



**Response to the Department of Employment and
Learning on its
Draft Audit of Inequalities and Action plan**

August 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.

NICEM accepts that drafting an audit of inequalities and an action plan is ‘new territory’ for everyone involved in this process. 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 welcome the statement in the draft audit (at p 16) that the audit is a “living document”. However we have concerns that there are few indicators of inequalities affecting ethnic and religious minority communities and we would prefer to see this rectified at the stage of submitting the audit and action plan to the Equality Commission (ECNI) rather than any vague assertion that these issues can be reviewed at some later stage.

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.

2 Draft Audit of Inequalities

2.1 Customised Equality documentation

We made the point, in our response to the Department's draft Equality Scheme, "**NICEM ... believes that public authorities should make more efforts to customise their schemes to their own functions. ... 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." In later responses, we have also suggested that public bodies could produce a practical guide to equality mainstreaming to explain how the statutory duty works in practice in their organisation.

We welcome the fact that the Department has gone to some lengths to set out many of its activities in pages 8-13 of the draft audit. But there is little attempt to relate these activities to section 75 grounds. NICEM works with the Department, or interacts with the Department, on issues such as migrant workers, particularly with regard to the Department's Migrant Worker Strategy and the work of the Migrant Workers' Thematic Sub-Group, and employment rights, for example the draft Agency Worker Regulations. It is not obvious how these interactions fit into the Department's activities as set out in this quite extensive description of the Department's activities.

2.2 The evidence base for the draft Audit

We stated, in our response to the draft Equality Scheme, “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. In this draft audit, the sources, in ‘Data, Research and Publications’, are not set out under each section 75 ground. Given that this is an audit of inequalities, supporting the Department’s Equality Scheme, which in turn implements section 75, we consider that it is essential that each section 75 ground is identified in the ‘Data, Research and Publications’ section, in the audit of inequalities and in the action plan.

In our earlier response, we specifically referred the Department to NICEM’s research paper, ‘Robbie McVeigh and Chris McAfee, ‘Za Chlebem’: The Impact of the Economic Downturn on the Polish Community in Northern Ireland’, Belfast: NICEM, 2009.³

There is no reference to this research report amongst the sources in the draft Audit.⁴ Therefore the issues of inequality considered in that report are not identified in the draft audit. Indeed, the draft audit does not include some of the Department’s own publications, first on migrant workers⁵ and,

³ (http://www.nicem.org.uk/publications_view/item/za-chlebem-the-impact-of-the-economic-downturn-on-the-polish-community-in-northern-ireland)

⁴ We note an unwillingness to acknowledge non-public sources of evidence. For example, in the Key Inequalities, it is stated that, “Anecdotal evidence suggests that lesbian, gay and bisexual people are at statistically greater risk of bullying and harassment in the workplace”. However, in the draft Action Plan, one action is ‘Production of report’ which refers to the Rainbow Project publication, Matthew McDermott, ‘Through Our Eyes – Experiences of Lesbian, Gay and Bisexual People in the Workplace.’ (published in March 2011). Even though the Action Plan refers to Departmental participation on the steering group for this research, the report does not appear amongst the sources of the audit.

⁵ ‘Experiences of Migrant Workers in Northern Ireland’ (December 2009)

secondly, on racism in further education.⁶ Nor, once again, is there any reference to the Migrant Workers Strategy, the work of the Migrant Workers' Thematic Sub-Group or the Race Equality Strategy more generally.

We also refer the Department to recent research by NICEM on racial equality in post-primary schools.⁷ Although the findings and recommendations concern the stages in the education sector prior to those for which the Department has responsibility, namely further and higher education, we consider that a range of similar issues may arise in those sectors also. We do not consider that the Department's research report on racism in further education necessarily addresses all these issues.

We welcome the reference to the ETI report on Traveller Education and note the Department's involvement as Chair of the subgroup on further education, lifelong learning and skills for work within the Taskforce on Traveller Education.

There is a range of issues applying to many ethnic minority communities in the labour market and in further and higher education

(<http://www.delni.gov.uk/index/publications/r-and-s-stats/research-reports-2/migrantworkersexperiences.htm>), 'Attitudes to Migrant Workers: Results from the Northern Ireland Omnibus Survey - January 2007'

(<http://www.delni.gov.uk/index/publications/r-and-s-stats/research-reports-2/publicattitudestomigrantworkers.htm>) and 'Attitudes to Migrant Workers in Northern Ireland: Results from the Northern Ireland Omnibus Survey 2009'

(<http://www.delni.gov.uk/index/publications/r-and-s-stats/research-reports-2/attitudestomigrantworkers.htm>).

⁶ 'Study of Racism in the Northern Ireland Further Education Sector: Attitudes and Experiences' (<http://www.delni.gov.uk/index/publications/r-and-s-stats/research-reports-2/racism-ni-fe-study.htm>)

⁷ Eoin Rooney and Barry Fitzpatrick, Promoting Racial Equality in Northern Ireland's Post-Primary Schools (June 2011)(<http://nicem.org.uk/elibrary/publication/promoting-racial-equality-in-northern-irelands-post-primary-schools>).

which are not addressed at all, even though sources exist to identify actual and possible issues.

We also note a welcome reference to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), although we do not see any evidence of these sources being taken into account in the draft audit. However, there is no reference to the International Convention on the Elimination of Racial Discrimination (CERD).

In fact, NICEM has contributed to submissions on all of these international human rights instruments.⁸ Most recently, NICEM has made submissions to the UN Committee on the Elimination of Racial Discrimination.⁹ In §6.3 ‘Employment Rights of Migrants, Poverty and access to benefits’,¹⁰ in relation to exploitation of migrant workers, the question is posed:-

“• What measures have the devolved NI Government taken to tackle the

⁸ See Submission to the UN Economic, Social and Cultural Committee on the UK’s compliance with the International Covenant on Economic, Social and Cultural Rights (April 2009) (<http://www.nicem.org.uk/elibrary/publication/submission-to-the-un-economic-social-and-cultural-committee-on-the-uks-compliance-with-the-international-covenant-on-economic-social-and-cultural-rights>) and Submission to the Committee on the Elimination of Discrimination against Women on its Examination of the Sixth Periodic Report of the Government of Britain and Northern Ireland (October 2007) (<http://www.nicem.org.uk/elibrary/publication/submission-to-the-committee-on-the-elimination-of-discrimination-against-women-on-its-examination-of-the-sixth-periodic-report-of-the-government-of-britain-and-northern-ireland>)

⁹ NICEM Submission to the UN Committee on the Elimination of all forms of Racial Discrimination (published in July 2011 after the commencement of this consultation exercise) (<http://www.nicem.org.uk/elibrary/publication/nicem-submission-to-the-un-committee-on-the-elimination-of-all-forms-of-racial-discrimination>)

¹⁰ In relation to Article 5(e)(i) ‘The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;’

exploitation of migrant workers, especially with regard to access to just remuneration for work?”

In §6.4 ‘The vulnerability of Agency Workers’,¹¹ the questions are posed:-

- “What measures will the devolved NI Government take to prevent the exploitation of Agency workers?”
- How does the devolved NI government intend to monitor legal compliance of employers of migrants?”
- Will the UK and NI Governments ensure that employers are jointly liable with agencies outside the UK for breaches of the rights of migrant agency workers?”
- Will the devolved NI Government address the inadequacies in the current draft Agency Workers Regulations to make them more robust in protecting and enforcing the rights of all Agency workers?”

All these issues are within the remit of the Department. The ‘Evidence Annex’ to the submission includes numerous examples of breaches of rights under these two headings, taken from Tribunal decisions, BBC reports, NICEM case files and those provided by UNISON and the Law Centre.

Since the launch of this consultation, the Institute on Conflict Research has published a report on forced labour in NI,¹² particularly referring to the exploitation of migrant workers. NICEM, in our response to the draft Agency Worker Regulations,¹³ gave some of these examples and proposed that the definition of ‘agency worker’ should be extended to include a range

¹¹ Again in relation to Article 5(e)(1).

¹² Les Allamby, John Bell, Jennifer Hamilton, Ulf Hansson, Neil Jarman, Michael Potter, Sorina Toma, ‘Forced labour in Northern Ireland: exploiting vulnerability’ (June 2011) (<http://www.conflictresearch.org.uk/Resources/Documents/Jarman-Forced%20Labour%20report%202655.pdf>)

¹³ ‘NICEM Response to the Department of Employment and Learning’s consultation on the Agency Workers Directive’ (June 2011) (<http://www.nicem.org.uk/elibrary/publication/nicem-response-to-the-department-of-employment-and-learnings-consultation-on-the-agency-workers-directive>)

of contractual, and non-contractual, employment relationships. We also proposed that joint liability, between a hirer and non-UK agencies, should be available in some circumstances.

We hope that, as a result of this consultation, these sources are taken into account by the Department in its final audit and that appropriate actions are included, such as amendments to the draft Agency Worker Regulations and a programme of action to end the exploitation of migrant workers in NI.

A recommendation on agency workers was one of four recommendations in the 'Za Chlebem' research report, namely:-

“5. We urge the Department for Employment and Learning to ensure the European Directive on Temporary Agency Workers is transposed to Northern Ireland as soon as possible in order to ensure the principle of equal treatment in working conditions for permanent and agency workers. We also call on the Department for Employment and Learning to extend the terms of this protection to workers who have registered with employment agencies outside the UK. By taking this lead the Department will ensure that all agency workers in Northern Ireland will benefit from the principle of equality of treatment in basic working conditions between temporary and permanent workers. For example, this extension of the Directive would help reduce the vulnerability of a construction worker who registers with an agency in Poland to work in Northern Ireland.”

The other relevant recommendations are:-

“2. We recommend the Department for Education and Learning establish specific training courses that include ESOL (English for Speakers of Other Languages) provision to help use the skills of Polish workers in order to assist economic recovery and integrate Polish workers into the labour market.”

“4. The Department for Employment and Learning should work to improve the process of qualification recognition under the European Directive on Qualifications. This is urgently needed during the economic downturn not

only to assist migrant workers but also to unlock and use these skills to help in the recovery of the local economy.”

“8. We are aware the Department for Employment and Learning has commissioned research into the labour market impact of migrant workers in Northern Ireland and we call on the Department to publish these findings as soon as possible.”

We are pleased that this research has now been published but disappointed that it is not included in the ‘Data, Research and Publications’, leading to the identification of inequalities suffered by migrant workers and actions to counteract them.

2.3 Monitoring data

Monitoring data is a key element in the evidence base upon which the audit is conducted. In Annex A, ‘Equality Monitoring Of Uptake Of The Department’s Main Programmes And Services’, it is stated:-

“Since the introduction of the NI Act (1998) the Department has monitored the uptake of its main programmes and services in terms of community background, racial group, age, marital status, gender, disability and dependants. This monitoring is one way in which Government can keep a check of its own performance, and publication of monitoring results enables public scrutiny. The results of equality monitoring on gender, community background and disability have been published in the Labour Market Bulletin since 2001.”

It is not clear therefore why no ethnic monitoring data has been published by the Department. It is further stated, “Not all eligible group figures are available as the data are taken from a sample survey and once the estimated number in a category drops below a certain level (6,000) data

are deemed to be unreliable and are not published. Numbers exceeding 6,000 are also subject to sampling error.”

Is this an assertion that all ethnic monitoring is ‘unreliable’ because the numbers involved are below 6000?

We note that there is a breakdown of functions, services and programmes by ethnic group at page 32 of the Annex. However we cannot see any analysis of these figures.

We would refer the Department to OFMDFM’s publication, ‘Guidance for Monitoring Racial Equality’,¹⁴ which encourages a wider approach to the ‘white’ category through the addition of additional questions, such as on country of birth. **We trust that this approach will form the basis of the Department’s ethnic monitoring in future.**

2.3 The audit process

The ECNI defines the audit as a “systematic review and analysis of inequalities”. This draft audit is driven by the identified sources and not section 75 grounds. Therefore there is no attempt to audit inequalities suffered by ethnic and religious minority communities in the labour market and the further and higher education systems, other than the reference to Traveller students in further education. **For example, there is no audit of the inequalities suffered by migrant workers, even though this is a key responsibility of the Department and a subject upon which ample evidence is available.**

¹⁴ http://www.ofmdfmi.gov.uk/guidance_for_monitoring_racial_equality_v2.pdf (July 2011).

2.4 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.**

We note that a 'gap analysis' has been included under 'Data Collection' 'to be completed by March 2012'. This action is to be welcomed. The difficulty with this is, first, that there are already significant gaps in the sources which the Department has identified and therefore significant gaps in the draft audit and action plan. Secondly, the reference to 'Liaison with NISRA, and other relevant business areas' indicates that **the Department is only concerned with public sources of evidence and primarily with quantitative evidence, rather than the full range of quantitative, qualitative and anecdotal evidence, as required by its revised Equality scheme.**

2.5 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.

3 Draft Action Plan

3.1 Gap analysis in Draft Action Plan

As stated above, 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.

3.2 Actions should be 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. The Department has identified the further education needs of Traveller students in its audit and action plan. **There are no further actions in relation to ethnic and religious minority communities in NI as no other 'inequalities' have so far been identified in the draft audit.**

3.3 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. It is true that sources can be tracked into the audit and then into the action plan but there are virtually no sources in relation to ethnic and religious minority communities and therefore virtually nothing to track.

3.4 Content of the Action Plan

We have two concerns here. In terms of methodology, we find the draft action plan rather vague and unfocussed. To take the first heading, "Lack of essential skills is a barrier to employment and a richer social life" (page 17) is listed as an inequality. What is "a rich social life"? What is the inequality here? Where is the data? Which section 75 groups are disadvantaged? Does this include ethnic minority communities and/or migrant workers? The performance indicator for action on this 'inequality' is "Participation rates in higher education of target groups". Which 'target groups'? The participation rates should increase from what level to what level for each target group? How will this be 'monitored annually'?

Our second concern is a more fundamental one. The action plan appears to set out what the Department is already doing rather than fresh initiatives to mainstream equality in its functions, services and programmes. Indeed it appears that, rather than tracking sources into inequalities and into actions, the already established actions, some of which have already been completed, have dictated the inequalities which, in turn, have dictated the 'Data, Research and Publications'.

It is useful to see much of the good work, which the Department is undertaking, brought together in one document. In our view, however,

this is not what an audit of inequalities and action plan is intended to achieve.

4 Conclusion

This document sets out much of the work which the Department is undertaking. However, it is **flawed in its structure** in that the 'Data, Research and Publications' are not grouped under each of the section 75 ground and ignore a vast wealth of evidence, including even the Department's own publications, along with important work emerging from the community and voluntary sector and elsewhere.

The audit merely extracts 'inequalities' which reflect what the Department already does and then generates a vague and unfocussed action plan. The recommendations in the 'Za Chlebem' research report are ignored, as are questions of access to the labour market and further and higher education by members of ethnic minority communities. **In particular, very serious concerns over the exploitation of migrant workers in NI are not addressed.**

NICEM is aware of good work being done in the Department on some of these issues but even this is not acknowledged. **As far as inequalities suffered by ethnic and religious minorities in NI are concerned, this exercise is not relevant to their needs or concerns.**

It seems that a tremendous opportunity has been missed to conduct a genuine audit of available quantitative and qualitative data on the NI labour market and further and higher education, to conduct a gap analysis of what is not known and initiate a programme of research to fill the gaps.

The opportunity has also been missed to generate significant actions in areas of inequality already well known to the Department.

At the very least, we would like to see a commitment to conduct an effective audit of inequalities and revision of the action plan within its first 12 months of its life.

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