



**Response to the Council for the Curriculum,
Examinations and Assessment on its
Draft Equality Scheme, Audit of Inequalities and
Action Plan**

June 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

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.

from an equality ‘mainstreaming’ duty into an equality ‘sidelining’ 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 to Public Authorities 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 anticipates that the Council will 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 Council 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 welcome the publication of the Council’s draft audit and action plan and comment upon it below.

NICEM expects both audits and action plans to be ‘living documents’ within the work of the Council. 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 Council with its equality scheme, but rather a means of helping the Council adopt best practice in the proactive

promotion of equality of opportunity in its work. In this regard, we welcome the commitment on the part of the Council to integrate equality scheme timetables, and action plans, into the business and corporate planning of the Council (§2.14 of the draft Scheme).

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.

2 Consultation

We have some concerns at the two month consultation process. At §3.2.6 of the draft scheme, it is stated:-

“The consultation period lasts for a minimum of twelve weeks to allow adequate time for groups to consult amongst themselves as part of the process of forming a view. However, in exceptional circumstances

when this timescale is not feasible (for example implementing EU Directives or UK wide legislation, meeting Health and Safety requirements, addressing urgent public health matters or complying with Court judgements), we may shorten timescales to eight weeks or less before the policy is implemented. We may continue consultation thereafter and will review the policy as part of our monitoring commitments.”

In our view, this consultation is one of the most important in the existence of section 75. NGOs are inundated with draft schemes, audits and action plans. We accept that the Council had a longer consultation period than originally envisaged by the Education and Library Boards (ELBs) and the Staff Commission for ELBs. However, it is still unfortunate that the Council did not allow for a full three-month consultation period.

Although we have welcomed the Council's draft audit and action plan, we would have preferred a longer consultation period over them. The Council has produced its draft audit and action plan ahead of the rest of the sector. NICEM is launching a research report on racial equality in post-primary schools on Thursday 30 June and we have sought to refer to some of our findings in this response. However we trust that the Council will consider the research report in full during the course of its analysis of consultation responses.

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 Council 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 not had an opportunity to compare fully the Council's draft scheme with the Model Scheme. However, we have had sight of the CAJ consultation response and endorse their remarks.

2.2 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 Council 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 Council, 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 Council actually does so that they can also see how the mainstreaming of equality is relevant to them. NICEM has been undertaking research into racial equality in post-primary schools. As outsiders to the education system, we remain uncertain about 'who does what' at the three levels of the system, let alone about distinctions between the Maintained and Controlled sectors. This concern is particularly acute as the schools (and their Councils of Governors) are not presently designated for section 75 as we enter an era of 'maximised supported autonomy'.

Given that most public authorities have been operating under their original schemes, it should be easy to include practical examples, from Annual Reports to the Equality Commission, 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 Council's draft scheme makes little attempt to describe 'what we do', although the Council's varied work deserves fuller description and explanation. In our view, **more could be done to make the scheme relevant both to those who work for the Council and the students and other citizens who receive its services**, and also those who work with them on consultative and other participative forums and respond to the Council's consultations. We note, in fact, that the introduction to the audit and action plan goes into more detail about the work of the Council.

We have met with a range of responses to this idea of the equality scheme as a 'living document'. One idea which now occurs to us is that the Council could take this opportunity to produce **a straightforward 'Practical Guide' to its equality scheme** (and its audit and action plan) for the benefit of those who work at the Council, those who receive its services and those who otherwise work with the Council and benefit from its activities. This Guide could be customised to the Council's own particular circumstances and give examples of what it has done under its original scheme taking examples from its Annual Reports to the Commission. One issue, which has come up in our research, concerns aspects of the Joint Council for Qualifications (JCQ) document, 'Access Arrangements, Reasonable Adjustments and Special Consideration'. It would be helpful to see in the

equality scheme, or in a 'Practical Guide', what is the Council's relationship with the JCQ.

The Guide could even be updated annually to incorporate key aspects of each subsequent Annual Report.

3.3 Collection of data

We consider the collection of data to continue to be the key element in successful mainstreaming of equality. Original schemes had specific commitments on data collection. The Model Scheme concentrates on monitoring of policies without a free-standing commitment to collect quantitative and qualitative data. Nonetheless the commitments in the Model Scheme remain significant. §4.29 of the Council's draft 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 secondary quantitative and qualitative data across the equality categories on an ongoing basis;
- An audit of existing information systems within one year of approval of this equality scheme, to identify the extent of current monitoring and 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."

First, we are surprised that there is no reference to primary data. The ECNI Model Scheme, at §4.29 provides:-

“• The collection, collation and analysis of existing relevant primary quantitative and qualitative data across all nine equality categories on an ongoing basis.” (emphasis added)

In §2.2 of the draft audit and action plan, the Council sets out a wide range of ‘internal sources’.³ Are they not sources of “existing relevant primary quantitative and qualitative data”? Is so why is the Council not committing itself to the monitoring of this data “across the nine equality categories on an ongoing basis”?

Secondly, it was anticipated that, under original schemes, consortia of public bodies, for example, the ELBs, the Staff Commission for ELBs and the Council, would conduct their own research into areas where evidence of inequality was not present.

We hope that this on-going commitment in §4.29, in conjunction with the commitment to produce and maintain an audit of inequality, will encourage the Council, in co-ordination with the ELBs and the Staff Commission, to be willing to commission its own research into issues of inequality suffered by ethnic and religious minority communities in NI.

3.4 Screening and EQIAs

As stated above, we have been examining the JCQ guidelines, ‘Access Arrangements, Reasonable Adjustments and Special Consideration’. We have been seeking information on the Council’s website as to when these guidelines have been screened (and subject to an EQIA).

³ In fact, the Council has the power, under direction from the Department, to conduct its own research, under Article 78(1) of the Education (NI) Order 1998.

We feel that, if the provisions on screening and EQIAs in the revised scheme are to work well, we need to consider more generally how the original scheme has been operating.

First, in the 'Equality' section on the Council's website, there are only Annual Reports for 2008/09 and 2009/10. It seems to be that the Council has not conducted any screening or EQIA exercises during those periods. The response, on each occasion, is "Education and Skills Authority Equality scheme under development during the period". We do not understand how an impending reorganisation in the education sector can affect the Council's obligations to comply with its 2001 scheme.

We also note, in the Council's response to the Annual Report on its disability duties:-

"Please note that due to RPA, CCEA and other educational bodies were granted an exemption from the implementing the disability duties. This was due to concentrating on equality work required for the formation of the new Education and Skills Authority. CCEA is part of the Equality forum set up by the Education and Skills Authority Implementation Team."

We have no doubt that it was open to the ECNI to give this dispensation in relation to the disability duties but there is no power to give a dispensation from compliance with the Council's original scheme.

Given that the Council is submitting a revised scheme for approval by the Commission, can the Council give us an assurance that it will comply with this revised scheme and not rely on the still-impending reorganisation in the sector?

Secondly, we have a concern, in relation to these JCQ guidelines, that the Council may be operating under an 'equivalence' principle with the rest of

the UK, which might, in some way, to be perceived as allowing the Council to avoid its responsibilities under its equality scheme.

As stated on the Council's website (and in its draft scheme):-

“conduct and moderate examinations and assessments, ensuring that standards are recognised as equivalent to standards of examinations and assessments conducted by other bodies or authorities exercising similar functions in the United Kingdom;”⁴

In our view, this ‘equivalence’ principle cannot allow the Council to avoid its responsibilities under its equality scheme. Section 75 must take precedence over any statutory provision in devolved legislation. The Council is at liberty to have higher standards than those which operate in other parts of the UK. If necessary, this statutory equivalence principle has to provide for ‘at least’ equivalence with UK standards in order to allow the Council to screen an examination or assessment policy, conduct an EQIA and consider alternatives and mitigation.

The Council seeks to satisfy this equivalence principle through its participation in the JCQ.⁵ The JCQ “consists of AQA, City & Guilds, CCEA, Edexcel, OCR, SQA and WJEC, the seven largest providers of qualifications in the UK.” We note that the JCQ claims to be a “single voice for the member awarding bodies, [which] cover[s] the full range of UK

⁴ This is based on Article 79(1)(c) of the 1998 Order which provides, “79.—(1) In carrying out its functions under this Part the Council shall—

(c) seek to ensure that the standards of examinations and assessments conducted by bodies or authorities in Northern Ireland are recognised as equivalent to the standards of examinations and assessments conducted by bodies or authorities exercising similar functions elsewhere in the United Kingdom.”

⁵ Confusingly, the JCQ is described as an ‘outside body’ in the 2008-09 Annual Report, at §7.1 but our understanding is that the CCEA is a member of the JCQ.

qualifications”.⁶ A point of note is that the Scottish Qualifications Authority (SQA), although a member of the JCQ, is not a party to the Access Guidelines with which we are concerned. So it is not clear why the Council could not have its own access arrangements which were ‘at least equivalent’ to those under the JCQ.

We would expect that all these bodies which are based in Great Britain are subject to public sector duties, similar to section 75, including on grounds of race. We cannot find any screening or EQIA exercises on the JCQ website. We wish to re-emphasise that participation in the JCQ does not, in some way, absolve the Council from its responsibilities under its own equality scheme. The duty in section 75 is ‘non-delegable’, that is, it cannot be delegated to either an ‘outside body’ or a body to which the public body in question is a party.

Turning specifically to the Access Guidelines, NICEM obviously welcomes the reform of the JCQ access arrangements to provide ‘reasonable adjustments’ for disabled students. However, judging by a press release by the Director of the JCQ in 2008, this was to satisfy the duty to make reasonable adjustments under the Disability Discrimination Act and not in response to any screening of the policy under the GB disability public sector duty.

We have a concern that the Council, when participating in these revisions to the access arrangements, did not screen the policy under other section 75 grounds also. Our research report reveals a number of troubling factors about the treatment of newcomer students. In particular, the JCQ

⁶ http://www.jcq.org.uk/about_us/index.cfm

guidelines provide that electronic bilingual dictionaries are not allowed, extra time to consult the dictionary is only permissible for those who have been in UK for less than 2 years and there is a ban on readers if candidate's literacy difficulties are primarily caused by English not being their first language.

We consider that these restrictions may have an 'adverse impact' on a range of ethnic minority, particularly newcomer, students and also may be 'indirectly discriminatory' in that they place these students 'at a particular disadvantage' without any explanation which might justify the disadvantage.

We also note that the SQA provisions⁷ appear to be more progressive than those in the JCQ guidelines. This raises two concerns. What processes has the SQA gone through to arrive at different arrangements and how, if at all, do they differ from the processes which the Council, as another party to the JCQ, has gone through?

Secondly, as Article 79(1)(c) requires equivalence "to the standards of examinations and assessments conducted by bodies or authorities exercising similar functions elsewhere in the United Kingdom", why has the Council followed an English and Welsh model rather than the Scottish one?

In our report, we recommend that the Council conducts a screening exercise on the access arrangements followed by a full EQIA of them.

We have gone into this degree of detail because this response coincides with the launch of our research report and we feel that there is an

⁷ http://www.sqa.org.uk/sqa/files_ccc/AA_EnglishAdditionalLanguage.pdf

opportunity for the CCEA to lead the way in promoting equality for newcomer students.

The Council's commitment to Section 75 is brought into question if it appears to be using a combination of factors, the impending reorganisation of the sector, the equivalence principle and its participation in the JCQ, to avoid, or even evade, its responsibilities.

4 Draft Audits of Inequality

4.1 The evidence base for the Draft Audit

A presentation was made at the Joint Consultative Forum on the ELBs' and Staff Commission present thinking on their draft audit. However we are not aware that this has yet been published. While we appreciate that the Council has produced a draft audit and action plan, we think that it would be preferable if the Council did not finalise the audit until it had sight of the wider sectoral audit.

NICEM is at present completing research, as part of its Atlantic funded Strategic Advocacy Project, on racial equality for ethnic minority young people in post-primary schools. It will be launched on 30 June 2011 and we look forward to its findings and recommendations being taken into account by the Council.

The evidence base is set out in a series of 'internal sources' and 'external sources'. We note with interest the 'Research Report on the Proposed Assessment and Moderation Arrangements for the NI Curriculum - January 2011' but we cannot find it on the Council's website. On the other hand, we note 'Research conducted on access to curriculum for English as an

Additional Language (EAL)/Newcomer children’ in the draft audit but this does not appear to be included in ‘external sources’.⁸

4.2 The audit process

The ECNI defines the audit as a “systematic review and analysis of inequalities”. We appreciate that a lot of work has gone into the draft audit. However we have some reservations about the process and detail. First, the potential inequalities are not referenced from their source.

Secondly, we have no difficulty with the breakdown of the Council’s activities into various functions and we think that the headings ‘Potential Inequality’, ‘What is already done’ and ‘Proposed actions and priorities’ is helpful as it is possible to track the inequalities into actions. However, we consider that those in ethnic and religious minority communities, and those who represent them, should be able to pick up the Council’s audit and see what it means to them.

For example, we can see potential inequalities for ethnic minority students under the heading, ‘Potential implicit inequalities re the statutory curriculum, e.g. content, learning styles etc;’ but we do not know if ethnic origin is being identified here. We note ‘Access for Newcomer and Traveller children’ and reference to what we take to be the 2005 ETI Report. Although NICEM’s research report focuses on RE in the curriculum, we also recommend that “DENI and CCEA should examine how the curriculum can be adapted in light of Northern Ireland’s growing diversity.”

⁸ This may be the 2005 ETI Report, ‘The Quality of Learning and Teaching and the Standards and Outcomes Achieved by the Learners in Relation to the Provision for English as an Additional Language’.

Under 'Statutory Assessment/Accreditation', we note reference to 'Inequality of performance, e.g. according to gender, social- economic background, religion;' In our report, we have noted above-average and below average academic attainment across different ethnic minority groups and also language issues in the access arrangements guidelines. On that basis, we could envisage similar potential inequalities in relation to statutory assessments.

Under 'Specification Development', we can see that an equality working panel considered 'accessibility issues'. We also note 'Ensuring Specifications and accompanying support material are engaging learners of all socio- economic backgrounds, genders and ethnicity'. In light of our findings and recommendations on the access arrangement guidelines, we hope that this potential inequality will be identified and that both screening and EQIA exercises are conducted. We feel that measures to address these issues should also be included in the draft action plan.

We feel that the audit should also include potential inequalities under each section 75 category. We would also like to see the audit to include potential inequalities suffered by religious minority communities.

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 a public body 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 welcome the commitment in the draft scheme to conduct

“[a]n audit 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;”

However we wish to see a fully integrated process between the monitoring requirements in the scheme and the regular updating of the audit and action plan.

We consider that **a gap analysis should be included in the first year of the Council’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.**

4.4 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 Council’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 Council will 'promote equality of opportunity' across the nine section 75 grounds. As with the audit, those in ethnic and religious minority communities, and those who represent them, should be able to pick up the Council's action plan and see what it means to them.

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. This is relatively transparent in the Council's audit and action plan but would be clearer if the audit and action plan were group-specific.

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 Council'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 Council's action plan is to show examples of actions, outputs and outcomes which the Council 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 Council seeks to achieve through its screening and EQIA processes and must complement, rather than displace, the timetable appended to the Council'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 Council's equality scheme. Rather these audits and action plans allow the Council, 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 welcome the synchronisation of the timetable in the draft scheme (at §2.14) with the Council's corporate planning cycle. However it would be helpful to have more information on how this is to be achieved.

6.3 Screening and EQIAs

We have expressed concerns that the Council's commitment to Section 75 is brought into question if it appears to be using a combination of factors, the impending reorganisation of the sector, the equivalence principle and its participation in the JCQ, to avoid, or even evade, its responsibilities under its equality scheme.

6.4 Consultative Forum

In other responses, we have been promoting the idea of a Consultative Forum to oversee the operation of equality schemes, audits and action

plans. The education sector has the benefit of the Joint Consultative Forum (JCF) which meets sporadically. We would like to see an annual meeting of the JCF. This could 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 equality schemes in the sector. This annual event could also consider gap analyses in the sector and actions directed at filling those gaps.** It could also alert section 75 groups to the equality agenda in the sector for the following 12 months.

We suggest that this overview meeting should take place when the public bodies in the sector have their Annual Reports 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.

6.5 Closing remarks

We were disturbed by the short consultation period on the ELBs' draft schemes and are pleased that it has been extended.

We feel that two months is too short of period of consultation on Council's draft scheme and particularly on its draft audit and action plan. We hope that the Council will take into account the wider sectoral draft audits and action plans before finalising its own.

We hope that the Council will take into account NICEM's research report on promoting racial equality in NI's post-primary schools.

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