



**Response to the Department of Employment and
Learning on its
Draft Equality Scheme**

April 2011

1 Introduction

NICEM is an independent non-governmental organisation working to promote a society free from all forms of racism and discrimination, where differences are recognised, respected and valued, and where human rights are guaranteed. As an umbrella organisation¹ we represent the interests of black and minority ethnic² (BME) communities in Northern Ireland.

NICEM welcomes the opportunity to make a response to this important consultation. Section 75 of the Northern Ireland Act 1998 was, at that time, a genuinely unique experiment in mainstreaming equality across nine grounds, including ‘racial group’ and ‘religious belief’.

NICEM has concerns that the ‘due regard’ duty in section 75 has become a mechanical exercise and that public authorities generally produce ‘defensive’ screening exercises and self-justifying EQIAs. We are also concerned that key elements in original schemes, such as the collection of quantitative and qualitative data, collaborative research across sectors and the effective monitoring of policies across all section 75 grounds, have been largely disregarded.

In short, NICEM considers that the bureaucratic application of equality schemes by many public authorities has turned section 75 from an equality ‘mainstreaming’ duty into an equality ‘sidelining’

¹ Currently we have 29 affiliated BME groups as full members. This composition is representative of the majority of BME communities in Northern Ireland.

² In this document “Black and Minority Ethnic Communities” or “Minority Ethnic Groups” or “Ethnic Minority” has an inclusive meaning to unite all minority communities. It refers to settled ethnic minorities (including Travellers, Roma and Gypsy), settled religious minorities, migrants (EU and non-EU), asylum seekers and refugees and people of other immigration status.

duty.

NICEM considers that section 75 itself and Schedule 9 of the Act have many deficiencies. Nonetheless, the Effectiveness Review conducted by the Equality Commission (ECNI), the third edition of its Guide on Statutory Duties and the introduction of audits of inequality and action plans all provide a stimulus for the reinvigoration of the mainstreaming duty in section 75.

NICEM expects the Department to submit a mature equality scheme to the ECNI. It should build on the experience of 10 years of operating under its original scheme and reflect the particular functions of the Department and challenges that it faces. NICEM worked as part of the Equality Coalition to discuss with the ECNI its draft Model Scheme, to which we will refer below, and we consider this to have been a valuable exercise in setting down the minimum standards expected in an approved equality scheme.

NICEM also accepts that drafting an audit of inequalities and an action plan is ‘new territory’ for everyone involved in this process. We have some concern that the Department has not produced a draft audit of inequalities and action plan.³ We are also concerned that there is no timescale for doing so. In the timetable, in Appendix 4 of the draft Scheme, it is merely stated that the draft Action Plan “will be ... finalised in due course”. This is not a satisfactory state of affairs. Neither is it satisfactory that a commitment to produce a draft audit of inequalities is not set out in the timetable. There needs to be a clear commitment to produce a draft audit and action plan within 12 months of approval of the Equality Scheme.

³ We think that the tense in §2.12 ought to be future, rather than past, tense.

We include here some general remarks on draft audits and action plans and we look forward to working with the Department on them.

NICEM expects both audits and action plans to be 'living documents' within the work of the Department. We expect them to be regularly reviewed and made more comprehensive and effective. We consider that the development of audits and action plans is not some form of alternative to the effective compliance of the Department with its equality scheme, but rather a means of helping the Department adopt best practice in the proactive promotion of equality of opportunity in its work. **In this regard, we wish to see commitment on the part of senior officers in the Department that the requirements to integrate equality scheme timetables, and action plans, into the business and corporate planning of the Department are fully met.**

In this sense, this revision of equality schemes, and introduction of audits and action plans, is an opportunity to learn from the mistakes and inadequacies of the past 10 years and to move forward, even at a time of scarce resources, into a period of genuine mainstreaming of equality.

3 Draft Equality Schemes

3.1 Consistency with ECNI Model Scheme

In NICEM's view, **there should be a non-regression principle in relation to the consistency of draft equality schemes with the ECNI Model Scheme.** We would have preferred if the Department had been required by the Commission to indicate any deviation from the minimum requirements of the Model Scheme with an explanation of the deviation. **We feel that public authorities should be required to explain deviations from the**

Model Scheme in the schemes which they submit to the Commission for approval and that the submitted schemes should be circulated to consultees so that they can comment upon the deviations and explanations.

We have seen the CAJ response to this consultation and share their concern at a number of deviations from the Model Scheme. This is particularly the case in relation to the failure to adopt a commitment, in §8.8 of your scheme, to “make all efforts to implement promptly and in full any recommendations arising out of any Commission investigation”. In our view, the provisions in paragraph 11(3) of Schedule 9, to refer investigation reports to the Secretary of State where ECNI recommendations have not been followed, is the ultimate ‘fall-back’ position. It should only be pursued against a recalcitrant public authority not prepared to take its section 75 responsibilities seriously.

The Department clearly does not come into that category and would wish to set a positive example both for the Department’s aligned public bodies, which are included in the second tranche of public bodies submitting revised schemes, and the public sector more generally. We consider that the Department should respect the ECNI’s expertise in carrying out section 75 investigations and therefore should make this commitment to carry out ECNI recommendations.

3.2 Customised Equality Schemes

Having made that point, **NICEM nevertheless believes that public authorities should make more efforts to customise their schemes to their own functions.** We have seen some schemes that repeat exactly the wording of the Model Scheme with minimal attempt to make the scheme a reflection of what the authority actually does. We do not accept that, because the scheme is a 'legal document', it should merely reiterate the terms of the Model Scheme. No doubt, the Commission wishes to approve a scheme within which the obligations of the Department are clearly set out, so that the Commission can, if necessary, conduct its investigations into alleged failures to comply with it. But this genuine concern is met by the 'non-regression' principle outlined above.

In our view, the scheme should be both inward and outward looking. It should be relevant to those who work for the public authority, so that they can see its role in mainstreaming equality in its organisation.

It should also explain fully to recipients of services, and the public more generally, what the authority actually does so that they can also see how the mainstreaming of equality is relevant to them. Given that most public authorities have been operating under their original schemes, it should be easy to include practical examples of how the authority has already complied with its original scheme, not just on screening and EQIAs but also on other commitments such as the collection of evidence and the monitoring of policies.

The Department's draft scheme contains a page of headings on the Department's work, which is varied and deserves greater description and

explanation. In our view, **more could be done to make the scheme relevant both to those who work for the Department and the citizens who receive its services**, and also those who work with them on consultative and other participative forums and respond to the Department's consultations.

We also note that the Migrant Workers' Thematic Sub-Group is not included in §2.10 of the draft Scheme. We accept that it is technically a sub-group of the Race Equality Forum, which is under the auspices OFMDFM, but it is chaired, indeed 'led', the Department. It is for us an important forum to discuss the position of migrant workers and the Department's Migrant Workers' Strategy. We hope that it is included in the revised scheme submitted to the ECNI for approval.

3.3 Collection of data

§ 4.29 of the Department's draft revised scheme states:-

"The systems we have established to monitor the impact of policies and identify opportunities to better promote equality of opportunity and good relations are:

- The collection, collation and analysis of existing relevant quantitative and qualitative data across the equality categories on an ongoing basis;
- A regular review of existing information systems within one year of approval of this equality scheme, to identify the extent of current monitoring and consider action to address any gaps in order to have the necessary information on which to base decisions; and

- Undertaking or commissioning new data if necessary.”

We welcome these commitments as it is not clear to us the Department has been undertaking these forms of data collection under its original scheme. In our view, the initial responsibility for the comprehensive collection of evidence lies with the relevant Government Department but with the full involvement of other DEL assigned bodies in the sector.

It is therefore essential that the comprehensive collection of evidence is undertaken under the Department’s revised scheme.

3.4 Screening

We note that the draft scheme follows closely the ECNI’s Model Scheme on this point. It appears to be the case that the Department is not seeking to include the process of ‘Preliminary Equality Impact Assessment’ (PEQIA), approved in its original scheme and used extensively in relation to proposed employment legislation.

On balance, we welcome this. The original concept had its merits but it has never been clear to us why the Commission approved this process, even if it is supposed to be ‘enhanced’ screening. Our concern is that this PEQIA exercise has failed to live up to any expectations of it and appears to have degenerated into a ‘do nothing’ approach towards the introduction of employment law from Great Britain into NI.

3.4 Training

We note that the Department is committed to the provision of training on section 75. This includes the following commitment, at §5.4 of the draft scheme, “Where appropriate, information or training will be provided to

ensure staff are aware of the issues experienced by the range of Section 75 groups.”

However, we cannot see how this can be achieved by the arrangements outlined in the draft scheme. The activities of the organisation called the ‘Centre for Allied Learning’ (CAL) has only recently come to our attention, even though it has apparently been operating since October 2006.⁴

First, the Department’s commitments on training of staff are a fundamental element of its original scheme (as they are of this draft revised scheme). And yet, the Department, without any apparent consultation on this central element of its training policy, appears to have agreed to the centralisation of section 75 training provided by a monopoly NI Civil Service (NICS) provider.

§4.5.2 of the Department’s original scheme provides:-

“The Department will consult affected groups regarding the design and delivery of Section 75 training and awareness-raising activities. Those events organised by the Department may be delivered by Department staff or by people and organisations outside the Department.”

We are not aware of any consultation with affected groups on the design and delivery of these CAL courses on section 75, as now outlined in the Department’s draft scheme.

The CAL 2008-09 Annual Report also sets out that ‘external providers’ provided nearly 47% of CAL’s courses⁵ but there is no indication of the

⁴ CAL Annual Report 2008-09 (the only document which we can find on the DFP website, although it appears to be the 3rd such Annual Report).

⁵ CAL Annual Report 2008-09 p 25.

identity of these providers or of the procurement process whereby they were employed. This Report also indicates that 31 'Diversity' courses were cancelled due to 'Course being reviewed and/or redesigned' by either CAL or 'CPG', which we take to be the Central Personnel Group in the Department of Finance and Personnel (DFP).⁶

We are further concerned about apparent changes in the governance of CAL. Previously the Department played a significant role in the development of CAL as its then Permanent Secretary chaired its Strategic Board. But the Board appears to have been 'closed' in February 2010 and is now subsumed within 'Enterprise Shared Services' (ESS).⁷ We cannot find any reference to its new governance arrangements.

Our concerns here are four-fold. First, we are unsure about the Department's influence over the delivery of its commitment to provide section 75 training in its original scheme. It appears to have an 'evaluation' role under the draft Scheme.⁸ Secondly, we cannot see how the

⁶ 'DFP Performance against PSA targets for the period to 30 September 2009' states, under PSA 21 2.1, "The CAL Strategy Board approved the CAL Business Plan on 14 May 2009. ... A new NICS diversity training programme has been developed by Corporate HR in conjunction with CAL which will be rolled out over the coming months."

⁷ DFP Performance against PSA targets for the period to 30 September 2010' PSA 21 2.1 To deliver the Centre for Applied Learning (CAL) Business Plan as agreed with the Centre for Applied Learning Strategy Board.

The CAL Strategy Board was closed in February 2010 and CAL is now managed under ESS governance arrangements. Good progress is being made on the objectives contained within the CAL Business Plan. CAL is continuing to build the capacity of the NI Civil Service to deliver the Government's priorities through the delivery of a number of key programmes including, the Certificate in Public Policy Making and the Strategic Leadership programmes. CAL has also redesigned the suite of equality programmes to take account of the review of Section 75 of the Northern Ireland Act. Diversity Programmes continue to be delivered.

⁸ §5.5 of the draft scheme states, "The Equality Unit staff are involved in the quality assurance of relevant [CAL] courses."

Department has satisfied its commitment under §4.5.2 of its original scheme to “consult affected groups regarding the design and delivery of Section 75 training and awareness-raising activities”. We also note a commitment in §5.5 of the draft Scheme, “Training and awareness raising programmes will, where relevant, be developed in association with the appropriate Section 75 groups and our staff.” We cannot see how this commitment can be met in the future, as there appears to have been no consultation on the ‘centralisation’ of the Department’s previous commitment under its original scheme.

Thirdly, we are very concerned that the Department’s section 75 training is being provided by a Government monopoly body and that nearly half CAL’s courses are provided by external providers. In particular, we have no idea of their identity and what expertise they have on issues which affect ethnic and religious minority communities in NI. Fourthly, it was understood, when equality schemes were first drafted (and this original commitment included in the Department’s original scheme), that training on section 75 would provide an opportunity for interaction between public bodies and section 75 groups. It appears that the Department (and indeed the entire NI Civil Service) has opted-out of this commitment.

Can the Department give us an assurance that it will undertake a wide-ranging consultation exercise on its commitment to develop “[t]raining and awareness raising programmes ... in association with the appropriate Section 75 groups”?⁹

⁹ NICEM welcomes its co-operation with the Department in the organisation of the Migrants Rights Seminar on 6 April 2011 and hopes that this co-operation can also include consultation on the Department’s commitment to provide section 75 training.

4 Draft Audits of Inequality

4.1 The evidence base for the Draft Audit

As stated above, we have concerns that the Department has not yet published a comprehensive audit of existing quantitative and qualitative evidence. We did receive a two-page ‘first draft’ document from the Department’s representative at the Equality Coalition event on 9 March. It would be helpful if the Department conducted a preliminary consultation with its section 75 stakeholders on its draft audit. It appears to us that a wide range of research on migrant worker communities and the ethnic minority communities more generally is not represented in this ‘first draft’ audit.¹⁰ We are concerned that no inequalities in relation to ethnic and religious minority communities in NI are identified.

While some research has been conducted into the labour market needs of ethnic minorities in NI, we are not aware of research into inequalities suffered by religious minority communities. We would expect that each ethnic and religious minority community has specific, as well as common, needs. We do not know if the Department’s audit will adequately reflect these needs.

¹⁰ Most obviously NICEM’s research report, Robbie McVeigh and Chris McAfee, ‘Za Chlebem’: The Impact of the Economic Downturn on the Polish Community in Northern Ireland’, Belfast: NICEM, 2009 (http://www.nicem.org.uk/publications_view/item/za-chlebem-the-impact-of-the-economic-downturn-on-the-polish-community-in-northern-ireland). Further complementary research is being conducted at present into the effect on the Filipino community.

4.2 The audit process

The ECNI defines the audit as a “systematic review and analysis of inequalities”. On the basis of the ‘first draft’ audit of inequalities which we have seen, we cannot say if this has taken place.

4.3 Gap analysis

What was missing in most draft audits is **a gap analysis of evidence on the inequalities suffered by ethnic and religious minority communities** in Northern Ireland in the areas for which the Department is responsible. Even in a period of reduced resources, we consider it essential that comprehensive research and consultation processes take place independently of particular screening and EQIA exercises.

We consider that the ECNI should produce a model audit of inequalities, on the basis of this initial exercise. We consider that **a gap analysis should be included in the first year of the Department’s action plans and that efforts to collect quantitative and qualitative data on priority gaps should be included in the subsequent years of the action plans.**

4.3 Annual Review

More generally, there should be a full review of the audit (and also the action plan) after the first year. This should be included in the Department’s Annual Reports to the ECNI.

5 Draft Action Plans

5.1 Gap analysis in Draft Action Plan

We wish to see the annual review of audits and action plans, together with the gap analysis and subsequent evidence collection, included in the action plan itself.

5.2 Actions group-specific

We have been asking public bodies to set out their draft action plans in group-specific categories. The purpose of the action plan is to show how the Department will 'promote equality of opportunity' across the nine section 75 grounds. Those in ethnic and religious minority communities, and those who represent them, want to pick up the Department's action plan and see what it means to them. If the Department follows this approach in its draft action plan, there will be no actions in relation to ethnic and religious minority communities in NI as no 'inequalities' have so far been identified in the draft audit.

5.3 Tracking inequalities into the Draft Action Plans

We would also like to be able to track the identified inequalities from the audit into the action plan so that we can see what prioritisation processes have been undertaken.

6 Conclusion

6.1 Equality outcomes through the effective operation of equality schemes

NICEM welcomes the introduction of audits of inequalities and action plans as part of the equality scheme revision process. **However our first concern is to see the section 75 mainstreaming duty work much more effectively than it has over the past 10 years.** The primary purpose of the audit of inequalities, and subsequent gap analysis, is to satisfy the Department's duty under its scheme to collect evidence of inequalities for the purpose of effective screening and EQIA processes and to improve the monitoring of policies across the nine section 75 grounds.

Similarly the primary purpose of the Department's action plan is to show examples of actions, outputs and outcomes which the Department intends to achieve in the process of mainstreaming equality throughout its work and through the implementation of its equality scheme. The content of the action plan, even when reviewed and updated every year, is not a roadmap of all that the Department seeks to achieve through its screening and EQIA processes and must complement, rather than displace, the timetable appended to the Department's equality scheme.

In short, the valuable addition of audits of inequalities and action plans is not an alternative to the effective operation of the Department's equality scheme. Rather these audits and action plans allow the Department, not merely to comply with its equality scheme, but also to adopt best practice in terms of tackling the inequalities which ethnic and religious minority communities face.

6.2 Corporate and business planning

We accept that this call by the ECNI for revised schemes may well have occurred in the middle of business and corporate planning cycles. However we do wish to see the rapid integration of scheme timetables and action plans into these planning processes.

6.3 Consultative Forum

We appreciate that the Department operates a number of forums across the Department's remit. In our view, we think it would be very useful to have a Consultative Forum across the section 75 sectors. This Forum should be an annual opportunity to step away from day-to-day consultations on screening and EQIAs. **The focus should be on a holistic overview of the operation of the Department's scheme**, including the 'underpinning' duties, such as collection of evidence, training of staff and monitoring of policies. **This Forum could also consider the Department's gap analysis and actions directed at filling those gaps.**

We suggest that this overview Forum meeting should take place when the Department has its Annual Report to the ECNI in a late draft form, as the details to be considered at the Forum meeting should all be included in that draft.

6.4 Closing remarks

The CAJ, in its response, has picked up some apparent regression from the standards of the Model Scheme and we feel that these should be fully explained to the ECNI when the scheme is submitted for approval (and copied to interested consultees).

We have significant reservations on the centralisation of section 75 training in the NI Civil Service. We cannot see how the Department could have met its commitment to consult with section 75 groups on the design and delivery of these courses. Also we would like clarification on how the Department proposes to do this in the future.

We are concerned that a Government Department which ought to be practising ‘best practice’ in its own right, and setting an example to the assigned bodies in its sector, has not produced a specific timetable on publication of its draft audit of inequalities and draft action plan. We call upon the Department to rectify this immediately.

We also encourage the Department to conduct a gap analysis, so that it can identify areas of potential inequality upon which it not yet collected quantitative and qualitative data.

Finally, we have concerns that no inequalities suffered by ethnic and religious minority communities in NI have been identified in the ‘first draft’ audit of inequalities and urge the Department to consult with the sector on its draft audit and action plan.

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