

Date: 5 November 2008

Consultation: Draft Guide to the Section 75 Statutory Duties

Introduction

The Northern Ireland Federation of Housing Associations (NIFHA) represents 40 housing associations. This includes 33 of the associations registered and regulated by the Department for Social Development (DSD). Collectively, these associations provide 30,000 good quality, affordable homes for renting or equity sharing. Further information is available at www.nifha.org

Background

The Federation is the umbrella body for the voluntary housing movement in Northern Ireland. NIFHA itself is not designated, but has taken on an 'Equality' co-ordination role as part of our support for members. As a result, the Federation has been assisting its members in the implementation of Section 75 through a joint approach to the statutory equality duties.

Since April 2004 NIFHA has collaborated with its membership to facilitate the production and submission of Equality Schemes, carry out policy screening, arrange relevant training and undertake Equality Impact Assessments (EQIA). We have done this to make the most of our members' resources and to reduce the administrative impact for consultee and/or stakeholder organisations.

Our comments are based on feedback from member associations and are reflective of their views on the proposed changes in relation to the Section 75 Statutory Duties.

General Comments

1. Overall the housing associations are positive about equality of opportunity; indeed many were formed to meet the needs of disadvantaged groups. Fairness and equality have always been core values for our member organisations and many associations have been leaders in developing services to meet the needs of a diverse community. For example schemes for Chinese Elders, Travellers, those with learning disabilities and mixed community housing are just a small sample of innovative projects completed by NIFHA members.

However, we have a genuine concern that the current system is unnecessarily cumbersome, process driven and demanding of significant resources that could be used to effect real improvements in the equality of opportunity experienced by many in our society. In particular, we believe that the existing Section 75 processes are based on a "one size fits all" approach which does not facilitate flexibility. Clearly, a small association with housing stock of less than 200 homes does not have the same impact on public services as a Health Trust. More importantly, such an association is unlikely to have access to the same level of resources for implementing the statutory duties.

2. NIFHA's members are in an anomalous position as they have been designated as statutory bodies but are in fact voluntary organisations. As a result of this situation housing associations often do not have ownership of the policies which they must operate. This can cause confusion and frustration for members of the public or stakeholder organisations who may not appreciate the constraints within which associations work. For example, associations serve the public by providing homes but housing need is actually determined by the Northern Ireland Housing Executive, while the House Sales policy used by associations was brought in by the Department for Social Development (DSD). On occasion our members have not even seen the associated policy screening documents for some imposed policies.

Housing associations generally have limited scope to alter the impact of major strategic policies as most of these tend to be imposed by government, in particular those sections with responsibility for housing such as the DSD or NIHE. One current example is that the NIHE's draft Corporate Plan does not allow for any supported housing; the associations do not have the power to alter this although they may argue the case in a response to consultation on the Plan.

We suggest it would be helpful if there was co-ordination of the Section 75 processes between government departments / bodies working in the same field or sector; especially in relation to imposed policies. In addition, there needs to be greater clarity on policy ownership.

3. NIFHA recommends that any changes should allow for proportionality in the implementation of the Guide. The specific requirements of the procedural guidance and the expected commitments should be relevant to the size and scale of operations of the organisation. We believe this would be beneficial for other small organisations too.

NIFHA would be happy to work with the Equality Commission to develop a model that is more appropriate to small public bodies or voluntary organisations. For instance, it may be sensible to have some type of passporting system if a smaller body is providing a public service on behalf of a statutory authority or that there is a method of "qualification by doing". In effect, certain actions or quality awards would count towards implementation.

4. It is important that the introduction of new Equality Schemes is phased to avoid undue pressure on consultee organisations. It may also make more practical sense to group designated bodies according to their main function, e.g. synchronisation of housing bodies. This could be advantageous when dealing with common policies.
5. Like a number of other bodies housing associations have not yet completed the first five year cycle since designation. For this reason NIFHA believes the requirement to produce new Equality Schemes should not be applied housing associations until after that initial 5 year period. We accept this may affect point 4 above.

Specific Comments

Chapter 1 of draft Guide

1. NIFHA supports the proposal to move towards Action Measures and Outcomes as this would be more beneficial for service users and would better align with business planning. The current emphasis appears to be on the processes rather than the end result. As a consequence, there is a tendency for organisations to get bogged down in adhering to the letter of the Guidance and meeting targets instead of focusing on achieving practical or positive outcomes. We agree mainstreaming equality of opportunity is more likely to happen if it is approached from the business perspective and seen as part of a good customer service. Unfortunately, the present model seems to have led to equality being treated as an additional task or even purely a function of human resources. The revised guidance needs to address this situation.
2. The idea of undertaking a review of Schemes before the end of the five year timeframe may make sense in business terms but from a practical point it is likely to increase the workload of those who already have a substantial remit – in associations implementing equality will normally form part of a much wider brief.
3. We accept that there needs to be strong top-level commitment to implementing the Section 75 duties and that this should include the allocation of necessary resources. However, the Commission must also take cognisance of the fact that no association has received any additional funding for this work but they are subject to efficiency requirements which have put pressure on already limited resources.
4. NIFHA notes that the Commission intends to implement a compliance standard accompanied by selective annual auditing and would be grateful for details of the legal ground for this. Whilst we are supportive of the principle of checking progress on implementation of the statutory duties we also have a number of concerns about how this proposal would work in practice. Housing associations are highly regulated bodies – depending on the services they provide associations can expect regulatory visits from some or all of the following:
 - The Northern Ireland Audit Office (NIAO)
 - The Department for Social Development
 - The Northern Ireland Housing Executive (from the NIAO or the Supporting People perspective)
 - The Regulation and Quality Improvement Authority
 - The Department of Learning

This verification is in addition to internal and external audit processes but does not include similar processes undertaken as part of quality standards like ISO, IIP or Charter Mark. The new Charity Commission may also have a regulatory or audit remit which will only add to an already onerous burden of compliance checking. Given this situation we are very concerned about the prospect of another layer of regulation.

We would need more detail on how this would work before making an informed comment. Even without such information NIFHA counsels that any compliance audits must be proportionate to the size of the organisation and should not be undertaken on an annual basis for every designated body.

Chapter 2 of the Draft Guide

1. NIFHA welcomes Guidance on the form of an Equality Scheme but believes even with the S75 Effectiveness Review some lessons really have not been learned from the previous schemes. The definition of policy as listed at 2.15 is still too wide to be managed in a practical way. It is not realistic to expect any organisation to individually screen (or filter) what could easily be 1000+ policies. This will become even more problematic if designated bodies have to carry out a public consultation exercise for those that have been “filtered out” too.

We recommend that the Commission considers giving more emphasis to the type of policy under review. One with strategic significance should merit higher priority than a policy on keeping pets in a sheltered housing scheme. For this reason we suggest that policies should be categorised on the basis of their importance or scope. An example would be that the Housing Association Guide or the Procurement Strategy issued by the Department for Social Development would be given more weight than the Rent Arrears or the Recycling Policy of an individual association.

2. The Federation recognises the need to have a good evidence base for decisions and believes there is a great need to share this information to avoid inefficient use of limited resources. For this reason we suggest the Commission’s own website could be used as a repository for or signpost to relevant research conducted by designated bodies, representative or umbrella groups, trade unions and universities.
3. NIFHA is concerned by the recommendation for public authorities “to undertake an audit of inequalities” (2.31) could lead to a considerable degree of duplication or even contradictory conclusions. We believe the Equality Commission should take a lead on this, preferably linking in with the relevant government departments to ensure that designated bodies are working to address the same inequalities. In our view this would facilitate a more targeted approach to reducing inequality.
4. The Federation notes the new deadline for progress reports and the proposal to introduce compliance reports. The previous comment on Chapter 1 point 4 covers this but we would like to add that many associations have several other reporting targets with the same timeframe.
5. Please refer to our comments on the Review of Schemes at Chapter 1 point 2.

The Federation also has concerns about the statement in 2.36 that public authorities must undertake a review prior to a merger or ceasing to exist. In the last few years a number of smaller associations have merged. This trend may well continue and such reviews would be a major undertaking for organisations with very limited staff resources.

6. NIFHA's members would welcome clarification on what the Commission means by "timely feedback" in Guiding Principle 9. Does this mean eight weeks as stated in Annex 1 at Step 2.13? If so, when does the eight weeks begin: from receipt of the response or following consideration of feedback?
7. The Federation also seeks clarity on point 2.49 as the second sentence does not appear to relate to the first. We would also like to know if the comment on policies "including those set by others..." applies to a different part of the document, if so, where? Perhaps more importantly we are concerned about how designated bodies could be responsible for policies they have not developed but are under obligation to implement.
8. Finally, the Federation feels the Commission should give more detail on what is intended by the requirement to "respond" to complaints within 28 calendar days in point 2.52. NIFHA believes this section should refer to the complaints procedures of the designated body as these commit the organisation to specific response timescales.

Chapter 3 of the Draft Guide

NIFHA and its members welcome the Equality Commission's commitment to produce a model layout as this makes it easier for us to take a collective approach to the task.

Annex 1

1. While the Commission may have sound reasons for the proposed move to "filtering" instead of screening this change to the policy appraisal process gives great cause for concern. Aside from the fact that altering the terminology may cause confusion and the potential for work to get caught between two systems, this new method will definitely be much more onerous. In effect, designated bodies will have to carry out substantive research and publication consultation for every single policy either at the filtering stage or as part of an Equality Impact Assessment.

Please refer also to previous points on this subject under General Comments 3 and Chapter 2 comment 1.

2. NIFHA does not believe it is practical to impose such a specific timescale for consultation on policies that have been "filtered out". We believe it would be extremely difficult for the Commission to monitor this. In fact such a requirement may even encourage delays in decision-making.

3. The Federation suggests if there is to be consultation on all policies that are “filtered out” then consultation on such policies would be easier to manage if it was undertaken on a periodic basis, for example quarterly or twice a year. Given that public consultation generally includes the insertion of Public Notices in papers this would be a much more efficient use of resources.
4. NIFHA agrees that policy appraisal should take place when developing policies but this is not possible for existing policies. This is particularly pertinent in the case of newly designated bodies or those like housing associations that have not completed the first five year cycle.
5. Our members would welcome more detail on the reference to policies “of a purely technical nature” in Step 2.2. In particular, it would be helpful to have some examples technical policies.
6. Steps 2.11 and 2.12 are also likely to involve additional work, for example if consultees disagree with the decisions of the designated body. Aside from the resource implications for NIFHA members we believe that 2.12 may not be the preferred option for service users. In fact for those experiencing inequality moving to the full impact assessment process could actually delay the introduction of the mitigating measures which would improve their access to a service.

In our view this does not seem to meet the spirit of the equality legislation.

Concluding remarks

On behalf of our members I am pleased to be able to contribute to this process and hope you will find these comments helpful. If you have any queries about any of the points raised or require further information about the Federation and the work of its members please do not hesitate to contact me.

Submitted on behalf of NIFHA by:

Lucinda McMurrin
Corporate Services Manager