators to help public authorities to measure outcomes.
- The Commission will work closely with OFMDFM to manage the development, implementation and measurement of actions on equality of opportunity and good relations to ensure effective cross-over between equality schemes, and cross-departmental strategies including the Gender Strategy and A Shared Future.
- To enhance the effectiveness of schemes, public authorities will be permitted to make changes to a scheme within its lifetime. Furthermore, to ensure greater read-across between equality schemes and Corporate Plans, public authorities will be permitted to develop equality schemes to coincide with Corporate Plans, i.e. every three years.
- With the aim of streamlining policy appraisal, and making it more effective, the Commission is proposing changes to the process. To measure this effectiveness, public authorities will be required to measure the impact of mainstreaming on policy outcomes.
- To reduce duplication of work among UK public authorities, the Commission will work with the existing Commissions in Britain, and with the forthcoming Commission for Equality and Human Rights, to agree a streamlined approach to progress reporting.
- The Commission will, as a matter of priority, provide targeted and detailed advice to government departments, and monitor ongoing practice, to ensure effectiveness in how they assess the impact of 'high level' policies.

- The Commission will review its current procedures to ensure its advice to individuals and organisations is fully accessible
- Given the relative familiarity among public authorities with the duties, the Commission will focus on sharing practice among public authorities, and ensuring a greater familiarity with the duties among the public and among organisations.
- The Commission will adopt a strategic approach to monitoring and enforcing compliance. This will include the establishment of a baseline or 'standard' of compliance, against which public authority progress will be measured. Public authorities will be required to report progress on outcomes, and the Commission will carry out detailed appraisal of progress among a sample of public authorities on an annual basis.
- The Commission has concluded that work is required to enhance the timeliness of Commission intervention regarding enforcement of the duties. The Commission will consider a range of approaches to ensure its interventions are timely and effective.
- In the context of the Commission's statutory remit on good relations, the Commission recommends to government that, as part of its consideration of single equality legislation for Northern Ireland, the Commission's duties under Article 42 of the Race Relations (NI) Order 1997 to promote good relations between people of different racial groups apply to other grounds.
- The Commission recommends that training on equality of opportunity and good relations is placed on a mandatory footing for all elected representatives, and that adherence to the principles of equality of opportunity and good relations are enshrined in Codes of Conduct.
- The Commission will work with public authorities and the voluntary and community sectors to ensure sufficient capacity amongst individuals and organisations who wish to engage with the policymaking process.

- The Commission will monitor leadership practice within public authorities in driving compliance with the duties. The Commission will specifically monitor the role of government departments in driving compliance with the duties by their associated public authorities.
- The Commission will consider how best to focus on promotion of the Section 75 duties, with two aims:
  - to increase public awareness of Section 75 its benefits and what it should achieve;
  - to ensure that public authorities identify the inequalities which exist, so as to enable them to introduce policies to promote equality of opportunity
- The Commission will consider the extension of the equality of opportunity and good relations categories in the coming period of implementation of the duties.
- The Commission considers the Section 75 framework is sufficiently robust to ensure that equality of opportunity is at the heart of public sector procurement, and is not at this point recommending that a specific obligation on public authorities is required.
- The Commission will monitor the impact of the proposed changes as part of its duty to review the effectiveness of the legislation. This will inform any future consideration of changes to the legislation.



## Introduction

Section 75 of the Northern Ireland Act 1998 has placed a duty on the Equality Commission for Northern Ireland to ‘keep under review the effectiveness of the duties imposed’<sup>1</sup>. The Commission launched its first strategic review of the effectiveness of Section 75 in 2006. Under the terms of reference for the review (contained in Annex One), the Commission assessed the effectiveness of the legislation in terms of the impacts it has had on individuals, and on the outcomes achieved.

Section 75 has also placed a duty on public authorities to have due regard to the need to promote equality of opportunity on nine grounds and regard to the desirability of promoting good relations on three grounds<sup>2</sup>. All designated public authorities are required to produce equality schemes, setting out arrangements for assessing and consulting on the likely impact of their policies, and to monitor policies for the adverse impact. Over 270 public authorities are currently designated under Section 75 and are subject to the duties.

The Commission’s review of effectiveness of the legislation is timely, as it follows a self assessment by public authorities of progress in implementing the duties, five years after approval of their equality schemes. The review reports submitted by authorities to the Commission provided a wealth of information on progress and confirm the many positive effects that implementation of Section 75 has had since its commencement. It is the Commission’s view that Section 75 has effected substantial cultural change within the public sector, in a way that has brought equality of opportunity centre stage in the development of public policy. Public authorities recognise their role in the promotion of equality of opportunity and good relations and give much greater consideration to the impact of their policies on equality of opportunity and good relations. Section 75 has resulted in a new, more informed and more evidence based approach to policymaking and has led to a much more inclusive approach to policymaking whereby public authorities see the benefit of working with organisations and individuals in assessing the impact of their policies on equality of opportunity and good relations.

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

<sup>2</sup> Northern Ireland Act 1998, Section 75 (1)

However, this review was not intended to be an analysis of compliance with the legislation. A previous review of Section 75 considered ‘the operational arrangements which are in place for implementing the duty, particularly monitoring and enforcement mechanisms’<sup>3</sup>. The independent element of that review, carried out by Eithne McLaughlin and Neil Faris, considered issues emerging from implementation of the duties and provided a significant insight into factors affecting implementation, including compliance by public authorities. The review found a need for integration of the equality duty with policy formulation, for enhanced performance by public authorities and better methods of sharing practice, improved consultation and monitoring by public authorities, and better communication of Section 75 to enhance its profile. It recommended particular matters to be discussed in this review of effectiveness. The terms of reference for this review, and the conclusions and recommendations that have arisen, are informed by the outcomes of the Operational Review.

While the Operational Review was a retrospective examination of implementation, in this review of the effectiveness of Section 75 the Commission makes a forward-looking assessment of the legislation, based on its impacts and outcomes, aimed at setting out a strategic direction for the coming years. It is the first systematic review of the effectiveness of Section 75 by the Commission since commencement of the duties and many lessons have been learned for future implementation of the legislation.

There have been a number of stages to the review. The first stage focused on information gathering and research, including commissioning six independent research reports<sup>4</sup> and analysis of public authority five year equality scheme reviews and annual progress reports. The second stage involved engagement with key actors in the implementation of Section 75; public authorities, including the Northern Ireland Civil Service, the voluntary and community sectors, members of the public and Commission staff.

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<sup>3</sup> *The Section 75 Equality Duty- Operational Review: Terms of Reference for the Independent Element of the Review*, April 2004

<sup>4</sup> An audit of compliance; an assessment of the Commission’s powers; an assessment of the impact and outcomes of S75 on individuals; an assessment of the impact and outcomes of S75 on public policy; an assessment of the role of OFMDFM/NIO in ensuring effectiveness; and an assessment of the role of the voluntary and community sector in ensuring effectiveness.

The third stage comprised consideration of review outcomes and publication of this report.

Conducting an inclusive review was essential to ensure that review outcomes accurately reflect the impact of Section 75 and provide strategic direction for implementation of the legislation in the coming years. To that end, the Commission published regular updates on the review on its website and required that researchers contracted as part of the review engaged with members of the public and interested organisations throughout. The Commission hosted a series of engagement sessions in early 2007 attended by over 160 individuals and organisations with an interest in Section 75<sup>5</sup>. The Commission wishes to thank the many individuals and organisations that contributed to the review by meeting with researchers or volunteering their views.

The review highlighted a number of key issues that merit presentation below. These issues are treated in more detail throughout this report.

- The effectiveness of Section 75 is dependent on its impact on the people it was designed to affect. The legislation was introduced to effect positive change in people's lives; to transform the practices of government, to reduce and ultimately remove inequalities and to promote equality of opportunity and good relations. The priority for the future direction of Section 75 is to ensure that the legislation brings benefits in the policies that affect people and the public services they need and use.
- To that end, effective mechanisms are required that will lead to a better public understanding of the intended impacts and outcomes of Section 75 and of the fact that the duties were intended to create a positive approach to the achievement of equality of opportunity.
- However, to make the legislation relevant, and to bring about tangible benefits, the legislation must produce actual, as well as perceived, impacts and outcomes. In carrying out the review, the Commission encountered challenges associated with measuring the impacts of a

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<sup>5</sup> The engagement sessions were hosted jointly with Ballymena Local Strategy Partnership, The Place Initiative in Portadown, Newry Confederation of Community Groups and the North West Community Network in Derry.

progressive and ambitious piece of legislation. Nonetheless, a framework is required to achieve and measure impacts and outcomes arising from the legislation. Six years into implementation, public policy does not sufficiently tackle the persistent inequalities that exist within society. The reduction or removal of these inequalities should be a central goal of public policy.

- Equality of opportunity and good relations must be mainstreamed in the implementation, as well as the development, of public policy. While accessibility policies exist within a number of public authorities, materials published across the public sector often are not sufficiently accessible for disabled people, those with learning difficulties and children and young people.
- Further work is required to ensure that the aims and objectives of screening and EQIA as a form of policy appraisal are fully understood and complied with and steps should be taken to ensure the process is open, streamlined and meets its objectives.
- Good relations work appears to have featured to a lesser extent in the public authorities' Section 75 activities than that of equality of opportunity. Public authority staff accepted a lack of knowledge among policy makers of good relations as a concept and of the duty itself. This may be attributable to the greater focus given to equality of opportunity in the early years of implementation of Section 75; or to the provisions in the legislation that only apply the good relations duty in relation to racial group, political opinion or religious belief, which has led to a perception that good relations is about 'conflict resolution'.
- Organisations across the voluntary and community sectors engage with Section 75 in different ways; in some instances, organisations work directly with public authorities to promote equality of opportunity and good relations in the practical implementation of policies, rather than contributing to the policymaking process. Levels of capacity, skills and resources remain as factors affecting engagement by an organisation.
- The initial focus by the Commission to overseeing implementation by focusing on the provision of advice and on 'getting the process right' was the correct one; however, given the relative familiarity with the duties amongst public authorities, attention must now be turned

to a more strategic approach to monitoring, ensuring compliance and use of the Commission's enforcement powers.

- Government departments continue to report challenges in assessing the equality implications of so-called 'high level policies'; the Commission's analysis of Five Year Scheme Reviews showed particularly poor practice in this area.
- In a strategic sense, Section 75 relates to the operation of the overall system of governance in Northern Ireland<sup>6</sup> and, in that sense, should be transformative. The institutional and cultural change brought about by Section 75 is impressive; however, the effectiveness of the legislation is dependent on this change being sustained over time.

This report sets out conclusions reached by the Commission on a range of issues; informed by all the views heard throughout the process. The Commission has further drawn on other documents to support its analysis; a recent paper commissioned examining the challenges and opportunities for embedding good relations in local government<sup>7</sup>, and the reports contributing to the independent element of the 2004 Operational Review of Section 75<sup>8</sup>. In a number of areas the report makes conclusions regarding changes to the Commission's approach to overseeing Section 75; in other areas it recommends changes to the interpretation or implementation of the duties by public authorities; in some cases it highlights findings of the need for changing practice within the voluntary and community sectors; and finally, it makes recommendations to government to enhance the effectiveness of Section 75. The report presents the Commission's view of the intended impact of the legislation which, it is hoped, will encourage debate and inform the future direction of Section 75.

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<sup>6</sup> Chaney, P. and Rees, T. *The Northern Ireland Section 75 Equality Duty: An International Perspective*, 2004

<sup>7</sup> *Embedding Good Relations in Local Government*, Good Relations Associates, 2006

<sup>8</sup> McLaughlin, E. and Faris, N. *The Section 75 Equality Duty- An Operational Review*, 2004

## **Chapter 1 Section 75: What is it meant to achieve?**

Throughout the review, the Commission found overwhelming support for the principles of Section 75. Expectations of the achievements of Section 75 remain high; however, contributors to the review called for a debate on what Section 75 is actually meant to achieve, so that the intended impact of Section 75 does not become so broad as to be meaningless. This section sets out the Commission's vision for the achievements of Section 75, and concludes that more energy must be focused on setting and measuring these achievements over time.

### **1.1 An Active Anticipatory Duty**

As with the establishment of the Commission itself, the introduction of Section 75 and its related provisions in the 1998 Act represent a statement of shared commitment by the Government and those involved in the Good Friday Agreement to the centrality of equality considerations in the institutional arrangements of Northern Ireland. Section 75 underlines the role of the equality dimension in the discharge of their duties by every designated public authority, while inextricably linked to the related importance of good relations.

The focus on equality of opportunity is an important recognition of the fact that for very many people, barriers exist that prevents them from realising their full potential. Their capacity to avail of the opportunities for a full life is diminished thereby. The innovative dimension of Section 75 is that it proposes an active anticipatory duty to address these inequalities and in their place promote a broadly based equality of opportunity. Opportunity and outcomes are not disconnected even if access to equal opportunity cannot guarantee equal outcomes. There are many other considerations at work that have an influence in this respect.

We know, however, that inequalities continue to exist in society and that they are often accompanied by or are reflections of persistent and stubborn inequalities in opportunity – not all of which are covered by the legislation. The comprehensive and faithful implementation of the intentions and requirements of Section 75 will do much to enhance the capacity of all who live in Northern Ireland more fully to enjoy what society offers. It will also

recognise that securing equality of opportunity is not simply a process of treating everyone as identical but of reflecting the underlying truth that different needs require different responses.

This is the context of the equality focus in the work of the Commission on Section 75 and is the background to the thrust in this document of the role of the Commission and of all public authorities in confronting inequalities in our society. It is also the fundamental building block on which good relations can be effectively and securely established.

## 1.2 An Innovative Approach to Mainstreaming

The promotion of equality of opportunity and good relations and the application of mainstreaming approaches are not new; as Theresa Rees put it, 'in a number of key regards', Section 75 'is typical of the existing equality practices presently to be found around the globe'<sup>9</sup>. Discussions on the 'perceived limitations of statutory anti-discrimination law' in Britain have led to the development of 'an alternative approach to equality based on a proactive model'<sup>10</sup>. A race duty was introduced in 2001 and a similar duty with regard to disability in 2006. A positive duty on gender commenced in April 2007. The Discrimination Law Review is currently giving consideration to the introduction of a 'generic' positive duty in Britain as part of a future Single Equality Act. Canada has adopted a positive approach to the promotion of equality, with a particular focus on gender. Gender mainstreaming has, since 1994, also been embedded in the development of policies at national, regional and local levels in Sweden, with other forms of mainstreaming developed in Norway and the Netherlands.

However, approaches to the promotion of equality of opportunity and to equality mainstreaming have been developed 'unevenly'<sup>11</sup> across Europe and further afield. There has been recognition internationally of the need for positive approaches to equality that go beyond the principle of anti-discrimination and this has resulted in the introduction of a range of legislative or policy instruments to that end. Some countries have favoured mainstreaming models

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<sup>9</sup> Chaney, P and Rees, T. *The Northern Ireland Section 75 Equality Duty: An International Perspective*, 2004

<sup>10</sup> Fredman, S. and Spencer, S. *Submission to the Cabinet Office Equality Review and to the Discrimination Law Review*, June 2006

<sup>11</sup> *Equality Mainstreaming: A Perspective from the Equality Bodies*, Equinet European Network of Equality Bodies, 2006

that focus on single strands, in particular gender; some give a central role to policy appraisal; others (albeit very few) require a level of participation by civic society in the development of policies, or a focus on the promotion of good relations. The positive equality duties in Northern Ireland contain a combination of existing and innovative equality practices and, as Rees predicts, 'Section 75 may yet prove to be a model that should be adopted widely amongst the international community'.

### 1.3 The intended impacts of the legislation

Clearly there is a need for a greater focus on Section 75's potential achievements. By better appreciating what Section 75 set out to do, outcomes that would achieve those intentions can be identified. According to the Commission's *Guidance for Implementation of Section 75*, 'the promotion of equality of opportunity entails more than the elimination of discrimination. It requires proactive measures to be taken to secure equality of opportunity'. The duties recognise and formalise the role of the public sector in promoting equality of opportunity and good relations; the effectiveness of the legislation should be measured in these terms.

The fact that the Section 75 duties on public authorities are to promote equality of opportunity and good relations, rather than purely to assess the impact of policies, indicates that the legislation is intended to be more than a framework for policy appraisal. The inclusion of a requirement to assess and mitigate adverse impacts implies that the legislation is intended to be more progressive than simply requiring equal treatment for all. The legislation is intended to be transformative; fundamentally to change 'social practices'<sup>12</sup> - specifically the practices of government, including the removal of barriers to inequality and the prevention of new barriers - in order to achieve equality of opportunity and good relations for all.

Successfully to meet the objectives or intentions of the legislation, public authorities must consider their individual role in the promotion of equality of opportunity and good relations. This should be done by authorities taking a systematic approach to

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<sup>12</sup> Zappone, K. *Charting the Equality Agenda: A Coherent Framework for Equality Strategies in Ireland, North and South*, 2001



examining their functions and how these relate to the promotion of equality of opportunity and good relations. They should develop a conscious understanding of the persistent inequalities that exist in society and of the experience of inequality amongst the community to whom they provide a service. Then they should introduce a proactive strategy for the promotion of equality of opportunity and good relations in the context of their functions and policies through the removal of these inequalities and the prevention of additional inequalities. Clearly, such an approach should result in substantive outcomes which should be identified and measured over time.

A strategy for setting outcomes and measuring their achievement is discussed in a later section.

## **Chapter 2 What have the impacts of Section 75 been?**

In undertaking the review, the Commission sought an understanding of the impacts of the legislation to date. Through a range of means, including research and public engagement, the Commission gained an appreciation of the impact of Section 75 on public policy and the impact on individuals across the equality of opportunity and good relations categories.

There are a number of points worth considering at the outset. Firstly, establishing the impact of Section 75 presented a challenge given that baseline data on the equality of opportunity and good relations categories were not collected in 2000, thereby making retrospective assessment difficult. Secondly, the approach taken by the Commission in monitoring compliance has mainly required public authorities to report on progress in terms of the systems, structures and procedures they have initiated, rather than on impacts in terms of equality of opportunity and good relations. This also made it difficult to assess impact and the Commission has reached a number of conclusions in this report regarding changes it intends to make to ensure that the focus in the coming years is on achieving and measuring outcomes in particular areas. Thirdly, challenges exist in measuring the impact of the legislation given that the outcomes may not simply be attributable to Section 75, but to other policies or statutory measures in the areas of equality or social policy. Finally, arriving at a conclusion regarding the overall impact of Section 75 should be placed in context of the relative youth of the legislation; following just six years of implementation, the review must be realistic regarding what Section 75 should have achieved thus far.

Overall, Section 75 has had a considerable positive impact on how public policy is developed; however, the impact on the lives of individuals in terms of the implementation of these policy outcomes is less certain.

### **2.1 Impacts on Policy**

Research on the impacts of Section 75 on public policy (Bridge, 2007) found that despite occasional lack of clarity about what represents a policy, Section 75 has had a clear and very positive impact on policy development. Interviewees reported an increase in the number of policy makers within public authorities 'taking

ownership' of Section 75 responsibilities. As well as better policy development, the research identified other benefits of Section 75; better external engagement by public authorities on the issue of equality of opportunity, giving credibility and transparency to decisions and the benefit of increased participation by civic society in the policymaking process. The research concluded that the processes associated with Section 75 had resulted in policymaking taking place in a more inclusive and consultative, but potentially less creative, way. The researcher pointed to a perception among policy makers that Section 75 is about following a process; 'there is more fear of getting it wrong and less scope for individual flair'. However, equality impact assessments are just one form of impact assessment required as part of 'tighter control' of the policymaking process; so it may be that criticism is being unfairly levelled at Section 75 and not more broadly at attempts to proof policies for their impact, e.g. rural proofing, poverty proofing, etc. Nonetheless, this report contains recommendations aimed at increasing awareness of equality issues among policy makers, and streamlining the process of policy appraisal with a view to better embedding equality of opportunity and good relations into public policy development and implementation.

Section 75 has ensured that policies have, for the first time, been assessed for their impact on carers. Benefits to carers have been reported to the Commission as part of the review.

Despite some positive impacts outlined above, the Commission has also found a number of areas where improvement is required. Analysis of public authority five year scheme reviews, along with the findings of more than one piece of commissioned research showed continued poor practice among government departments in assessing the impact of so called 'high level' policies on equality of opportunity. These policies or strategies often lead to the development of multiple policies across departments and can have a significant impact on equality of opportunity and good relations. Some departments struggle to conclude an overall or 'aggregate' impact of a 'high level' policy alongside the development of subsidiary policies.

The effects of mainstreaming of equality of opportunity and good relations appear to stop at the policy development stage and are failing to 'trickle through' to implementation. Good compliance with the duties has not entirely led to good effect; in a number of

instances, good practice has been followed in how decisions are made but not in how they are followed through.

## 2.2 Impacts on Individuals

The research on the impact of Section 75 on individuals (Reeves Associates, 2007) found that the impacts and outcomes on individuals has been 'positive although partial'. In general, the Commission has concluded:

- Individuals of different religious beliefs will have benefited from the steps taken by public authorities to better understand their needs in terms of service delivery; for example, through increasing accessibility in the delivery of services to take into account times of worship. There are examples of recruitment and selection policies being amended to mitigate an adverse impact for individuals of different religions.
- Those of different political opinions have benefited from work within public authorities to promote good relations. Considerable data are available to public authorities in assessing impacts on religious belief and political opinion as a result of requirements on public authorities through fair employment legislation.
- When considering men and women as a category, current available data belies the multiple discrimination often experienced by women and this has had an impact on policy outcomes. A lack of research and literature on the experiences of disabled women exists in Northern Ireland (though the Commission has undertaken a research project in this area), particularly with regard to the barriers that prevent access to health and social services; this has had a particular impact on the policies being developed by public authorities. Section 75 has tended to raise the debate about issues facing men which did not have a profile before.
- In terms of racial group, the researchers found that Section 75 has improved the accessibility of services in sectors such as health. They also found some evidence that targeted consultation has enabled individuals and user groups from minority ethnic communities to engage in policy development.

- In relation to age, the researchers found that Section 75 specifically drew attention to the inequality experienced by young people accessing services and, in general, helped raise awareness of age as an equality issue.
- Marital status was identified as a category that is often 'ignored completely'; implementation of Section 75 has 'failed to highlight the current issues concerning marital status as a source of unfair treatment and discrimination'.
- The researchers found that inequality and discrimination related to of sexual orientation are better understood, thus creating opportunities for the issues to be addressed.
- With regard to disability, the researchers found evidence that Section 75 has encouraged public authorities to anticipate the needs of disabled people and involve service users. In particular it has been 'instrumental' in enabling some public authorities to put in place a system which should lead to an increase in the recruitment of disabled people.
- In terms of people with dependents, as with sexual orientation, Section 75 raised the profile of this category as one which has experienced disadvantage. The researchers were unable however, to determine the extent to which improvements in this area were as a result of Section 75 or other initiative. They did find that representative groups reported a significant increase in involvement in the policymaking process; with positive policy outcomes.

The above is a general assessment of the impact of Section 75 on the categories within the legislation, but not a comprehensive appraisal. The priority in the coming years is for public authorities to ensure that targets for impacts and outcomes across the grounds are set and measured over time. On that basis, future assessments should be more effective in determining impacts.

Section 75 was described by contributors to the review as 'revolutionary', 'progressive', 'unique' and reference was made to the very high expectations in 2000 of what the legislation could achieve. Some contributors argued that it was unreasonable to be overly critical of the legislation, just seven years in, given its high aspirations and the breadth of its intended impact. Nevertheless, there was a general acceptance that Section 75 has led to a positive debate on equality of opportunity; that Section 75 has

heightened its profile. This is qualified by the previous point that while there is more debate on the issue, more work is required to identify the expected achievements of Section 75.

### 2.3 Measuring Impacts and Outcomes

In carrying out the review, the Commission encountered the challenges associated with measuring the impacts of a progressive and ambitious piece of legislation. Impacts and outcomes can be determined by a range of factors, from effective compliance with the duties, to broader social and economic conditions and changes to public administration. Nonetheless, a framework is required to measure impacts and outcomes arising from the legislation. The Commission recommends that work is undertaken by government to develop baseline data and indicators to help public authorities to measure outcomes. This would include data to allow comparisons of the potential impact of the legislation across the grounds; and would help identify any groups not sufficiently benefiting from the legislation.

### ***Conclusions and Recommendations***

- *Successfully to meet the objectives or intentions of the legislation, public authorities should consider their individual roles in the promotion of equality of opportunity and good relations. This should be done by authorities taking a systematic approach to examining their functions, and how these relate to the promotion of equality of opportunity and good relations. They should outline actions for the promotion of equality of opportunity and good relations, in the context of their functions and policies. These actions should be based on an analysis of the inequalities that exist in society, and of the experience of inequality amongst service users.*
- *The Commission recommends that work is undertaken by government to develop baseline data and indicators to help public authorities to identify and measure outcomes; this would include data to allow comparisons of the potential impact of the legislation across the grounds; and would help identify any grounds not sufficiently benefiting from the legislation.*

### **Chapter 3 Identifying actions and measuring outcomes**

As discussed in detail above, the review has highlighted the need for greater focus on setting and measuring the achievements of Section 75 in terms of outcomes for individuals. This issue is particularly pertinent to the relationship between the Section 75 duties to promote equality of opportunity and to promote good relations and the provisions of Schedule 9 which set out arrangements for enforcing the duties.

The Audit of Compliance (Reeves, 2007) was helpful in providing an insight into how public authorities approached implementation of the duties. It found that public authorities ‘put more emphasis’ on identifying and mitigating adverse impacts than on the duties to promote equality of opportunity and good relations. In other words, greater energies have been focused on developing and implementing equality schemes and on assessing the impact of policies than on the promotion of equality of opportunity and good relations and the achievement of outcomes.

This may be for a number of reasons. Dickson and Harvey (2006), for example, are of the view that a ‘disparity’ exists ‘within the legislation itself’; ‘the specific terms used in paragraph 9 differ from, and appear to be considerably weaker than the terms used in Section 75(1)’. They argue that it is not necessarily the case that where a public authority meets its obligations under Schedule 9 it will thereby be able to show that it has met the requirements of 75(1). However, the researchers do not argue that this has had a significant impact on implementation of the legislation; perhaps because it is too early in the life of the legislation to tell.

The Commission has concluded that a disproportionate emphasis by public authorities on Schedule 9 is due to interpretation of the legislation, rather than any disparities within the legislation itself. In its analysis of equality scheme review reports, the Commission also found evidence of a ‘risk averse’ approach to Section 75 within some public authorities; focusing on removing adverse impacts, but not going so far as promoting equality of opportunity. Many public authorities have focused their energies on adhering to the Commission’s guidance, rather than to the duties. The priority for future implementation is for public authorities to shift their attention to the duties. The aim is make best use of the provisions of Schedule 9 in order to meet the Section 75 duties. The central

objective is the promotion of equality of opportunity and good relations. Implementation of the legislation in the coming years will require tangible, measurable actions by public authorities towards the promotion of equality of opportunity and good relations.

Public authorities will be required to identify the inequalities that exist for the nine categories, and consider how, in exercising their functions, these inequalities could be reduced or removed and how equality of opportunity could be promoted. Each public authority will be required to outline specific actions, within its equality scheme, for the promotion of equality of opportunity and good relations. Such an approach was advocated by a range of contributors to the review, from public authorities to individuals and organisations with an interest in the duties, who agreed that the current focus on policy appraisal was failing to achieve the promotion of equality of opportunity and good relations.

The following sections set out in more detail how an emphasis on the equality of opportunity and good relations duties would work in practice. Suffice it to say at this point that the Commission considers such an approach, based on changes to the Commission's guidance, and to practice, would better reflect the direction of the legislation. The effectiveness of this approach will be monitored over time.

### 3.1 Equality Schemes as a Framework

The development of equality schemes has provided authorities with a useful framework for ensuring that equality of opportunity and good relations are central to the business of the organisation, and to public policymaking and, ultimately, to ensuring that the authority promotes equality of opportunity and good relations.

However, the Commission identified issues regarding the flexibility of schemes. While the Commission's original guidance in this area was credited with ensuring a consistent approach to scheme development, there is a view among public authorities that schemes are inflexible in their current form and that future guidance should allow for minor changes to be made to schemes (e.g. to reflect structural changes within organisations) without requiring the Commission's approval.



Similarly, there remain practical difficulties in requiring schemes to be developed to cover a five year period. Almost all public authorities develop corporate plans to cover a three year cycle and schemes should reflect a similar timescale; attempting to plan for a five year period is viewed by public authorities as impracticable. In addition, public authorities maintained that they would benefit from more regular scheme reviews, perhaps every three years.

The legislation provides some direction in this area; each public authority must produce an equality scheme, and this scheme should be reviewed before the end of a period of five years. However, the legislation does not expressly state that schemes must last for five years. The Commission has concluded that equality schemes would be more effective if they were to operate in parallel with the corporate planning cycle of each public authority, i.e. every three years. The Commission will amend its guidance to permit public authorities to produce schemes that will operate for a period of at least three years, but no more than five. Public authorities will then be required to review a scheme at the end of its lifetime, or at least every five years.

### 3.2 Actions for the achievement of outcomes

Various pieces of research commissioned as part of the review made recommendations with regard to outcomes; the Audit of Compliance recommended that 'the next round of equality schemes could usefully be more outcomes oriented'. Dickson and Harvey (2006) make reference to an article by Sandra Fredman who describes the issue aptly, 'Positive duties are proactive rather than reactive. The aim is to introduce equality measures rather than responding to complaints by individual victims and to harness the energies of ... public bodies to do so...thus equality can only be meaningfully advanced if practices and structures are altered proactively by those in a position to bring about real change'<sup>13</sup>.

The Commission will provide advice to public authorities on setting out actions for the achievement of the promotion of equality of opportunity and good relations. These actions should be:

- relevant to the functions of the public authority

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<sup>13</sup> Fredman, S. *Discrimination Law (2002, OUP) p.176*, in Dickson, H and Harvey, C. *An assessment of the role of the Equality Commission in the Effectiveness of Section 75 of the Northern Ireland Act 1998*, 2006

- developed on the basis of an analysis of the persistent inequalities that exist for service users or those affected by policies
- linked to achievable outcomes
- realistic and timely
- measurable

For example, a housing provider should carry out an assessment of the inequalities which currently exist for service users and those affected by their policies. This may conclude, for example, that young men require specific actions to be taken to ensure equality of access to housing. On that basis, the authority should consider what it should do, on the basis of its functions, to reduce inequalities for this group, and promote equality of opportunity. This could include the development of support services to provide targeted advice to this group to prevent homelessness, and to improve advice services to be provided when homelessness occurs. These actions should be set out in the authority's equality scheme, with a timeframe set for their achievement. The authority should monitor progress over time.

The Commission is clear that public authorities should develop actions as part of the corporate planning process. Furthermore, these actions should complement those arising from the recent positive duties in respect of disability. The government's policy and strategic framework for good relations, *A Shared Future*, identifies a number of policy objectives and priority areas for action within government departments through the development of 'Triennial Action Plans'. The actions of departments and other public authorities in meeting *A Shared Future* commitments, or high-level strategies such as the Gender Strategy, should be reflected in their equality schemes. Commission guidance will provide advice on how to manage read across between high-level strategies, disability action plans, and actions to promote equality of opportunity and good relations.

### 3.3 Designation of Public Authorities

A public authority is subject to Section 75 by virtue of its inclusion in one of several statutory provisions; Schedule 2 to the Parliamentary Commissioner Act 1967, Schedule 2 to the Commissioner for Complaints (NI) Order 1996, Schedule 2 to the

Ombudsman (NI) Order 1996, or where designated for the purposes of Section 75 by order made by the Secretary of State.

Research by Trotman (2007) examined the role of the Northern Ireland Office (NIO) in making public authorities subject to Section 75, as well as the role of the Commission in this process. In examining the role of the Commission, Dickson and Harvey (2006) were 'impressed' with efforts made by the Commission to persuade the Secretary of State to designate public authorities for the purpose of Section 75. However, Trotman found a perceived lack of clarity among the voluntary and community sectors regarding the role of the Commission in the process of designating public authorities. The Commission is clear that its sole role is to provide advice to the Secretary of State regarding potential or future designations; the power to designate rests with the Secretary of State.

The Trotman research further suggests a tension between the role of the Secretary of State in designating public authorities and the Commission in exempting public authorities from the duty to produce an equality scheme. The Commission does not agree. In accordance with its guidance, the Commission has interpreted this power as one which will only be used in exceptional circumstances; 'exemptions being granted by the Commission either to a body entirely, or to particular functions of a body, will continue to be rare'. Moreover, an exemption would only relieve a body of the duty to produce a scheme, not the duty to promote equality of opportunity and good relations. The Commission is clear that the power to exempt a public authority from the duty to produce a scheme is entirely separate from the Secretary of State's power to designate a public authority.

### ***Conclusions and Recommendations***

- *Future guidance from the Commission will require public authorities to include, within their equality schemes, actions that require a particular focus in that public authority to promote equality of opportunity and good relations; targeting particular areas. There should be read across with Corporate Plans so that promoting equality of opportunity and good relations is central to the business of the organisation. They should be linked to the outcomes that*

*public authorities wish to achieve, with targets set to measure progress in achieving these outcomes.*

- *The Commission will provide advice to public authorities on setting out actions for the achievement of the promotion of equality of opportunity and good relations. These actions should be:*
  - *relevant to the functions of the public authority*
  - *developed on the basis of an analysis of the inequalities that exist for service users or those affected by policies*
  - *linked to achievable outcomes*
  - *realistic and timely*
  - *measurable*
  
- *Commission guidance will be amended to allow changes to be made to a scheme within its lifetime.*
  
- *Commission guidance will be amended to permit public authorities to develop equality schemes for a period of three years. The aim is that the timeframe for a scheme coincides with corporate plans and disability action plans. Guidance will also recommend that scheme reviews take place every three year, and, to meet the needs of the legislation, no less often than every five.*

## **Chapter 4 Mainstreaming equality of opportunity in public policy**

Section 75 makes equality of opportunity central to public policy decision making. It must be an essential consideration in policy development, implementation, monitoring and review. This section considers the effectiveness of the legislation in that respect.

### **4.1 Policy appraisal**

Section 75 has transformed the policymaking process, making it more inclusive, more evidence based and, as a result, more informed. Despite this, however, public authorities are generally poor at demonstrating policy outcomes arising from the mainstreaming process. This could be due to a poor level of compliance among some public authorities, i.e. that equality of opportunity is not being sufficiently mainstreamed; the independent Audit of Compliance (Reeves, 2007) provided evidence of poor compliance in this area. It may also be due to the approach to annual reporting by the Commission which was criticised in the research by Bridge (2007) into the impact of Section 75 on public policy. The Commission has not systematically required public authorities to report on policy outcomes so the lack of evidence here may be because public authorities were not required to collect such information. Some public authorities further claim that evidence of impacts is impossible if equality of opportunity is properly embedded in the process of policy development. This is at odds with the findings of the Audit of Compliance (Reeves, 2007) which found very few examples of equality of opportunity being so well mainstreamed as to be 'immeasurable'. The reasons are likely to be a mix of all of the above factors; the recommendations below aim to change practice in each of these areas.

The Audit of Compliance (Reeves, 2007) found that 45% of the public authorities in the sample were assessed at below the minimum level of compliance in relation to screening and equality impact assessment (EQIA). There are a number of reasons for poor compliance in this area.

- The audit found 'a lack of sufficient understanding of the equality of opportunity and good relations considerations for

the specific policy area(s)'. The researchers put it bluntly; 'the audit did not provide sufficient evidence to show that all staff in public authorities really understood what screening was trying to do, and recommended a fresh approach to screening, including training for public authorities following the effectiveness review'. This was confirmed in the Commission's analysis of five year scheme reviews, which found a view within some public authorities that the screening and EQIA process requires everyone to be treated the same, disregarding existing inequalities.

- The Audit of Compliance found that much more work needs to be done by public authorities, and by the Commission, to focus attention on the needs (in terms of equality of opportunity) of those affected by policy. Public authorities must 'understand the specific needs of different equality groups in relation to the service being provided; how the needs impact on and relate to inequality between groups; what policies need to be addressed to make the most significant impact...By starting with needs of different groups, policy development can focus on how these needs can be met in the most appropriate way'.
- Research on the impact of Section 75 on public policy (Bridge, 2007) found that the approach to policy development under Direct Rule appears to be undermining the mainstreaming process within some departments; whereby insufficient time is allowed for the process of screening and EQIA and relevant consultation periods. The review further highlighted poor compliance within government departments in screening so called 'high level' policies. The research found a number of occasions where there was a lack of visible commitment to the screening process; further guidance may be required from the Commission in this area. In general, government departments place more emphasis on identifying adverse impacts than seeking out opportunities to promote equality of opportunity.
- Public authorities rightly make a distinction between existing and proposed policies in their approach to screening. However it has become apparent that the Commission's guidance may be deficient in this area. The guidance treats existing and new policies together within the same section of the guide, in the context of the production of an equality scheme, i.e. identifying all policies,

written and unwritten, and internally appraising (according to four criteria) the significance of equality of opportunity and good relations for each policy. This may have been unhelpful and may not sufficiently reflect the different steps to be taken in developing a new policy.

- Poor compliance may be due to the perceived or actual complexity of the screening and EQIA process. The Audit of Compliance found that ‘the impetus to consult informally at screening resulted from a desire...to use screening more and more to get the policy right so that it did not need to go to EQIA’. Such an approach suggests that policy makers see the benefits of considering the equality implications of their policies but are reticent about going through the EQIA process.

## 4.2 Screening

The screening process is fundamental to appraising the impact of policies. By screening, policy makers identify whether a policy is pertinent for the promotion of equality of opportunity. However, the Commission has concluded that the process set out in its guidance is not sufficiently effective.

Approaches to screening by public authorities have changed over time. Following commencement of Section 75, public authorities, in preparing their schemes, screened their existing policies and identified those requiring an equality impact assessment. The process was generally understood as ‘filtering’ policies for equality impact assessment. However, screening has been less effective in the development of new policies. The Commission’s guidance is clear that in developing new policies, the authority should screen the proposal, consult on its decision and if ‘screened in’ should carry out an EQIA as part of the policy development process. In practice, in a number of instances, proposed policies have been developed, with changes made to the policy during screening. In effect, screening has not acted as a ‘filter’ but as a ‘mini EQIA’.

The Commission has considered the role of consultation in screening new policies. Following a review of its guidance in 2002, the Commission required public authorities to consult on the outcome of screening exercises. This has, in effect, required public authorities to consult twice on a single policy and perhaps acted as a disincentive to carrying out an EQIA.

The Commission intends to advise that, in the development of new policies, consultation is not required where policies are 'screened in'; i.e. where a requirement for EQIA is identified. This would allow policy makers to progress immediately to an EQIA, focusing on data gathering, potential changes to the policy and consultation. Where a public authority proposes, following screening, to 'screen out' the policy, a two-month consultation will remain a requirement.

This proposal has a number of aims. Firstly, to highlight the distinctions between screening and EQIA as separate and successive processes. Secondly, to re-prioritise EQIA as the primary method of assessing the impact of policies, as intended by the legislation. Thirdly, to mark the distinction between existing and new policies. Fourthly, to streamline the policymaking process by re-positioning screening as a 'light touch' process. Screening must be more effective in acting as a 'filter' to identify policies relevant to the promotion of equality of opportunity and those which will produce any adverse impacts. EQIA should remain the sole process through which changes are made to the policy to better promote equality of opportunity and mitigate adverse impacts. Screening is not a 'mini EQIA' and cannot be used as a substitute for a full impact assessment.

#### 4.3 'High Level' policies

The Audit of Compliance (Reeves, 2007) found that work is required to ensure good practice within government departments on assessing the impact of 'high level' policies on equality of opportunity and good relations. While the Commission's guidance on EQIAs applies to the development of all policies, including 'high level' policies and strategies, the review highlighted the need for further advice from the Commission to ensure compliance by departments in this area. The Commission will, as a matter of priority, provide targeted and detailed advice across government departments to ensure clarity on high-level impact assessment.

#### 4.4 Equality Impact Assessment

Issues were raised regarding the point in the policy cycle at which an equality impact assessment proceeds. Very few public authorities were able to demonstrate that the EQIA process is used as part of, and in parallel with, the policy development



process. Evidence was found of a number of instances where an equality impact assessment was carried out after a policy is developed, thus reducing the meaningfulness of the EQIA. This suggests a lack of understanding of the process by policy makers, and on a very practical level makes the policy development process considerably more complicated than it needs to be. The perception on the part of some public authorities that the EQIA process is unduly cumbersome may indeed be due to a misunderstanding of the process. Whatever the reason for this perception, it is incumbent on the Commission to ensure the process is understood and complied with.

Generally, there is greater familiarity within public authorities with the EQIA process than with screening, which may be due to the fact that the Commission produced more detailed guidance on the EQIA process. Recent years have seen a reduction in the number of EQIAs carried out, and continued poor practice within some authorities. A renewed emphasis on building expertise on understanding existing inequalities and the intended impact of Section 75 in promoting equality of opportunity should improve compliance in this area.

#### 4.5 Consultation

Greater engagement or consultation with those directly affected by policies is one of the key successes of Section 75. One public authority described it aptly as ensuring that ‘government can no longer take key policy decisions without first having conversations with people who will be affected by those decisions.’ Contributors to the review reported a more inclusive approach to policymaking; a new departure in how policy is made as public authorities take steps to consider the potential impact of their policies. However, there was a sense among contributors to the review that the full potential of consultation has not yet been realised.

In general, members of the public who attended the public engagement sessions argued that they have not seen an increase in requests by public authorities for their views on the potential impact of policies. This compares greatly to the views of participants who work in the voluntary or community sectors; who reported a deluge of consultation requests, suggesting that public authorities have sought the views of representative organisations rather than seeking the views of the public and those directly

affected by policies. In addition, not all voluntary and community sector organisations are regularly consulted. Review research assessing the contribution of the voluntary and community sectors to the effectiveness of Section 75 (McMahon, 2007) highlighted low levels of involvement in the consultation process across the voluntary and community sectors, with 58% of organisations surveyed in the research reporting that they had never been involved in a policy consultation. This is in stark contrast to the view that the sectors have been 'over consulted'. The researcher suggested that many community and voluntary organisations remain outside the public policy development process, that the process of consultation is not 'trickling down' from the well-established organisations. This compounds the reported lack of knowledge regarding Section 75 in some parts of the sectors.

There is a disparity of views between public authorities and the voluntary and community sectors regarding consultation. Public authorities found the process of consultation and engagement as helpful in identifying adverse impacts of policies; whereas the sectors were less enthusiastic in their view of the positive outcomes achieved. Research by McMahon (2007) in this area recommended that work be done to ensure better reporting of the impact of consultation on policy outcomes. In general, the process was most effective where feedback was provided to consultees so that they could track the extent to which their views were taken on board.

The Audit of Compliance (Reeves, 2007) found a high number of authorities (86%) to be compliant with their commitments on consultation; it is clear that consultation is taking place. However, the researchers felt that this level of compliance should be built on to ensure best practice. A greater emphasis on targeted consultation and a wider range of consultation mechanisms was recommended. There was evidence of patchy practice in government departments in particular, with some showing evidence of innovative practice through the development of tailored materials and the development of fora for ongoing dialogue; however little evidence was provided of any overall coordination of consultations across departments. The researchers found a tendency for consultation to be used as an alternative, rather than as complementary to data collection. They also found resistance to carrying out EQIAs, resulting from a perception that the consultation period was too long. This is

despite the fact that Commission guidance requires a shorter consultation period, of two months, than Cabinet Office guidelines, of three months. Researchers also found little direct consultation with children and young people and people with learning difficulties. They found a perception among some authorities that advertisements in newspapers amount to consultation even though there is clearly a distinction between informing the public of a consultation and the process of consultation itself.

The review also found evidence of some misinterpretation of the Commission's guidance regarding consultation. The Commission is clear that consultation on a policy proposal must include consultation 'on the likely impact of policies' and take into account these assessments of impact. Public authorities must acquire knowledge of the circumstances of those who may be affected by a policy; gaining an understanding of how the policy may impact on them, as well as their views on the substance of the policy. The Audit of Compliance found that while public authorities were proactively seeking the views of organisations, and to a lesser extent individuals, on policy proposals, insufficient time is being given to the assessment of impact.

The Commission identified a need for greater efforts to ensure that targeted consultation does not amount to exclusion of individuals or organisations. Contributors to the review reported some public authorities limiting access to policy consultations, e.g. only including the age sector in policies relating to age. Effective consultation requires a recognition and understanding of the diverse needs and multiple identities of consultees.

All public authorities should give due consideration to the way in which they seek the views of consultees; review research found that very few authorities target consultations effectively. However, there was disagreement among public participants regarding the issue of targeted consultation. Some organisations and individuals expressed a preference for receiving all policy documents as it allowed them to self select those policies to which they were interested in contributing. Others felt that public authorities should do the selecting; however they should have a better understanding of which issues people are interested in. In general, public authority staff concurred with this analysis; and pointed to the need for a single staff resource to both co-ordinate consultations across the organisation as well as build expertise on the consultation

process. There are examples of good practice in this area, where authorities have benefited from internal expertise on consultation, and developed innovative means of consulting on the likely impact of policies. It has also ensured added value to the consultation process, as lessons can be learned from previous consultations.

In developing guidance for public authorities on consultation with children and young people, the Commission sought the views of groups of children and young people on how they can best participate in the policymaking process, to ensure the potential impact of policies on this group can be assessed effectively. Children and young people have preference for a range of methods of consultation, including face to face consultation, involving the use of play, small discussion groups and consultative fora (particularly for older children), and better use of new technologies. The Commission benefited greatly from the insights gained from children and young people, and will monitor compliance with the guidance, and measure the extent to which it enhances consultation with this group.

Independent research and the Commission's engagement as part of the review found a need for greater support for individuals and organisations targeted as part of public policy consultations. Dickson and Harvey (2006) suggested that a body could be funded to provide this support on behalf of public authorities though noted that it is debateable whether this would be strictly within the current powers of the Commission. The Commission does not currently possess powers to provide support, financial or otherwise, to the individuals and organisations that public authorities consult in the development of their policies. While the Commission has previously provided financial support to build capacity within organisations to contribute to the policymaking process, it is not convinced that revisiting such an approach would provide a remedy to the issues raised above. The review has identified measures which may improve the consultation process, and the Commission considers that its energies would better lie in ensuring compliance by public authorities on these issues.

#### 4.6 Monitoring

The legislation recognises the need for consistent assessment of intended or unintended impacts of policies in terms of equality of opportunity. This requires public authorities to develop systems in

order to assess how a policy has been implemented, if it has had the effect intended, and if changes are required to the policy to better promote equality of opportunity or mitigate adverse impacts. However, the Commission has found poor practice in monitoring for adverse impacts by public authorities. The Audit of Compliance identified this as the weakest area of compliance among public authorities; with 55% of those sampled below the minimum compliance level in this area. Some public authorities attribute poor practice in monitoring to lack of Commission guidance in this area. This is contested by the findings of the audit, which showed some examples of good practice in this area. Nevertheless, the Commission has produced guidance on monitoring and aims to measure the impact of the guidance in increasing good practice on monitoring.

Commission guidance currently requires that a public authority revise a policy if, after two years, the policy results in greater adverse impact than predicted or if opportunities arise which would allow for greater equality of opportunity to be promoted. On the basis of the review, and given that potential immediate impacts of some policies, the Commission will revisit this guidance and its requirement that monitoring takes place two years after the development of a policy.

### ***Conclusions and Recommendations***

- *The Commission will amend its approach to progress reporting to require public authorities to measure the impact of mainstreaming on policy outcomes.*
- *Given the potential impact of 'high level' policies or strategies on equality of opportunity and good relations, visible evidence of screening and EQIA by government departments in this area is required. The Commission will, as a matter of priority, provide targeted and detailed advice across government departments to promote clarity on an approach to high-level impact assessment.*
- *The Commission will make changes to the policy appraisal process to maximise the opportunities provided by Section 75 to promote equality of opportunity and good relations. The Commission's guidance on screening for proposed policies will be amended to make screening a more efficient*

*and effective ‘filter’ in early identification of equality considerations, thus allowing public authorities to quickly see whether a policy is pertinent for the promotion of equality of opportunity and good relations. The equality impact assessment process should continue to be the primary method of assessing the impact of policies on equality of opportunity and good relations, with public authorities carrying out impact assessment as they develop policies rather than afterwards.*

- *Future improvements to the consultation process must ensure that public authorities seek the views of the public and those directly affected by the policy, rather than focusing wholly on representative organisations. It should also ensure a more effective assessment of the impact of policies, and better reporting of the impact of consultation on policy outcomes, and encourage a greater emphasis on targeted consultation and a wider range of consultation mechanisms used. Generally, a fresh approach to consultation is required to ensure it achieves its aims, that is, hearing views on the likely impact of policies.*

## Chapter 5 The Commission's Powers and Duties

The Commission's duties and powers in respect of Section 75 broadly include reviewing the effectiveness of the legislation, providing advice to public authorities and others on the legislation, discharging the range of functions conferred by Schedule 9 and reporting on progress. The Commission has responsibility for the approval of equality schemes and, where appropriate, investigating alleged breaches of equality schemes. Contributors described the review as a milestone in the application of the Commission's role in overseeing implementation of Section 75 through its powers and duties. The review considered the adequacy of these duties and powers, and assessed the steps taken by the Commission to discharge its duties and use its powers.

The Commission possesses a continuum of powers intended to enforce the legislation. Research by Dickson and Harvey (2006) found that advice provision and monitoring were seen to be effective in overseeing implementation of the legislation. The Commission's approach to advice provision was considered effective; advising public authorities to get the right systems and structures in place to ensure compliance, and working with public authorities to ensure familiarity with the duties. However, the effectiveness of Section 75 is dependent on a strategic approach to enforcement that better links the provision of advice with monitoring compliance and investigating alleged breaches of schemes. In his contribution to the Operational Review, McCrudden made a similar point. He argued that the application of Section 75 'lacks an overall strategic focus' and advocated that attention be paid to 'strategic objectives'. According to McCrudden a 'much stronger approach' was required from the Commission on enforcing compliance and he proposed that it develop an enforcement strategy<sup>14</sup>. The Commission's conclusions regarding a strategic approach to monitoring and enforcing compliance are aimed at enhancing the effectiveness of the legislation in this respect.

### 5.1 Keeping the Effectiveness of the Legislation under Review

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<sup>14</sup> McCrudden, C. *Mainstreaming Equality in Northern Ireland 1998-2004: A Review of the Issues Concerning the Operation of the Equality Duty in Section 75 of the Northern Ireland Act 1998*, 2004

This duty positions the Commission as the key organisation responsible for assessing whether the legislation achieves its policy intentions. It is incumbent on the Commission to review how well the legislation works in practice, whether it is 'fit for purpose' and whether changes are required to its provisions, or to its implementation to ensure its effectiveness.

The Commission has worked to keep the effectiveness of the legislation under review in its approach to annual and five year reporting by public authorities and in its work generally with public authorities. Staff have carried out detailed analysis of the information contained in public authority reports, and used the lessons learned in planning the Commission's strategic approach to overseeing implementation. For example, an early review of implementation of the Commission's guidance, taking into account the experience of public authorities and affected groups, highlighted particular issues in relation to the level of detail in the guide. On this basis, the Commission revised the Guidance with a view to increasing the effectiveness of the legislation.

Similarly, implementation of its other obligations has contributed to the Commission's approach to reviewing the effectiveness of the legislation. Through the provision of advice, by monitoring compliance, and by enforcing the legislation, the Commission has kept abreast of the key issues regarding implementation and compliance.

It is incumbent on the Commission to take a strategic approach to reviewing the effectiveness of the legislation. Dickson and Harvey (2006) found it regrettable that the Commission waited until the sixth year of its operation before triggering a review and suggested that this prevented the identification of obstacles to the effectiveness of Section 75. While initial soundings on the review welcomed the Commission's approach to measuring effectiveness in terms of impacts and outcomes, there was some concern that the Commission would wait another six years before a further strategic review. Some participants in the Commission's engagement sessions sought clarification regarding how the Commission would take into account of the outcomes of the review when planning for the future.

From the outset, the Commission saw the potential of the current review to provide a template or a model to assist it in continuing to



discharge its duty. The relevant elements of this strategic review of effectiveness will be integrated in the continuing process of review. As part of the review, the Commission has commissioned research that has provided it with a framework or baseline for compliance and with a methodology for assessing the impact of the legislation on individuals. Both of these, together with other outcomes of this review, will be used by the Commission to meet its duties in the coming years.

## 5.2 Offering Advice

The Commission is required by the legislation ‘to offer advice to public authorities and others’ in relation to the Section 75 duties. The Commission has interpreted the advice duty broadly, and provides advice by a range of means, by producing guidance for public authorities and by providing briefings and presentations on the duties to public authorities and to other organisations and individuals. This includes offering advice or intervening where the Commission believes it will improve a policy direction or outcome as regards equality of opportunity or good relations.

A range of views was presented to the Commission throughout the review regarding its role in providing advice. In general, the advice provided by the Commission was found to be of high quality and useful to public authorities. However, members of the public contended that advice to the public is not sufficiently accessible. For example, it was argued that the current approach places too much onus on a potential complainant to understand the intricacies of the legislation and to identify an alleged breach of an equality scheme. These issues are discussed in more detail in the section on promotion of the legislation. Dickson and Harvey found that the Commission’s approach to its advice duty was essentially process rather than outcomes driven. However, they accepted that ‘given the huge task... it was right to focus on ensuring that it provided uniform advice to public authorities and others’. The prevailing view of contributors to the review was that the Commission was right to focus on the provision of detailed advice to public authorities in the early years of Section 75. However, opinion was mixed regarding the recipients of future advice. Voluntary and community sector organisations contributing to the review contended that the Commission focuses a disproportionate amount of its time (in relation to Section 75) on advising public authorities and far less on promoting the duties or on supporting

individuals to make complaints. They argued that more time should be spent advising the voluntary and community sectors and members of the public on the duties and on promoting the benefits of Section 75. For their part, the majority of public authorities urged the Commission to reduce the time spent on detailed guidance and replace this with less 'formal' advice provision, for example by promoting good practice.

The duty on the Commission to offer advice to public authorities and others is contained within the provisions of Schedule 9 which is entitled "Equality: Enforcement of Duties". The Commission sees the duty as one element of its enforcement powers, as part of a continuum of powers ranging from advice and monitoring compliance to enforcement. Hitherto, the Commission's approach to advice giving has been set in the context of overseeing implementation of new and developing legislation; the focus has been on 'getting the process right'. However, given the relative familiarity with the duties among public authorities, the Commission will turn its attention to an advice strategy aimed at sharing practice among public authorities and ensuring a greater familiarity with the duties among the voluntary and community sectors and the public.

### 5.3 Monitoring Compliance

The Commission has monitored compliance within the context of its duty to review the effectiveness of Section 75 and its duty to report on progress made by public authorities in meeting their duties. It has taken a broad approach to monitoring compliance. Chiefly, this has involved requiring public authorities, in their equality schemes, to commit to the submission of annual progress reports to the Commission. The Commission ensures that this information is received and analysed, and this forms the basis of a published report from the Commission setting out public authorities' views of their progress in implementing Section 75. Similarly, the Commission carried out a detailed analysis of the information contained in reports from public authorities following their five year scheme reviews and has used this information to inform this review of effectiveness.

While the approach taken by the Commission was useful in providing a range of information on progress, research by Dickson and Harvey (2006) found that the Commission 'could have been

more effective than it has been in monitoring the implementation of the Section 75 duties'. The Commission has identified a number of issues:

- Research on the impacts of Section 75 on policy development (Bridge, 2007) found that, in monitoring compliance, the Commission had not requested sufficient or accurate information from public authorities on the changes they had made to the policymaking process as a result of Section 75, on the policy outcomes arising from the process or on the extent to which the authority has better promoted equality of opportunity and good relations. Requests for such information in annual progress reports would have required public authorities to present this evidence, thereby having an impact on practice throughout the year. The research recommended changes to the kind of information sought from public authorities by the Commission.
- The Audit of Compliance questioned the approach taken by the Commission to monitor compliance on the basis of analysis of information received from public authorities and recommended an approach which validates this information. It goes on to recommend an approach that 'digs beneath the surface' of the information submitted by public authorities. The Audit of Compliance was particularly helpful in setting out the benefits of an audit approach; the development of a model or standard for compliance and an assessment of compliance on the basis of this standard.
- Lessons should be learned from the Commission's approach to monitoring compliance with fair employment legislation; the Commission could take a more strategic approach by selecting, on an annual basis, public authorities that will be subject to detailed compliance monitoring, either through audit or other means of appraisal.
- Research also found the need for the development of baseline statistical data to allow the Commission to measure progress in various areas.
- Dickson and Harvey (2006) referred to Commission practice to produce two annual reports a year; one setting out the steps taken by public authorities to promote equality of opportunity, the other the Commission's corporate annual report. The Commission disputes their suggestion that it has failed to submit an annual account of steps taken by it and other authorities to promote equality of opportunity.

However, it accepts the need to review its approach to reporting on progress, on the basis of the broader findings of the review regarding a strategic approach to monitoring compliance.

- The commencement of a new duty on public authorities to promote positive attitudes to disabled people and to promote their public participation, along with developments in relation to positive equality duties in Britain, has resulted in a situation where, in a number of cases, a single public authority will be required to report on progress under its Northern Ireland equality scheme, the disability duties here and on progress with their race, disability and gender duties in Britain. The Commission is committed to working with the existing Commissions in Britain, and with the forthcoming Commission for Equality and Human Rights to agree a streamlined approach to reporting to reduce duplication of work and to enhance the effectiveness of progress reporting for UK public authorities.
- Following the development of single strand strategies, such as the Children and Young Person's Strategy, the Race Equality Strategy, the Gender Equality Strategy and the publication of Triennial Action Plans under *A Shared Future*, government departments are required to develop strategic actions in a range of areas. To ensure effectiveness, greater cohesion is required between the mechanisms for reporting on equality schemes and the new procedures for submitting and reporting on action plans under cross-departmental single strand strategies. The Commission will work closely with OFMDFM in the development of new guidance on equality schemes to manage the development, implementation and measurement of actions to promote equality of opportunity and good relations so as to ensure effective cross-over between equality schemes, and actions committed to under cross-departmental strategies such as the Gender Strategy and *A Shared Future*.

The Commission views the development of a strategic approach to monitoring compliance as a way to increase the effectiveness of its duty to enforce the legislation; the more that is known and understood about factors affecting compliance, the better the Commission can use its powers to enforce the legislation. To that end, the Commission will develop a baseline or 'standard' of compliance required by public authorities. This will give clarity on

required practice, help public authorities to monitor their own compliance and support public authorities to improve practice over time. The Commission will review its approach to monitoring compliance and will ensure that the information sought from public authorities is linked to actions and outcomes, by carrying out an appraisal of the information received and by selecting a number of public authorities each year that will be subject to detailed compliance monitoring.

#### 5.4 Investigating Alleged Breaches of Equality Schemes

Schedule 9 conferred powers of investigation on the Commission, aimed at enforcing the legislation. The Commission can investigate an alleged breach of scheme where a complaint has been made by an individual directly affected by the alleged breach. The Commission has completed eight such investigations. The Commission may also investigate an alleged breach of scheme of its own accord, and has completed three such investigations. The Commission's approach to managing complaints and investigations is contained in its Investigations Protocol. Regular appraisal of the effectiveness of its investigations procedure by the Commission has been useful in enhancing the effectiveness of Commission interventions. A recent legal ruling resulted in the Commission's appraising its interpretation of Schedule 9 and making resultant changes to its investigations protocol<sup>15</sup>. Judge Girvan found that the Children's Law Centre, an organisation who had made a complaint to the Commission, was not 'directly affected' by a breach of an equality scheme by the NIO. The judgement has influenced the Commission's interpretation of 'directly affected'.

Dickson and Harvey (2006) argued that limitations exist in enforcing the duties through the investigations process. They pointed to the provisions of the legislation that only allow for an investigation following an alleged breach of an approved equality scheme; not a breach of the duties to promote equality of opportunity and good relations. A perception exists among some contributors that the Commission's enforcement powers 'lack teeth'. Challenges exist in implementing of the relevant Schedule 9 provisions; given that schemes set out the steps taken by public authorities to meet their duties, breaches of schemes tend to relate

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<sup>15</sup> *In the Matter of an Application by Peter O'Neill for Judicial Review*, High Court of Justice in Northern Ireland. Delivered on 7<sup>th</sup> October 2005.

to a failure to follow a particular process. As a result, the outcomes of investigations have tended to require a public authority (retrospectively) to improve its approach to a particular process rather than requiring a public authority to come to a particular conclusion in relation to a policy. As Dickson and Harvey (2006) point out, 'The Commission itself is given no power to direct a public authority to take any action...the Commission appears fairly powerless in this area compared with its position in the area of discrimination law'.

The Commission has considered a range of ways in which the legislation could be more effective in achieving outcomes. Certainly, the provisions of the legislation are restrictive in linking an investigation to a breach of an equality scheme; however it is not the case that this hinders the effectiveness of the legislation. As set out in Chapter Three, the Commission will amend its guidance to require public authorities to prioritise outcome-oriented actions within their schemes, to be achieved in a set timescale. By broadening the content of schemes, the link between an investigation and a breach of scheme may not be so limiting; investigations could consider whether a public authority has worked to achieve a particular action as set out in its equality scheme, rather than whether the public authority has followed a process. Further reviews could helpfully consider whether this has increased the effectiveness of the legislation. If not, amendment of the legislation may be an option to consider.

In terms of how the Commission uses its powers of enforcement, it was argued that procedures for conducting investigations are 'convoluted'. However, this was not the overwhelming view of those contributing to the research; the perception may be based on a lack of understanding of the legislation and could be remedied by awareness-raising about the process. As set out in 5.2 above, the Commission will, as a matter of priority, focus on providing advice to the public and to the voluntary and community sectors to improve their understanding of the legislation and of means of redress for individuals directly affected by an alleged breach of scheme.

The Commission has concluded, however, that work is required to enhance the timeliness of Commission intervention regarding enforcement of the duties. Research and engagement as part of the review has highlighted some deficiencies in terms of approach

by the Commission. Dickson and Harvey (2006), for example, did interpret the two months given to a public authority as a reasonable opportunity to respond to a complaint as 'rather generous'. Other contributors to the review cited the length of time it takes for the Commission to complete an investigation as potentially undermining the effectiveness of its powers. The Commission will consider a range of issues, including these, to ensure its interventions are timely and effective.

As set out in 5.3 above, the Commission will take a more strategic approach to monitoring compliance with the duties, and aims to use this approach to better identify alleged breaches of schemes and use its investigatory powers to respond to any breaches in a more timely manner.

### ***Conclusions and Recommendations***

- *The Commission will review its current procedures to ensure its advice to individuals and organisations is fully accessible*
- *The Commission will focus its advice provision on sharing practice among public authorities, and ensuring a greater familiarity with the duties among individuals and organisations*
- *As part of a strategic approach to advice provision and to monitoring compliance, the Commission will establish a baseline or 'standard' of compliance. This will provide clarity for public authorities and others on required practice, help public authorities to monitor their own compliance, while also supporting public authorities to improve practice over time.*
- *The Commission will require that public authorities report progress on the achievement of impacts and outcomes, requiring authorities to measure these over time.*
- *The Commission will work with the existing Commissions in Britain, and with the forthcoming Commission for Equality and Human Rights, to agree a streamlined approach to progress reporting to reduce duplication of work, and enhance the effectiveness of progress reporting for UK public authorities.*

- *The Commission will work closely with OFMDFM in the development of guidance on equality schemes to manage the development, implementation and measurement of actions to promote equality of opportunity and good relations to ensure effective cross-over between equality schemes, and actions committed to under cross-departmental strategies including the Gender Strategy and A Shared Future.*
- *The Commission is recommending that schemes be amended to set out outcome-oriented actions which will be achieved over time. By broadening the scope of schemes, investigations could consider whether a public authority has worked to achieve a particular action as set out in its equality scheme, rather than whether the public authority has followed a process contained in its equality scheme.*
- *The Commission has concluded that work is required to enhance the timeliness of Commission intervention regarding enforcement of the duties. The Commission will consider a range of issues to ensure its interventions are timely and effective.*



## Chapter 6 Promoting Good Relations

### 6.1 The Role of the Commission in Promoting Good Relations

Progress by public authorities in implementing the duty on equality of opportunity has not been matched in terms of the good relations duty and an inconsistency of approach exists across public authorities. In contributing to the Commission's engagement sessions on the review, participants reported a lack of knowledge among the public of the good relations duty. Public authority staff also accepted a lack of knowledge among policy makers of good relations as a concept and of the duty itself. This was attributed to a greater focus having been given to equality of opportunity in the early years of implementing Section 75. It was also linked to a perception within public authorities that equality of opportunity work is 'easier' or that the issues are 'less contentious'. It is borne out in the findings of research by Bridge (2007), into the impact of Section 75 on public policy, which found that good relations work appears to have figured to a lesser extent in the public authorities' Section 75 activities than that equality of opportunity.

The development of *A Shared Future*, the government's strategic approach to the achievement of good relations, has brought welcome attention to the role of government departments and others in promoting good relations. Despite this, a level of confusion exists amongst public authorities regarding the practical implications of the relationship between the good relations duty under Section 75(2) and *A Shared Future*.

Research by Trotman (2007) into the role of OFMDFM and NIO in contributing to the effectiveness of Section 75 makes a similar point, referring to 'contrasting interpretations, perspectives and expectations' of the duty on public authorities regarding good relations. The researcher attributes this to confusion about the respective roles of the Equality Commission and the Community Relations Council in the context of *A Shared Future*. The research points to a view that good relations work is seen by OFMDFM as the responsibility of the Community Relations Council; 'it is contended that a structure specifically geared to address community relations would be more effective in developing the Section 75(2) duty at the grassroots'. The research concludes that this 'uncertainty' 'has had a measurable impact on the ability of the public authorities to drive Section 75 as robustly as they might'.

However, the Commission points to the legislation for a conclusive reading of its respective role and does not concur that a greater role for CRC in driving progress on good relations at a grassroots level is at odds with the Commission's statutory remit in respect of good relations. Equality of opportunity and good relations are inextricably linked in fact and in law. The Commission has an enduring statutory responsibility for overseeing Section 75(2), including the enforcement of the duties and the provision of advice. The importance of the duties is recognised in the Shared Future policy document; 'equality of opportunity and the promotion of good relations are central to delivering good-quality public services and a better quality of life for everyone. The good relations duty under S75 (2) will shape the public service response.'<sup>16</sup> A greater role for the Community Relations Council in embedding progress on *A Shared Future* is entirely complementary with the Commission's statutory remit.

The Commission currently promotes good relations between people of different racial groups, in accordance with its duties under Article 42 of the Race Relations (NI) Order 1997. In its 2004 response to an OFMDFM consultation paper on a single equality bill for Northern Ireland, the Commission called for this duty to be applied to other grounds, in recognition of the significant potential of such duty on good relations. This remains the Commission's position. To reflect the Commission's role in strategic oversight for good relations, the Commission recommends to government that, as part of its consideration of single equality legislation for Northern Ireland, the Commission's duties to promote good relations between people of different racial groups be applied to other grounds. This would reflect similar duties placed on the new Commission for Equality and Human Rights in Britain.

## 6.2 The Role of Public Authorities in Promoting Good Relations

Review research has noted the distinction between the equality of opportunity and good relations duties. According to Trotman (2007), the relative weakness of the good relations duty when compared to the duty to promote equality of opportunity highlights 'the need to clarify the legislation'. This reflects the conclusions of research by Good Relations Associates (2007) which found differing views on the relationship between the two duties, and a

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<sup>16</sup> Office of the First Minister and Deputy First Minister, *A Shared Future: Policy and Strategic Framework for Good Relations in Northern Ireland*, March 2005

view from some commentators that the principle or practice of good relations ‘somehow presents a challenge to, or detracts from a commitment to equality’<sup>17</sup>. Dickson and Harvey (2006) referred to the views of some interviewees that recent progress with good relations may risk undermining the stronger duty on equality of opportunity. They conclude that ‘there is evidently scope for further clarification of the interdependence of equality of opportunity and good relations as well as of the Commission’s precise role in relation to the latter’.

Given the relative youth of the legislation, and the strategic focus arising from *A Shared Future*, the Commission believes that enhancing implementation of the legislation has a greater capacity to ensure the interdependence of the duties than a change to the legislation to bring parity between the duties. The Commission’s forthcoming Guidance for Public Authorities in Promoting Good Relations places emphasis on the interdependence between the two duties; a failure to achieve one affects the ability to achieve the other. The impact of the guidance on implementation of the duty will be monitored by the Commission over time.

### 6.3 Achieving Outcomes on Good Relations

Analysis of five year reviews of equality schemes highlighted the need for a distinction in the Commission’s approach between monitoring compliance with equality of opportunity duty and with the good relations duty. This is due to the difference in how the duties are presented in the legislation. Unlike the duty to promote equality of opportunity, the legislation does not require public authorities, in promoting good relations, to assess, consult on or monitor the impact of their policies on the promotion of good relations. Up until now, the Commission has not sufficiently reflected this distinction in the progress reports it has requested from public authorities, resulting in a lack of information on progress with the good relations duty. The Commission’s forthcoming guidance on good relations takes this into account and advocates the development of an action-oriented approach to good relations that sets the requirement within the overall framework of Section 75. It also shows the need to mainstream the principle of good relations in public policy development and implementation. Such an approach is entirely complementary to

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<sup>17</sup> *Embedding Good Relations in Local Government: Challenges and Opportunities*, Good Relations Associates, 2007

the development of Triennial Action Plans under the *Shared Future* requirements. The aim is to ensure outcomes from the good relations duty.

While the review did provide an insight into the distinct approaches by public authorities to meeting their good relations duties, it did not identify a need for a change to the legislation formally to require public authorities to engage in impact assessment regarding good relations, as they currently do on equality of opportunity. While Dickson and Harvey (2006) accept that public authorities are not expected to assess impact in this area, they go on to say 'this does not necessarily mean that impact assessments are inappropriate in the context of good relations'. The Commission's guidance makes that point: 'good relations must be an integral part of policy development and service delivery in an organisational wide approach which includes incorporation into corporate, business, and/or operational plan and objectives, with accompanying targets and performance measures. The equality of opportunity and good relations duties under Section 75 should be considered part of normal (core) business rather than being seen as a parallel process'. It is the Commission's view that promoting this through the guide may be more effective in requiring public authorities to embed the promotion of good relations in the business of the organisation than a formal change to the legislation. Its value will be measured over time by the Commission and revisited as part of its ongoing review of the effectiveness of the legislation.

#### 6.4 Good Relations and Local Government

The review research found that measures taken by local councils are fundamental to the success of the promotion of good relations. The Audit of Compliance found leadership by councillors to be a critical success factor to the promotion of good relations; to lead by example in terms of the policies they propose and their visible commitment to Section 75. Participants in the public engagement sessions argued strongly that while council staff are generally committed to equality of opportunity and good relations, their actions can be undermined by elected representatives taking decisions regarding particular policies that impact on good relations. They maintained that Councillors 'set the tone' for the local area and felt that greater sanctions should be taken against them when they undermine the principles of good relations.

The Commission recognises that the Review of Public Administration provides a unique opportunity for ensuring that good relations principles are embedded in the structures and systems within the new councils. An interdependence exists between the duty for councils to promote good relations, the principles of good governance and the proposed system of safeguards for local government. Good governance requires committed leaders who acknowledge and accept the corporate responsibilities of an organisation. To ensure visible commitment to the principle of good relations by leaders across local government, the Commission recommends that training on equality and good relations is placed on a mandatory footing for all elected representatives and that adherence to the principles of equality of opportunity and good relations are enshrined in Codes of Conduct.

### ***Conclusions and Recommendations***

- *In the context of the Commission's statutory remit on good relations, the Commission recommends to government that, as part of its consideration of single equality legislation for Northern Ireland, the Commission's duties under Article 42 of the Race Relations (NI) Order 1997 to promote equality of opportunity and good relations between people of different racial groups be extended to other grounds. This would reflect the new duties on the CEHR in Britain.*
- *To ensure visible commitment to the principle of good relations by leaders across local government the Commission recommends that training on equality and good relations is placed on a mandatory footing for all elected representatives, and that adherence to the principles of equality of opportunity and good relations are enshrined in Codes of Conduct.*

## **Chapter 7 The Roles of the Voluntary and Community Sectors**

Section 75 recognises the important roles of the voluntary and community sectors in Northern Ireland, through the inclusion in its provisions of a duty on public authorities to consult with representatives of affected individuals in the production of their schemes and to consult on the likely impact of their policies. This section considers the unique role of the sectors in contributing to the effectiveness of the legislation. It is informed by McMahan's research and by the views of contributors to the Commission's public engagement sessions.

### **7.1 Bringing Unique Experience to the Policymaking Process**

McMahan's research (2007) provided an insight into how the sectors see their role regarding Section 75. The sectors described their roles as three-fold; a challenge role, a role in enabling voices to be heard and a role in raising awareness within the sectors themselves. In general, the research found 'evidence of Section 75 meaning different things to different organisations...clearly linked to issues of capacity, skills and resources within any particular organisation'.

As set out in Chapter Three, the Commission identified a difference between the sectors and public authorities in how effective they consider the sectors' contribution to the policymaking process to be. The voluntary and community sectors felt strongly that their 'unique experience or expertise' had not been utilised by public authorities. The majority of organisations indicated that in their experience any representations made to public authorities have not effected a change. In the research conclusions, it was noted that 'consultation fatigue' appears to have been replaced by 'consultation disappointment'. This is at odds with the view of public authorities who provided a much more positive report of engagement with the sectors, and identified 'a long list of policies adjusted precisely because of their involvement'. Despite the views of the sectors, the researcher is clear that there have been 'not inconsiderable advances' in relation to engagement between public authorities and the sectors, reflecting 'tenacity on the part of the community and voluntary sectors to effect change'. The researcher concluded that 'it is less evident that the community and voluntary sectors recognise the positive contribution they have made'.

It was suggested that these different views may be due to differing understandings of the aim of Section 75; with voluntary and community organisations having greater expectations of the impact of their engagement on public policy outcomes and public authorities seeing the role of the organisations as providing information on the needs of constituent groups. The researcher argues, 'Section 75 consultation processes should seek to secure evidence based policymaking, not hearing views...there is also a tendency to confuse consultation with negotiation'. This mirrors the points made earlier in the report regarding the aim of consultations, to consult on the 'likely impact of policies'.

The Commission has found a number of occasions where perceptions of progress or effectiveness are different across sectors. This report contains a range of recommendations aimed at resolving this issue; greater clarity on the intended impacts of Section 75, a commitment to actions within public authority schemes, re-positioning consultation as being about assessing the likely impact of a policy and greater promotion of the duties.

## 7.2 Engagement with Section 75

Organisations across the voluntary and community sectors engage with Section 75 in different ways. At local level, organisations have an active engagement with public authorities that goes beyond acting purely as respondents to policy documents, extending to the development and provision of services; whereas large regional organisations tend mainly to focus their relationship with public authorities as contributors to the policymaking process. It was also found that, at local community level, many organisations are engaged in some manner with good relations work and activity, regardless of their knowledge of its legislative basis, while Section 75 policymaking processes are more likely to be the concern of the regional voluntary organisations. While McMahon (2007) welcomed the practice oriented approach of the community sector, she warned that 'unless policy and practice are seen as two sides of the same coin, there is potential for misplaced focus on process and policy outcomes while practice may fall behind'. The researcher viewed the role of the voluntary and community sectors in the implementation of Section 75 so far as 'responsive rather than pro-active'. Nonetheless, lessons can

be learned from this diverse approach to engagement with the legislation by the community sector.

The review research found that a difference of opinion exists throughout the sector regarding its role in representing those directly affected by policies. In carrying out her research, McMahon found an expectation within the sector that consultation with those directly affected should be carried out by, or through, the sectors. She deemed this impractical and suggestive of a 'custodial' or 'guardian' approach within the sector 'which is at odds with its ethos'. Public authorities reported similar expectations in the Audit of Compliance but this was not found to be the case in the public engagement sessions when a number of voluntary and community sector organisations reported the importance of public authorities consulting directly with those affected by their policies.

The Commission identified missed opportunities within the sectors for greater co-ordination in order to maximise the opportunities to influence policymaking provided by Section 75. The McMahon research (2007) identified difficulties for public authorities in ensuring that all relevant groups have been included in the consultation process; public authorities see this as due to the number and differing roles of organisations within the sectors. The researcher concluded that this 'emphasised the need for the community and voluntary sectors to be joined up in a collective approach...without detriment to the constituency of interest'.

### *Conclusions and Recommendations*

- *To ensure a consistent level of awareness across the sectors, larger voluntary organisations should play a greater role in raising awareness of Section 75 among small voluntary and community organisations. The sectors should also build a more effective approach to co-ordination, to maximise the opportunities presented by Section 75 in terms of influencing public policy outcomes.*
- *The Commission will further consider its role in the promotion of the duties, by working with public authorities and the voluntary and community sectors to ensure sufficient capacity amongst individuals and organisations who wish to engage with the process.*



## Chapter 8 Institutional and Cultural Change

In a strategic sense, Section 75 relates to the operation of the overall system of governance in Northern Ireland<sup>18</sup> and, in that sense, should be transformative. Section 75 placed obligations on public authorities that required substantial cultural and institutional change within public authorities. Over a relatively short period of six years, considerable change has been made to the resources allocated for equality of opportunity and good relations work as well as to the development of public policy. This section considers the changes that have taken place and the role of leadership in ensuring the effectiveness of the duties.

### 8.1 Institutional Change

Commencement of the duties in 2000 required that public authorities initiate institutional change to meet the broad scope required by Section 75. The development of equality schemes should have ensured the integration of equality of opportunity and good relations considerations into Business Plans which are then cascaded down into associated objectives and tasks for all staff. However, the Commission's analysis of five year scheme review reports found that while such an approach is increasing in frequency, it is not yet the norm.

While the Commission found some organisation-wide progress in implementing Section 75, the audit of compliance showed that Section 75 had not yet become a core business priority for many public authorities; 'mainstreaming equality of opportunity and good relations was not a term widely used or employed by practitioners in public authorities'. Training, good communication and increased partnership working should have led to equality thinking now being commonplace or 'second nature'. Processes and procedures should have been developed to ensure consistent application of the equality duties. Staff should be encouraged to think about the duties in the context of their own responsibilities, rather than leave it to a designated officer. While a number of public authorities have effectively implemented such changes, the majority of public authorities have not implemented the level of institutional reform required to ensure effective implementation of the duties.

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<sup>18</sup> Chaney, P. and Rees, T. *The Northern Ireland Section 75 Equality Duty: An International Perspective*, 2004

However, an increasing number of public authorities have begun to set specific equality objectives which are measured at a senior level in the organisation. This corroborates research into the impact of Section 75 on public policy (Bridge, 2007) which found that a number of public authorities interviewed support the business case for equality of opportunity and good relations. The finding is encouraging, given the recommendations regarding equality outcomes made earlier.

The extent to which Section 75 is considered core business is particularly evident in the level of resources allocated to meet the duties. The institutional change within organisations required by the legislation has had an impact on resources in terms of people, time and money. On a practical level, Section 75 has made the policymaking process more resource intensive; effective consultation entails wide publication of notices, the development of documents in alternative formats and hosting public meetings. Effective monitoring is dependent on the availability of resources to gather data, to carry out quantitative and qualitative research and places demands on technological capacity within an organisation.

The Audit of Compliance (Reeves Associates, 2007) found that initial resources allocated within government departments were not sustained or that initial programmes had not been realistic in scope. The impact has been felt on 'high level' policies, where efforts have been directed into explaining why EQIAs were not possible, rather than looking and seeing how they could be done. The audit further found that locating staff responsible for equality of opportunity and for good relations, respectively, in different teams may have created a competition for resources. In general, there have been inconsistencies in the level of human resources allocated to implementation of the Section 75; the Audit of Compliance found that, as a result, expertise within equality units was mixed. According to the researchers, 'staff levels and expertise determined whether a reactive or proactive approach (to the duties) was taken'. The positioning of the Equality Officer or Good Relations Officer, or their line manager, on senior management teams was found to influence whether Section 75 considerations were included in strategic decisions. Similarly, where equality units are located in central policy or planning directorates, equality personnel find it easier to influence and keep track of policy developments since communication lines are shorter.

The development of measurable actions within equality schemes, linked to corporate plans, and, within departments, to single strand strategies and *A Shared Future*, will require public authorities to be strategic in allocating resources to promoting equality of opportunity and good relations. The Commission will assess the level of resource commitment attached to the actions identified.

## 8.2 Cultural Change

The introduction of institutional change (albeit in varying degrees) should have resulted, over time, in the kind of cultural change within public authorities that espouses a corporate approach to the promotion of equality of opportunity.

Changes brought about due to consultation have transformed the way public policy is developed. According to the Audit of Compliance, 'the scale of this culture change is important to recognise'. The researchers also identified that public authorities 'were not fully accustomed to complying with a piece of legislation which was about promoting equality of opportunity rather than eliminating discrimination', with a recognition of the cultural change required in taking an anticipatory approach to equality of opportunity.

The research also recognised the momentum created by the legislation. The Audit of Compliance found that 'the desire of public authorities to be seen as progressive influenced their commitment to the aims of Section 75'.

## 8.3 Leadership

The institutional and cultural changes brought about by Section 75 have been generally positive, albeit slow. In carrying out this review, the Commission has observed the central role of leadership in bringing about those institutional and cultural changes by driving commitment to Section 75. Proactive leadership has been seen to impact positively on institutional change, which can be immediate, and on cultural change, which is more gradual, and develops over time.

Successful implementation of Section 75 in departments is dependent on commitment from ministers and from senior staff at

policy and operational levels. The role of management boards is critical in ensuring a corporate approach to implementation of the duties. The Commission has identified high levels of inconsistency in terms of how Section 75 has been embedded institutionally and culturally within organisations generally - whether commitment goes beyond simply signing the equality scheme or attaching resources in terms of senior staff. Implementation suffers where there is a lack of clarity regarding responsibility for Section 75 obligations within an organisation or where sufficient distinction is not made between strategic oversight for Section 75 and functional responsibility for implementation.

The issue of leadership in driving compliance and ultimately in promoting equality of opportunity and good relations is particularly pertinent within local government and government departments. Research by Trotman (2007) points to OFMDFM's important role in driving commitment to Section 75 within government departments. Analysis of scheme review reports, as well as findings from the Audit of Compliance have shown that tensions between political parties at elected representative level on issues such as flags and emblems have provided an obstacle to the effective implementation of the duties; elected representatives were found to have 'severely limited the activities which could be undertaken'. According to the Audit of Compliance, 'there was concern that this group may not have fully appreciated the requirements and responsibilities of Section 75 and the positive benefits it could bring to service delivery'. It is particularly worrying to see that in a small number of councils, the commitment of staff to the duties is not matched by elected members who have approved policies at council meetings without giving consideration to the outcomes of equality impact assessment. Similarly, research by Bridge (2007) found within some government departments, Section 75 is viewed at a senior level as a bureaucratic tool and this has had a negative impact on how equality and good relations are mainstreamed in public policy. Some departments consider EQIAs inappropriate for so called 'high level' policies or strategies as they were deemed 'not specific enough to be subject to assessment'. The Trotman research (2007), and the Audit of Compliance (2007) both found evidence of a lack of leadership at ministerial level, whereby insufficient regard has been paid to the Section 75 duties. The suspension of devolved government has affected the implementation of Section 75. Trotman (2007) found that 'Direct Rule ministers are

distinguished largely by a lack of commitment' when compared with local ministers who were 'more familiar with the inequalities within the Northern Irish context and perceived to be more committed to the detailed implementation of Section 75'. McMahon (2007) also touched on this point, referring to a view within the voluntary and community sectors that engagement with Section 75 has been much more difficult under Direct Rule, stemming from a lack of political commitment to the legislation. Certainly, there is evidence of varying levels of visible commitment to Section 75 among direct rule ministers and their counterparts under devolution.

Trotman's research (2007) found that operation of the policies, processes, structures, and systems within NIO in relation to equality of opportunity and good relations are not always well defined. The research pointed to the need for more effective processes to ensure positive leadership in respect of Section 75.

### *Conclusions and Recommendations*

- *The Commission will reflect the issues of leadership and embedding the duties in core business in a new baseline or framework for compliance; it will assess the progress made by public authorities in meeting their duties according to measures taken in this area.*
- *The Commission will specifically monitor the role of government departments in driving compliance with the duties by their associated public authorities.*

## Chapter 9 Promotion of Section 75

### 9.1 Awareness and Understanding of Section 75

The engagement sessions as part of the review confirmed previous research from the Commission which found a lack of awareness among the public of Section 75<sup>19</sup>. This lack of knowledge seems widespread but is particularly evident in traditionally excluded groups; the disabled, the very young and old, ethnic minorities and those living in poverty.

Contributors pointed to a range of cultural and language barriers that prevented deaf and blind individuals, and those with learning disabilities from understanding Section 75 and from engaging in the policymaking process. According to contributors to the review, individuals whose first language is not English have struggled to engage with Section 75. Contributors argued that the Commission must be more effective in enforcing the requirement on public authorities to be accessible to all equality categories.

Lack of engagement with Section 75 may be symptomatic of a general lack of knowledge amongst the public of the public policy process, and a resultant apathy in contributing to the process, or to the machinery of government in general. It is important, in this context, to maximise the opportunities provided by Section 75 to increase public engagement in decision-making.

The Commission has a critical role in promoting the potential and actual benefits of Section 75, as well as how it can be used to bring about positive change to peoples' lives. It is likely that greater promotion of Commission investigations, and Commission enforcement would promote the level of change which Section 75 can effect. Work is required to promote the provisions of the legislation so that there is an understanding of how it works and what it should achieve.

### 9.2 Promotion of Section 75 by the Commission

Dickson and Harvey recognised that the 1998 Act does not impose a specific duty on the Commission to promote the Section 75 duties, but consider it reasonable to imply such a duty into the

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<sup>19</sup> Equality Commission for Northern Ireland, *Equality Awareness Survey*, 2006

more general duty to offer advice. The Bridge research found that a large number of public authorities have seen the benefit of Section 75 as 'amounting to good business practice'. The research recommended that the Commission should continue to build on the awareness of the need for Section 75 and develop its role in disseminating good practice. The Audit of Compliance concluded that an important foundation has been laid on which to build; the Commission must play a role in sharing practice in the future.

Voluntary and community sector organisations consider equality of opportunity and good relations as concepts of value and utility to their work; however, this is not matched by a broad awareness or understanding of what Section 75 actually is or of the role it plays. The research found low levels of awareness among local community organisations and high levels among regional or sub regional organisations, particularly those working with equality categories, e.g. age, disability, etc. McMahon's research (2007) identified a need for on-going education on Section 75 within the sectors and for mechanisms to facilitate better internal transfer of information; 'the undoubted expertise, which exists within the sector, needs to be disseminated throughout it'. The research recommended 'collaborative working among the Commission, public authorities and regional voluntary organisations to improve the profile of Section 75 among locally based community organisations'. However the research also recognises the role of large regional or sectoral organisations in bringing about positive change; 'there is a need for large membership organisations with policy officers to work with community organisations at a local level'.

Dickson and Harvey (2006) referred to the Commission's need to promote Section 75 if it is to enhance its effectiveness. 'Clearly the Commission (and the government) need to do more to increase the general public's awareness of Section 75'.

The Commission considers the promotion of the Section 75 duties as an integral element of the Commission's continuum of powers and duties, from advice through to monitoring and enforcement. The recommendations below aim to maximise the effectiveness of the Commission's role in promoting the duties.

### *Conclusions and Recommendations*

- *The Commission considers the promotion of the Section 75 duties as an integral element of its continuum of powers and duties, from advice through to monitoring and enforcement of the duties. On that basis, Commission will consider how best to focus on promotion of the Section 75 duties, with two aims:*
  - *to increase public awareness of Section 75 its benefits and what it should achieve;*
  - *to ensure that public authorities identify the inequalities which exist, so as to enable them to introduce policies to promote equality of opportunity*
- *The Commission will remain proactive in ensuring all documents are available and advertised in different formats, as well as enforcing much more strongly the requirement on public authorities to reach out to all equality categories.*



## Chapter 10      The Section 75 Categories

Section 75 requires public authorities to have due regard to the need to promote equality of opportunity in respect of nine categories and to have regard to the desirability of promoting good relations in respect of three categories. This section considers the extent to which this 'closed list' system, whereby the duties apply to specific categories or groups, has had an impact on the effectiveness of the legislation.

### 10.1 Applying the Duties to Specific Categories

The Commission found evidence that some policy makers interpret Section 75 as requiring equal treatment, for example, that a particular service should be provided across the categories in exactly the same way. Section 75 was not introduced to bring about parity between disabled and non-disabled, between women and men, but to introduce positive measures to promote equality of opportunity for those groups that have experienced inequality. It is for this reason that the Commission's guidance requires public authorities to consider the potential impact of their policies and where adverse impact is identified, mitigating measures are brought forward. The Commission will ensure that implementation of the recommendations regarding streamlining the policy appraisal process will provide clarity to public authorities in this instance.

On a practical level, some contributors to the review reported public authorities 'forcing individuals into categories', e.g. a deaf woman attending a focus group will automatically be put in the 'disabled box' and not with other women or with carers etc. In this respect, authorities are missing an opportunity to think across the categories in a multi-dimensional way.

Research by Dickson and Harvey (2006) found that, in meeting its duties under Section 75, the Commission did not give disproportionate attention to one equality of opportunity or good relations category over another. However, participants to the review reported a sense among the public that some categories or groups have benefited more than others. Public authority staff accepted the perception that some categories may have 'done better than others' but they attribute this perception to the legacy of the anti-discrimination legislation. However, they were also aware

that some categories are perceived to do better because their representative organisations are well resourced and have the ability to 'shout the loudest'. Public authorities agreed that more work needs to be done to publicise the positive impacts of the legislation across the categories. The Commission will consider actions which it could take with public authorities in this area.

## 10.2 Extension of the Categories

On the basis of the engagement discussions, there was some support for the extension of the legislation to include consideration of the impact of policies on socio-economic status and on whether individuals live in rural or urban areas. The research commissioned as part of the review did not, however, identify the need for expansion of the equality or opportunity or good relations categories at this time.

Public authority staff differed in their response to the question regarding the appropriateness of the current set of categories. Some called for the extension of the provision of the legislation to cover people from different socio-economic backgrounds but pointed out that such an approach would require a fundamental shift in government policy. Other staff argued that the extension of the groups would represent excessive change to the legislation early on in its lifetime. They argued that successful implementation of Section 75 should ensure equality of opportunity for all, and that focusing on extension of the groups would have the adverse impact of 'diluting' the duties or of taking attention away from meeting the aims of the legislation.

Public authority staff did accept the risk that some categories could be excluded from the process of engagement or consultation unless the authority is proactive in seeking their involvement. To this end, some public authorities advocated that consultation focus groups are 'issues led' rather than group led e.g. 'meeting with a group of older people'. Discussing the issues increases the chance that the public will see the discussion as relevant to them.

### *Conclusions and Recommendations*

- *A combined approach between public authorities, the voluntary and community sectors and the Commission is*

*recommended to ensure the promotion of the benefit of the duties to all equality and good relations groups.*

- *The development, by the Commission, of baseline data and indicators to measure outcomes should include the need to compare the potential impact of the legislation across the groups; this would help identify any groups not sufficiently benefiting from the legislation.*
- *The Commission will consider the extension of the equality of opportunity and good relations categories in the coming period of implementation of the duties.*

## **Chapter 11      The Relationship between the Public and Private Sectors**

Section 75 applies to public authorities designated for the purposes of the legislation, thus underlining the role of the public sector in promoting equality of opportunity and good relations. But the nature of the public service is changing. A maturing society, a changing policy environment, external economic factors, different perceptions of need will all have a continuing impact on the form and function of public authorities in Northern Ireland. The Review of Public Administration is a vivid example of such a process in action. Other areas of change are also evident whether in the joint funding of investment, the joint management of projects or the entrusting of areas of public life to the private sector.

These latter developments, in particular, not only reflect significant changes of direction in terms of policy and operational practice; they also highlight the fact that the pursuit of public policy in respect of equality and good relations no longer concerns only the public service. By extension, the application of Section 75 cannot be confined “within the walls” of public authorities.

The legislation was intended to ensure that in the making and implementation of policy decisions, the principles of equality and good relations would be at the heart of the process – would be mainstreamed. That fundamental intention cannot be displaced or set aside by a change in arrangements for the funding or delivery of the consequences of the policy decision.

This is not to argue for an invasion of the private sector by unreasonable and non-commercial considerations. The private sector in the private sphere does not have an obligation to embrace Section 75 but the private sector in providing public services, by public commission, at public cost is in an entirely different set of circumstances. The circumstances of the public authority at whose instance the service is being provided by a private concern is in a continuing relationship with the requirements of Section 75.

The Equality Commission is very clear in its view that the commissioning of services from an external source or the joint management of any such service is neither an opportunity to dilute a public authority’s Section 75 duties nor, less still, an entitlement

to be exempt from it. Were it otherwise, the intentions of Parliament would be frustrated by the expedient of external commissioning of public services. Similarly, it would be a denial of the intentions of the legislation if people enjoyed differing rights or entitlements in respect of publicly funded services based only on the identity of the service provider.

Given the increasing role of the private sector in the provision of public services, some commentators have begun to consider the role of the private sector in promoting equality of opportunity, and in particular, the extent to which the Section 75 duties affect the relationship between public authorities and the private sector in the public procurement process.

McCrudden has argued that since Section 75 is a positive duty, it requires that 'where a public authority knows, or ought to know, of a real and immediate risk to a particular individual or group, there is an obligation on it to take reasonable steps to address that risk'<sup>20</sup>. He further proposes that the duty, in a broader sense, also requires public authorities to work with private sector bodies to advance equality of opportunity.

The Section 75 duties apply to all the functions of a public authority. The Commission's statutory guidance is clear that this 'covers all the ways in which a public authority carries out or proposes to carry out its functions relating to Northern Ireland...an authority's employment and procurement policies are an integral aspect of the way in which a public authority carries out its functions. Accordingly the (equality) scheme must cover the arrangements for assessing the impact of such policies'. Clearly, there is an obligation on public authorities to assess the equality implications of individual procurement initiatives; from the decision to procure a particular service right through to the details of the contract and delivery of the service.

However, there are limits to the measures required by public authorities, and as McCrudden argues, 'where those limits lie precisely is as yet unclear'. The Commission's forthcoming *Guidance on Equality and Sustainable Development Considerations in Public Sector Procurement*, produced jointly with

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<sup>20</sup> McCrudden, C. *Mainstreaming Equality in Northern Ireland 1998-2004: A Review of Issues Concerning the Operation of the Equality Duty in Section 75 of the Northern Ireland Act 1998*, 2004

the Central Procurement Directorate, aims to provide clarity regarding the extent of the measures required by public authorities.

The Guidance proposes that ‘as a public policy process, public procurement provides a valuable and challenging opportunity that puts equality (of opportunity) and sustainable development considerations at the heart of the work of public authorities’. The guidance has been written at a time when the scale of investment in infrastructure in Northern Ireland offers unique opportunities to use the procurement process to promote equality of opportunity. Economic policy objectives and the objectives of Section 75 are not mutually exclusive; rather they are complementary in the achievement of a just, stable and cohesive society.

The Commission is clear that the effectiveness of Section 75 depends, not just on how public authorities comply with the duties in direct provision of services, but in how they ensure the private sector, through public procurement, promotes equality of opportunity.

The statutory duties placed on public authorities by Section 75 of the Northern Ireland Act 1998 were clearly intended to cover all the functions of public authorities; including public procurement. The recent Equalities Review in Britain proposed that a new public sector positive duty should incorporate a specific requirement for public bodies to use procurement as a tool for achieving greater equality. The Commission considers the Section 75 framework as sufficiently robust to ensure that equality of opportunity is at the heart of public sector procurement and is not at this point recommending that a specific obligation on public authorities is required. In taking an inclusive approach, whereby Section 75 applies to all policies, the legislation is suitably flexible to provide for the changing role of public authorities as procurers of services from the private sector, to meet public need. However, this emerging role for public authorities will take time to unfold. In continuing to review the effectiveness of the Section 75 duties, the Commission will promote its guidance on equality considerations in public sector procurement and monitor, over time, whether the clarity it provides has had a positive effect on the promotion of equality of opportunity in private sector delivery of public services. The Commission will also consider the extent to which these

considerations ought properly to be addressed in equality schemes.

## **Conclusions and Recommendations**

*The Commission considers the Section 75 framework as sufficiently robust to ensure that equality of opportunity is at the heart of public sector procurement and is not at this point recommending that a specific obligation on public authorities is required.*

## Conclusion

Section 75 is intended to transform the practices of government to achieve equality of opportunity for all. In a relatively short period of time, it has, indeed, been effective in achieving something of a transformation in the development and delivery of public policy. Section 75 has effected substantial cultural change in the institutions of government and, in particular, in how public policy is made. Public authorities have worked hard to get the process right and have benefited greatly from the considerable efforts of the voluntary and community sectors and the public in contributing to the identification of needs among the equality and good relations categories when assessing the impacts of policies. However, a sea change is now required to ensure that Section 75 fully achieves its intentions.

The effectiveness of the duties should be measured primarily in terms of the benefits derived; the impacts on the lives of individuals. This review has found that much work is required in the coming years more clearly to identify the outcomes to be achieved from the legislation and to set targeted actions for their achievement. The Commission will help to direct the actions of public authorities in this area and to refocus energies and resources on the duties within the legislation - the promotion of equality of opportunity and good relations.

Prompted by the terms of reference for the review, the Commission considered whether changes are required to the legislation in order to enhance its effectiveness. Legislative change was considered in the context of its potential to achieve greater outcomes but neither the findings from the research nor the contributions from individuals and organisations advocated such an approach. In general, the Commission's recommendations are focused on the need for a shift in interpretation of the legislation, away from process and towards outcomes and also towards enhancing the role of the Commission in its strategic enforcement of the duties. The Commission believes that these changes should be embedded and assessed in advance of any substantive changes to the law. Support for Section 75 is high; the Commission believes that this will be sustained as people experience its benefits over time.



To be effective, the legislation must reduce and ultimately remove barriers to equality. In the coming months, the Commission will work with public authorities to build on good practice in leadership while also using its enforcement powers to realise evident and meaningful outcomes for individuals and for equality of opportunity and good relations in general. The aim is to continue to build a culture of commitment to achieving the benefits envisaged by the enactment of the provision.

## **Annex One: Terms of Reference**

Schedule 9(1) (a) of the Northern Ireland Act states that,  
'The Equality Commission shall keep under review the effectiveness of the duties imposed by section 75'

Responsibility for carrying the review clearly lies with the Commission. However, the legislation is not prescriptive on

- how the review should be carried out,
- whether or not the review should have independent status
- the involvement of other stakeholders
- the scope of the review.

The Commission had always intended to undertake a strategic review of the effectiveness of Section 75; the 2003 Corporate Plan made a commitment to do so in 2006. This would coincide with learning opportunities derived from the clearly separate but inter-related first statutory five year review of individual equality schemes to be undertaken by relevant designated public bodies.

### **The scope of the review**

1. The scope of the review will be considered on the basis of what the Commission must do to meet its statutory duty to keep the effectiveness of s.75 legislation under review.
2. It should not go beyond the parameters of the current duties.
3. It should cover whether the objectives of the legislation have been met.
4. The scope of the review should be considered on the basis of what is practical. In other words, not progressing with an ambitious and complex review that would not meet external expectations.
5. It should not duplicate the work of the recent Operational Review which considered the processes involved in meeting the section 75 duties; this review should consider the impacts and outcomes (the extent of the positive or negative effects) of the duties.

### **What Opportunities does the review provide?**

The review affords the Commission a number of key opportunities:

- To gain a strategic overview of implementation

- To research the impact and outcomes provided by the Section 75 legislative framework; in other words, to find out whether Section 75 has met its policy intentions. This would shift the emphasis of implementation away from processes towards outcomes; a consideration of the difference which the duties on public authorities with regard to equality of opportunity have had on those individuals as set out in Section 75(1), and the duties with regard to good relations on those persons as set out in Section 75(2).
- To allow the Commission to develop a strategic framework for measuring progress. The Commission could use a series of benchmarks to measure progress as part of future (regular) reviews.
- Clarification of the objectives of the legislation and a shared understanding on concepts such as equality of opportunity, outcomes and mainstreaming.
- To increase momentum, engagement with and support for the legislative framework.
- Finally, it will allow for positive debate around the current and future success of section 75.

### **How do we assess effectiveness?**

To be effective, the legislation must have a positive impact on the lives of individuals across the equality categories. For the purpose of this review, the Commission is assessing effectiveness in terms of the impacts and outcomes achieved for the nine equality categories in terms of equality of opportunity and the three categories in terms of good relations.

This strategic review will be distinct from the annual progress reports submitted by authorities. The annual reports focus on progress within authorities in meeting their duties; however they do not measure the impact and outcomes on individuals.

### **Agreed Terms of Reference for the review**

To review the effectiveness of the duties on public authorities as set out in Section 75 of the Northern Ireland Act 1998 in terms of the impact which their discharge has on the development of public policy, on the provision of services and on the practical outcomes for the nine categories insofar as promoting equality of opportunity

is concerned and for the three categories insofar as promoting good relations is concerned.

To consider whether any issues arise for consideration by the Commission itself or on which it might wish to make recommendations to Government.

### **Objectives of the review**

A. Section 75's effectiveness is dependent on public authorities, The Equality Commission for Northern Ireland, OFMDFM, and other stakeholders, e.g. the voluntary sector. The review will therefore consider the roles and responsibilities of these stakeholders.

1. An assessment of the extent of impacts, equality outcomes and life improvements for each of the nine groups with regard to equality of opportunity and for each of the three groups with regard to good relations, as set out in section 75 of the Northern Ireland Act 1998. Effectiveness should be measured in terms of:
  - the extent to which development of public policy is different to what otherwise would have been;
  - the extent to which a range of public services are different to what otherwise would have been; and
  - the extent to which the practical lives of people are different or at least not worse than would otherwise have been
2. To assess how far public authorities have driven Section 75 as a core business priority as a means of mainstreaming equality of opportunity and good relations. This should include an assessment of how policies are made and implemented. This will require an independent audit of compliance to include an audit of consultation practice.
3. An assessment of Commission's powers to implement the legislation, and how the Commission has conducted the role set out for it in the legislation, with a view to enhancing effectiveness. This should include a review of the Commission's enforcement powers; and consideration of the effectiveness of the legal remedies as set out in Schedule 9. It should

further consist of an assessment of the timeliness, adequacy and impact of the Equality Commission's interventions – assessing if the portfolio of advice, promotion and enforcement is still relevant to allow the Commission to carry out its duties as set out in legislation.

4. To consider the role and effectiveness of OFMDFM in promoting and securing implementation of section 75.
5. To consider the contribution of the voluntary sector in representing the views of persons likely to be affected by the duties.

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