



**UNISON submission to
Belfast Education & Library Board on
its draft Equality Scheme and
forthcoming Audit of Inequalities and
Action Plan**

May 2011

1.0 INTRODUCTION

UNISON is the leading trade union in NI and the largest trade union in the UK with over 1.3 million members.

Our membership includes public service workers in health and social care, the education and higher education services; workers in local government, youth justice; workers in private sector service suppliers; and workers in the community and voluntary sectors.

84% of our membership in NI are women. Our membership also reflects all groups designated under the Statutory Duty of Equality of Opportunity (s.75 of the NI Act 1998).

We are co-convenor, with the CAJ, of the Equality Coalition, an alliance of the affected groups specified in s.75.

The comments we make in respect of this draft Equality Scheme should be viewed in conjunction with input from other affected groups as a co-operative contribution.

UNISON stress our willingness to work co-operatively with BELB to ensure sound processes for consultation and the participation of all affected individuals and groups in future decision-making.

2.0 EQUALITY SCHEME

There are a number of issues on which BELB's draft Scheme diverges from the ECNI Model Scheme. These changes, which will limit and undermine the effectiveness of the Scheme, are highlighted throughout this response

We have a particular concern that the consultation period is well below the three month minimum recommended by the ECNI¹ and other Guidance from OFMDFM.² This timescale is much too short to ensure meaningful participation from affected groups.

More generally, there are a number of key issues which we believe must be addressed to strengthen the Scheme and to ensure that BELB most effectively implements its Section 75 obligations. We believe effective implementation will result in:

- the mainstreaming of equality, placing it at the heart of BELB's decision-making processes;
- the opening up of those decision-making processes to civil society and in particular to the groups affected by s.75;
- better all round delivery of public services; and
- an effective contribution to consensus building in a divided society.

¹ Section 75 of the Northern Ireland Act 1998 A Guide for Public Authorities, April 2010

² OFMDFM (2003) „A practical guide to policy making in Northern Ireland

The Scheme needs to clarify the precise relationship between the s.75 equality duty and the good relations duty

To prevent misunderstanding, and ensure the most effective application of s.75 by BELB staff, the Scheme should clarify the precise relationship between the s.75 equality duty and the good relations duty.

The NI Act 1998 and subsequent Guidance from the Equality Commission for NI make it clear that equality duty is given stronger legal weight than the good relations duty as the former is seen as the necessary underpinning for the latter. 2010 Equality Commission Guidance states that *'good relations cannot be based on inequality'* and that *'the term due regard was intended to be, and is, stronger than regard'*. The discharge of the good relations duty also *'cannot be an alternative to or cannot set aside the equality of opportunity duty.'*

Thus, for example, provisions to better promote equality of opportunity for Catholics and nationalists in some geographical areas and some public programmes, or Protestants and unionists in other domains, must reflect real objective need, rather than some search for an 'equitable balance'. Community differentials caused by religious discrimination lie at the heart of much of the inequality in Northern Ireland and the Section 75 duty actively seeks to address and reduce those differentials.

It is essential that BELB clarifies this relationship to ensure that its responsibilities under each duty are clear and unambiguous.

2.1 Comments on the Foreword and Chapter 1: Introduction

UNISON welcomes the top level commitment given by the Chief Executive and Chair to BELB's obligations under Section 75. It must be made clear, however, that the Foreword and Appendices form integral parts of the Scheme.

Whilst we welcome the commitment of BELB to fulfilling its Section 75 duties across all its functions, these are defined differently in various parts of the Scheme. For clarity we would suggest that a common definition is used throughout the Scheme - specifying that functions includes powers and duties, is of wide import and includes service provision, employment and procurement functions.

BELB should make it clear that the existence of the Action Plan does not detract from its statutory responsibility to ensure that all its functions and policies are scrutinised to determine where equality of opportunity can be promoted and inequality tackled.

It is essential, in this context, that decision-makers utilise all available qualitative and quantitative data, including the Audit of Inequalities, when applying s75 to BELB functions and policies not contained within the Action Plan.

We would also suggest that the Foreword states BELB's commitment to taking, *all necessary steps* to ensure that it complies with its statutory duty and the effective implementation of the Equality Scheme.

The current wording in the Foreword to the draft Scheme commits BELB to providing “*the necessary resources*” to effectively implement the duty. However, the wording of para 1.3 waters down this commitment by stating a commitment to ‘*the necessary available resources*’. This is a weak formulation of words and should be amended to that contained in the Foreword.

We believe that the introduction to the Scheme should outline the social, economic and political context within which BELB operates and how it engages with crucial issues of inequality and discrimination. For example, the introductory section of the report on ‘Who we are and what we do’ must be expanded to give a real sense of the important role the Board plays in the lives of all the population of NI – many of whom live in some of the most deprived communities in the UK – rural and urban. In this section the Board should present some analysis and information on how it currently relates to the affected groups. For example:

- What are the particular challenges facing the Board in securing greater equality of opportunity in its area of responsibility?
- How does the Board envisage impact assessments operating in practice?
- What is the significance on the education system of the high levels of social deprivation and long term unemployment in Northern Ireland?
- How has unmet need been addressed in the past and how will need and unmet need be addressed in the future in light of the Board’s statutory duties.

The same process of clarity and simplification needs to be applied to the complex area of decision-making. The scheme should set out more clearly:

- where the boundaries of the Board’s decision-making powers begin and end;
- the bodies it interacts and interfaces with; and
- who else has decision-making power,

UNISON would recommend that BELB use the data and information available to it much more systematically to expose, analyse and then monitor inequalities.

2.2 Comments on Chapter 2: Arrangements for Assessing Compliance

Chapter 2 should contain a flowchart to aid understanding of decision-making processes and responsibilities within BELB.

For clarity it would be useful if the Equality Scheme includes examples of *how* compliance will actually be assessed in practice.

Whilst recognising that the Equality Commission Guide uses the term ‘Audit of Inequalities’, this term is often quite limiting in scope. We would therefore recommend that the BELB Scheme makes it clear that the Audit is a living documents and requires an ongoing, full and comprehensive ‘*analysis*’ of inequalities.

Whilst the current structures for assessing compliance necessarily ensure senior representation, it is likely to point up existing imbalances in many of the categories designated under s.75. Consideration should be given to how these

imbalances are redressed. We welcome more information on the *specific discussions* BELB is entering into with users of the services and their representatives. In particular we wish to see specific steps taken to involve affected s.75 groups and service users in TSN areas.

2.3 Comments on Chapter 3: Consultation arrangements

It is essential that consultations on all matters including functions, duties and powers involve all designated groups and individuals. It is therefore essential that any '*targeted approach to consultation*' as specified in para 3.2.1 does not create a 'hierarchy' of consultation with certain groups becoming the 'gatekeepers' of the process thus excluding others from inclusive participation.

The ECNI Model Scheme recommends that BELB expand on what its specific considerations are with regard to how best to communicate with children and young people, people with disabilities (in particular people with learning disabilities) and minority ethnic communities.

In para 3.2.3 the BELB draft Scheme deviates from the Model Scheme by stating that consultees who require alternative formats will have "*adequate time to respond*". We would ask BELB to explain why they have chosen to deviate from the ECNI's recommendation that "*such consultees have equal time to respond*" (para 3.2.3 of Model Scheme).

Effective consultation leading to effective participation by affected groups lies at the heart of the statutory duty. It is an area in which BELB has obligations to outreach, assist and resource the consultees.

We would encourage BELB to follow the advice of (and resource) groups with specialist knowledge in this domain. For example such groups could assist in decisions about how, when, and who to approach. People with disabilities could be involved in developing the consultative methods to be used and involved in delivering that training. This kind of investment will ensure that affected people are able to fully participate in the decision making process and contribute to capacity building within the constituency which, in and of itself, will address fundamental issues of inequality and exclusion. However, the primary responsibility must remain with BELB itself to do the necessary work, and to reach out beyond organised groups.

Para 3.1 should be amended to ensure that the Audit of Inequalities will be consulted upon in addition to the Scheme, action measures and Equality Impact Assessments.

The Scheme must set out a clear procedure to ensure that the views of those consulted have been fully considered and incorporated into the decision-making process. Where those views have not been included the Scheme must set out a clear procedure for ensuring that consultees are given reasons for their exclusion.

We welcome the commitment of BELB to ensure that those involved in facilitating such processes are given ‘*specific training*’ and have “*necessary skills*” to enable meaningful participation.

BELB should also provide the ‘*necessary resources*’ to ensure that both the information which is disseminated and, the services provided, are made accessible in a way which ensures equality of opportunity.

2.4 Comments on Chapter 4: Arrangements for assessing, monitoring and publishing the impact of policies

What is a policy?

The Scheme needs to impart a real sense of what the policies mean and how someone could identify if a policy has a particular relevance to their interest group. In setting out its functions, duties and powers:

- BELB must be more explicit about who else is involved, particularly in the mixed economy of health care delivery. Full details of BELB’s contractors and sub contractors and the functions they perform should be set out in the scheme;
- BELB must set out clearly arrangements on how it will ensure that decisions or directives from others both ‘upstream’ and ‘downstream’ in the decision-making process will be independently assessed by it to enable it to fully comply with its section 75 obligations;
- BELB must state its specific responsibilities in relation to impact assessment to ensure that any overlapping with another public body or

agency does not lead to confusion or lack of clarity on the action required by each body to discharge their statutory obligations.

BELB is obliged under s.75 to promote equality of opportunity across the range of constituencies mentioned, regardless of where any particular policy originates. S.75 applies to all policies regardless of their origin and the Scheme must explicitly accept that all policies, once accepted and put into practice within the authority concerned, become its policies.

UNISON would also welcome a more explicit recognition by BELB that many practices are not the subject of written policy documents, but are nevertheless established policies. As recognised in the draft Scheme, all written and unwritten policies are covered by section 75. However, the draft Scheme should indicate measures that will be put in place to reflect this more systematically for the purposes of screening and impact assessment.

The Scheme provides insufficient detail on BELB's procurement and employment functions. Section 75 clearly places an obligation on BELB in respect of all its functions, powers and duties. Employment, service provision and procurement are among the key areas on which we expect BELB to fully implement statutory duty. Detailed comments on procurement and employment follow.

Procurement

BELB must clearly acknowledge throughout its scheme that procurement is a function to which the equality duty applies. The following comments were

produced by UNISON in 2000. A number of public bodies agreed that these would be incorporated in future revised schemes. Departments also incorporated them into the implementation of their Schemes.

As a minimum standard for the full promotion of equality, it is also essential that BELB commit to implementing the 2008 joint *'Equality of Opportunity and Sustainable Development in Public Sector Procurement'* Guidance produced by the Equality Commission NI and the Northern Ireland Central Procurement Directorate

BELB should commit to a definition of procurement that embraces its responsibilities as:

- a purchaser or provider of services under commissioning arrangements;
- a purchaser of goods, supplies and utilities; and
- a purchaser of services and works

In respect of its role as a purchaser or provider of specific commissioned services, it should acknowledge its responsibility to ensure that commissioning documents and reviews to which it is a party contain a proper process of equality assessment as defined in the legislation, and commit both the provider and purchaser to delivery and review of the service in light of the equality groups in the legislation.

In particular, the Scheme should commit to a specific and integral reporting framework by which the purchaser and provider can publicly account for the equality proofing and performance of commissioned services.

In respect of the procurement of goods/supplies/utilities, where such procurement is through purchasing consortia which are also subject to the equality duty, BELB should commit to developing its partnership and influence with such bodies to ensure contracts in which it participates test at listing and award stage the competence and capability of suppliers (whether internal or external to Northern Ireland) in respect of the designated equality categories within the legislation.

It should also commit within its Scheme to participating with such bodies to specific initiatives to:

- brief existing suppliers of goods/services/initiatives as to the obligations and standards they need to develop;
- develop awareness amongst potential (and in particular local) suppliers of equality good practice to assist them in participating in contracting, particularly when such participation would promote equality in e.g. TSN areas.

Where BELB contracts directly for goods/supplies/utilities it should state within the Scheme a defined materiality threshold over which the competence of suppliers in demonstrating their adherence and understanding of the specified equality groups is mainstreamed into the processes of advertisement, listing, award and contract review. It should also commit to promoting suppliers awareness and participation as described above.

In respect of the procurement of services and works, it should commit within the Scheme to the following:

- ensuring that any advisors/Consultants/Supervisors retained have an appropriate understanding of the legislation and the Scheme;
- reflecting the requirements of the legislation and Scheme in all contractual documentation;
- ensuring the testing of provider equality competencies is mainstreamed into advertisement, listing, award and monitoring processes;
- specifically testing employment policy, employment practice and provider track record against the designated equality groups, including consideration of adverse findings in the courts or at tribunals over statutory factors.

It should also commit within the scheme to the full implementation within its procurement activities of future legislation from the EU and UK governments (e.g. the expanded role for assessments in procurement of race factors in the draft EU Racism Directive).

Employment

BELB must make a specific commitment in its Scheme to discharging the equality obligation in its function of employment. This should inter alia include:

- a commitment to the systematic creation and review of employment policies covering all the designated equality groups;
- a clear commitment in the Scheme to equality of treatment between the different groups, and the avoidance of any hierarchy, including any distinction between statutory and non statutory discrimination;
- recognition within policies and the Scheme of the nature of multiple oppression and discrimination;

- a clear commitment to link a policy-driven employment framework to equality of pay and remuneration;
- a recognition that all training and development should reflect mainstreamed equality as per the Scheme, not just Scheme-specific training.
- a commitment to the visible integration of equality policy/practice and Health and Safety policy/practice given such strategic links as sexual harassment;
- a commitment that section 75 obligations will form part of the induction training of all BELB members and employees;
- integration where appropriate between the section 75 employment obligation and professional practice protocols involving employee obligations for fair treatment;
- specific recruitment, grievance and disciplinary policies which reflect section 75 obligations;
- specific training for all those charged with the operation of such policies;
- appropriate and confidential facilities which allow individuals or groups facing discrimination to raise their concerns;
- systematic audits of workforce composition and employment policy effectiveness;
- clear and explicit policy measures, remedies and sanctions for acts of discrimination and harassment in respect of all designated groups;
- a commitment to review and modernisation of policies in the light of positive legal developments that promote equality of opportunity;
- effective consultation with stakeholders (e.g. recognised trade unions) over the implementation and ongoing review of all section 75 employment obligations;

- a mainstreamed approach promoting equality within all bargaining structures;
- a commitment in any screening process to incorporate specific consideration of employment factors;
- acceptance that the employment function covers the definition of “worker” in the widest sense;
- commitment to measures to protect all employees from discriminatory violence or harassment from users of its services.

Screening and Equality Impact Assessments

Para 4.20 of the ECNI model scheme states that in its screening report BELB should include a list of all policies screened by BELB over the three month period. Whether this will take place is unclear and should be made explicit.

To ensure full opportunity for consultees to influence the screening process, it is also crucial that consultees are informed immediately when screening forms are made available on the BELB website. The current proposals to post these on the website without notification and to send out screening reports ‘regularly’ provides no opportunity for effective participation in decision-making processes prior to the implementation of policy

Section 4.29 of BELB’s draft Scheme commits the Board to *“the collection, collation and analysis of existing relevant quantitative and qualitative data”*. This is less specific than section 4.29 of the ECNI Model Scheme which highlights the importance of the collection, collation and analysis of existing relevant *‘primary’* and *‘secondary’* sources of quantitative and qualitative data.

We would ask why BELB has deviated from the ECNI Model Scheme on this issue.

We would recommend that para 4.29 is revised to reflect the ECNI Model Scheme language that BELB shall 'take action to address any gaps'.

Para 4.30 of the ECNI Model Scheme also commits a public authority to '*revise*' the policy to achieve better outcomes for relevant equality groups where monitoring has found that a policy results in greater adverse impact than expected. However, in para 4.30 of its draft Scheme BELB only commits to '*review*' the policy. This weakening of the ECNI Model Scheme has the potential to render impotent BELB's procedures to identify and monitor equality impacts.

We note that the lead role in screening will be taken by the policy decision maker. From experience, the lack of equality expertise amongst senior decision-makers has led to the screening out of policies which have had enormous implications for equality of opportunity.

It is essential that the decision on whether an equality impact is minor, major or none is subject to objective criteria and not on the whim of the lead decision-maker who may not have the necessary training on s.75 issues. There is a real danger that this will lead to an effective climate of no assessments being undertaken, particularly on what may be seen as onerous or contentious policies.

A report on all screening recommendations should be issued for endorsement by the Senior Management Team with the full participation of the Organisation's Equality Unit at the earliest possible stage.

BELB should commit to ensuring that affected groups are facilitated to participate in the screening process at the earliest possible stage, through whatever techniques are appropriate, including where required, quantitative survey work, and qualitative discussions with groups, where information gaps need to be addressed.

To ensure that consultees are able to participate effectively in the screening process it is essential that BELB commit to informing consultees when screening forms are issued and posted on BELB website. Without such notification s.75 groups with expertise and data on particular issues will be excluded from influencing policy development – particularly the application of mitigation or alternative measures. This is particularly important on policies where 'no' or 'minor' impact is determined. Groups representing LGBT communities; political opinion or dependents have expressed particular concerns in this regard since so little research has been done on the needs of their specific constituencies.

It is essential that BELB make it clear that financial considerations will not be a basis for restricting or limiting the impact of equality assessment.

As stated previously all policies, written or unwritten, are covered by section 75. We would therefore ask BELB to clarify the measures that it will undertake to ensure that practices that are not the subject of written policy documents

but which are established policies of BELB are both screened and an impact assessments undertaken.

BELB has a responsibility to follow the Guidelines with respect to all policies regardless of the source of the policy – not just those in which equality of opportunity is 'central'. BELB's Scheme would be advised to strongly acknowledge that, alongside the screening for policies which have equality of opportunity as a central focus, policies which may appear at first glance to be devoid of equal opportunities implications, and which have been immune from challenge or question in the past, require a fresh look in order to determine whether there are in fact implications for equality of opportunity. The screening of new and proposed policies must also be subject to this criteria.

To enable us to understand whether we will achieve measurable outcomes it is essential that specific data is available and baselines established on specific impacts to establish how BELB has related to the affected groups in the past and how it will relate in the future in the context of the Statutory duty.

There is clear scope for collaboration. Where a 'lead responsibility' is identified for a particular Equality Impact Assessment the scheme must identify the boundaries of each public authority's responsibility for decision-making to ensure that responsibilities are not passed on or hived off.

2.5 Comments on Chapter 5: Staff Training

Please see our previous comments on the functions of BELB with regard to *Employment*.

UNISON would urge BELB to ensure that the Scheme make more explicit that training be provided to all staff and will not be dependent on grade, responsibilities or any training needs assessment that will in any way dilute their statutory obligations. The resources for this should be set out in the scheme.

As stated previously, the training should clarify the precise relationship between the equality duty and good relations duty and the implications of this for the functions of BELB and policy development.

2.6 Comments on Chapter 6: Arrangements for ensuring and assessing public access to information and services we provide

Para 6.4 of the draft BELB Scheme does not provide a timeline for responses to requests for information in alternative formats. Such a timeline is recommended in the ECNI Model Scheme and is essential.

The BELB draft Scheme also fails to outline BELB's arrangements for providing information to children and young people, people with learning disabilities And minority ethnic communities. This is recommended in para 6.3 of the ECNI Model Scheme. We would ask BELB to explain its reasons for excluding such information.

The Scheme must ensure equality of access to information with regard to how and where the results of equality impact assessments and the monitoring of

adverse impact will be published. There must not be a sliding scale of publication according to objectively *determined* interest on a particular issue.

BELB must provide the *necessary resources* to ensure that both the information which is disseminated and, the services provided, are made accessible in a way which ensures equality of opportunity. More imaginative methods of distribution would be welcome such as in public libraries, stalls set up in local shopping centres etc.

BELB must specify an actual period of time within which it will respond to requests for information. Responding in a '*timely*' manner is too vague and not measurable.

2.7 Comments on Chapter 8: Complaints procedure

Implementation of the Scheme should be constantly reviewed to ensure that S.75 groups are confident that they will get support and redress.

2.8 Chapter 9: Publication of the Equality Scheme

The BELB draft Scheme deviates from the ECNI Model Scheme by failing to outline the arrangements it has in place for communicating its Equality Scheme effectively to children and young people and people with disabilities (Section 9.3 of ECNI Model Scheme).

3.0 AUDIT OF INEQUALITIES AND ACTION PLAN

It is essential that BELB publishes and consults upon its audit of inequalities and action plan urgently and provides a minimum of 3 months for response. Such consultation is an essential component of ensuring that the BELB Action Plan fully reflects the full range of inequalities facing s.75 groups. Both the Audit and Action Plan are documents that BELB must consult on the future to ensure the necessary participation of s.75 groups and its stakeholders.

UNISON will be asking three three fundamental questions with regard to the Audits of Inequalities and Action Plan

- 1. Is the Audit robust?**
- 2. Does the Audit clearly inform the Action Plan?**
- 3. Will the Action Plan be effective?**

If it 'fails' on the first two questions, it is reasonable to assume it will fail on the third one.

The language in the document should accurately reflect the statutory relationship between the equality and good relations duties. As stated previously in this submission, the NI Act 1998 states that public authorities must have 'have *due* regard' to the need to promote equality of opportunity and must have 'regard' to the need to promote good relations.

This difference in language not only reflects the language of the Good Friday Agreement, but is intended to strengthen the requirement to promote equality

of opportunity, giving it greater weight. This duty is not just a statutory duty; it is a *constitutional* duty.

We will also ask BELB to detail the *specific* consultations it has undertaken with s.75 groups to identify (1) the specific inequalities that *those potentially* affected groups felt were relevant to the Organisation's functions and (2) what actions those groups felt were necessary to better promote equality of opportunity.

3.1 Audit of Inequalities

The Audit must give a comprehensive and full picture of the potential inequalities faced by *each* s.75 group across BELB's specific functions and policy areas. This will consultees from specific s.75 groups to easily identify the inequalities potentially affecting them when BELB carries out its range of functions.

There must be cross-reference to the Audit findings at each item of the Action Plan to show why it is required as an equality measure and to give consultees the opportunity to establish the audit trail to each Action Plan.

Tracking the evidence base into the Action Plans is essential. We are particularly aware that there are gaps in evidence around sexual orientation, dependents and political opinion and are reminding all public authorities of their responsibility to commission research where insufficient data exists.

In this context we would ask BELB to clarify:

- (a) Will BELB gather data on the potential inequalities faced by *each* s.75 group across each functional area?
- (b) Will a gap analysis be undertaken?
- (c) Has BELB considered commissioning its own research to ensure that the Audit and Action Plan are as comprehensive as possible?

Information will also be required to determine how unmet need has been addressed in the past and how it will need to be addressed in the future in light of BELB's statutory duty.

We would ask BELB to recognise that the Audit itself has a clear use over and above the Action Plan and should be used to inform future screenings and EQIAs. It is an aid to the effective implementation of S.75, not a replacement for it.

In the wider context we would request further information on whether the Audit of inequalities, and priorities identified, will inform the way in which BELB's budget is allocated in the future.

3.2 Action Plan

We will ask BELB to clarify whether the actions contained in the Action Plan are in fact 'new' actions identified as a direct result of the Audit of Inequalities.

It is essential that the targets in the Action Plan are Specific, Measurable, Achievable, Realistic and Time-based. The Action Plan should be specific in this regard, particularly in detailing intended outcomes for each s.75 group.

There must be a full review of the Action Plan after one year. The Action Plan must be a living document to which specific actions will be added in the context of identified inequalities.

There must be a clear description of how this process interacts with the corporate planning cycle – as stipulated by the Equality Commission. There must also be clear evidence of trade union involvement in the process



For further information contact: Thomas Mahaffy, Policy Officer, UNISON
Centre, Galway House, 165 York Street, Belfast BT15 1AL. T. 028 90270190; E.
t.mahaffy@unison.co.uk