



UNISON submission

PSNI Equality, Diversity and Good Relations Strategy

September 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 strategy 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 PSNI to ensure sound processes for consultation and the participation of all affected individuals and groups in future decision-making.

We believe that effective implementation of a PSNI Equality Scheme that utilises the ECNI Model Scheme as a minimum standard should result in:

- the mainstreaming of equality, placing it at the heart of PSNI’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 services; and
- an effective contribution to consensus building in a divided society.

2.0 Key Issues: PSNI Equality, Diversity and Good Relations Strategy.

The PSNI’s Equality, Diversity and Good Relations Strategy does not fulfil the PSNI’s statutory obligation to submit an Equality Scheme or revised Equality Scheme as set out in paras 2 and 3 of Schedule 9 of the NI Act 1998.

For example, the failure of PSNI to produce a separate document that specifically identifies the document as an ‘Equality Scheme’ makes the application of paras 10 and 11 of Schedule 9 (dealing with complaints and investigations) impossible.

With regard to content, Schedule 9 of the NI Act specifies particular elements that the PSNI draft MUST contain to be considered an Equality Scheme. Specifically:

- *Paragraph 4 (1) – how it proposes to fulfil the duties imposed by Section 75 in relation to the relevant functions.*

To fulfil this obligation PSNI must set out in a Scheme the specific detailed arrangements that have been put in place to carry out the following actions:

- *Paragraph 4 (2) (a) – its arrangement for assessing its compliance with the Section 75 statutory duties and for consulting on matters to which a duty under that section is likely to be relevant (including details of the persons to be consulted).*
- *Paragraph 4 (2) (b) – Its arrangements for assessing and consulting on the impact of policies adopted or proposed to be adopted on the promotion of equality of opportunity.*
- *Paragraph 4 (2) (c) – its arrangements for monitoring any adverse impact of policies adopted by the authority on the promotion of equality of opportunity.*
- *Paragraph 4 (2) (d) – its arrangements for publishing the results of such assessments as are mentioned in paragraph (b) and such monitoring as is mentioned in paragraph (c).*
- *Paragraph 4 (2) (e) – its arrangements for training staff on issues relevant to Section 75 statutory duties.*
- *Paragraph 4 (2) (f) – its arrangements for ensuring, and assessing, public access to information and to services provided by the authority.*

It is clear that the vague commitments made by PSNI on these crucial issues (Page 13 of the strategy and in the appendices and footnotes) are inadequate for it to meet its statutory obligations.

Para 4 (3) (a) of Schedule 9 also specifically directs that an Equality Scheme shall conform to any Guidelines as to form and content which are issued by the Commission with the approval of the Secretary of State. In addition:

- *The scheme must specify a timetable for measures proposed in the scheme (Paragraph 4 (3) (b))*
- *the scheme shall include details of how the scheme will be published (Paragraph 4 (3) (c))*
- *The scheme must include a commitment to conducting a review of the scheme within five years of its submission to the Commission or the scheme's last review, and to forwarding a report of this review to the Commission (Paragraph 8 (3))*
- *The scheme must include a commitment that, in making any decision with respect to a policy adopted or proposed to be adopted by it, a public authority shall take into account any such assessment and consultation as is mentioned in paragraph 4 (2) (b) carried out in relation to the policy (Paragraph 9 (2))*
- *The scheme must include the authority's arrangements for dealing with complaints arising from a failure to comply with the scheme. In publishing the results of such an assessment as mentioned in Schedule 9, paragraph 4 (Paragraph 10)*

Again the PSNI strategy fails to comply with these obligations and guidelines as to form, content and timetable for measures.

Crucially it also fails to set out the duties resulting for an Equality Scheme as detailed in para 9, schedule 9 with regards to mitigation and alternative policies.

UNISON believes that the PSNI's failure to produce an Equality Scheme that complies with Schedule 9 will leave PSNI in breach of its statutory obligations, will make redundant the complaints and investigation procedures detailed in paras 10 and 11 of Schedule 9 and will lead to a lack of transparency and the ineffective participation of affected groups in decision-making processes.

UNISON recommends that PSNI revert to the ECNI Model Scheme that has been utilised by all other designated public bodies in NI. The use of the ECNI Model Scheme as a minimum standard will ensure greater clarity and consistency. It will also ensure that the PSNI complies with its statutory obligations under Schedule 9.

3.0 Key Issues to be addressed in a redrafted Equality Scheme

More generally, there are a number of key issues which we believe must be addressed in a redrafted Scheme to ensure that PSNI most effectively implements its Section 75 obligations.

3.1 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 PSNI 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 PSNI clarifies this relationship to ensure that its responsibilities under each duty are clear and unambiguous.

3.2 PSNI should make it clear that the existence of an Action Plan does not detract PSNI 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 PSNI functions and policies not contained within the Action Plan.

3.3 The introduction to the Scheme should outline the social, economic and political context within which PSNI operates and how it engages with crucial issues of inequality and discrimination. For example:

- What are the particular challenges facing PSNI in securing greater equality of opportunity in its area of responsibility?
- How PSNI envisage impact assessments operating in practice?
- How has unmet need been addressed in the past and how will need and unmet need be addressed in the future in light of PSNI's statutory duties.

3.4 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 PSNI's decision-making powers begin and end;
- the bodies it interacts and interfaces with; and
- who else has decision-making power,

3.5 The Equality Scheme should include examples of *how* compliance will actually be assessed in practice.

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* PSNI 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.

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

Para 3.2.1 of the ECNI model scheme also requires PSNI to “*seek the views of those directly affected by the matter/policy, the Equality Commission, representative groups of Section 75 categories, other public authorities, voluntary and community groups, our staff and their trades unions and such other groups who have a legitimate interest in the matter, whether or not they have a direct economic or personal interest*”.

We would encourage PSNI 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 PSNI itself to do the necessary work, and to reach out beyond organised groups.

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.

It is essential that those involved in facilitating such processes are given *'specific training'* and have *"necessary skills"* to enable meaningful participation.

PSNI 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.

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* does create a 'hierarchy' of

consultation with certain groups becoming the ‘gatekeepers’ of the process thus excluding others from inclusive participation.

3.7 Arrangements for assessing, monitoring and publishing the impact of policies

What is a policy?

The Scheme must 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:

- Full details of PSNI’s contractors and sub contractors and the functions they perform should be set out in the scheme;
- PSNI 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;
- PSNI must state its specific responsibilities in relation to impact assessment to ensure that any overlapping with another public body or agency PSNIs not lead to confusion or lack of clarity on the action required by each body to discharge their statutory obligations.

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

Procurement

PSNI 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 PSNI 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

PSNI 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, PSNI 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 PSNI 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

PSNI 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 PSNI 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.

3.9 Screening and Equality Impact Assessments

To ensure full opportunity for consultees to influence the screening process, it is crucial that consultees are informed immediately when screening forms are made available on the PSNI website.

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.

PSNI 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 PSNI commit to informing consultees when screening forms are issued and posted on PSNI 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 PSNI 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 PSNI 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 PSNI are both screened and an impact assessments undertaken.

PSNI 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'. PSNI'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 PSNI 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.

3.10 Staff Training

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

UNISON would urge PSNI to ensure that the Scheme makes explicit that training 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 PSNI and policy development.

3.11 Arrangements for ensuring and assessing public access to information and services we provide

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.

PSNI 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.

PSNI 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.

3.12 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.

4.0 Audit of Inequalities and Action Plan

The PSNI Action Plan is compromised by failure of method due to a failure to consult on or publish its audit of inequalities. As a result there is an unclear linkage between PSNI's key functions, identified inequalities for *each* s.75 group and specific Actions to address these. There should be clearer cross-referencing to the Audit findings at each item of the Action Plan to show why it is required. In effect there is no clear audit trail

This failure prejudices any judgement by us on whether the Action Plan will be effective in effectively promoting equality of opportunity for s.75 groups across PSNI's range of functions.



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