

This guidance note provides advice to Councils in Northern Ireland on how the Section 75 good relations duty applies to relevant areas of their business, as well as how it can inform Councils' wider good relations policy development.

## Equality Commission advice on Good Relations in Local Councils

There are several statutes which place good relations duties on Councils. While these statutes apply to all designated public authorities, they have particular relevance to Councils, given their ongoing programme of work related to good relations and the opportunities presented to progress this through local government reorganisation.

The Commission recognises the various challenges faced by Councils as they assume the responsibilities of the previous District Councils. These challenges are particularly sensitive when policies are established or reviewed relating to community identity in Northern Ireland, whether that is flags, emblems, commemorations, corporate branding or the naming of facilities and places.

The Commission will continue to offer advice to Councils on the effective implementation of their Section 75 good relations duty and expects each public authority to apply its Equality Scheme arrangements to fulfil this duty. Such engagement will be informed by the Executive's good relations strategy, [Together: Building a United Community](#) and the outworking of relevant sections of the Stormont House Agreement. We plan to update our guidance on good relations generally over the coming period to take account of this changing context. We look forward to engaging with key stakeholders in the Councils and other public authorities to progress this work.



This guidance should be read in conjunction with [Section 75: A Guide to Public Authorities](#) (2010), [The Public Sector Equality, Disability and Good Relations Duties: A Short Guide](#) (2014) and other related guidance.<sup>1</sup>

## The Good Relations Duties

The **Section 75 duties** require a designated public authority, when carrying out its functions relating to Northern Ireland, to have due regard to the need to promote equality of opportunity in relation to the nine equality categories<sup>2</sup> and to have regard to the desirability of promoting good relations between persons of a different religious belief, political opinion or racial group. Equality Commission guidance provides information on the interrelationship between these two duties. This notes, for example, that the ‘due regard’ equality duty was intended to be and is stronger than the good relations ‘regard’ duty whilst, nevertheless, emphasising that “both duties have to be discharged in all circumstances.”<sup>3</sup>

The Section 75 (2) good relations duty places a requirement on decision makers to ensure that they properly consider the desirability of promoting good relations when carrying out the Council’s functions, such as when developing new policies, or when revising existing ones.

Case law in Great Britain has identified some principles that the courts take into account when assessing compliance with the public sector duties. These principles may also be applied by the Northern Ireland courts. Public authorities, in working to implement their duties, may find these principles helpful:<sup>4</sup>

1. a decision-maker must be aware that he/she is obliged to comply with the public sector duties
2. the duties must be fulfilled before and at the time that a particular decision is being considered, and not afterwards
3. the duties must be exercised in substance, with rigour and an open mind and not as a ‘tick box’ exercise

<sup>1</sup> Equality Commission Guidance: ‘Promoting Good Relations: A Guide for Public Authorities’

<sup>2</sup> Between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation; between men and women generally; between persons with a disability and persons without; and between persons with dependants and persons without.

<sup>3</sup> Section 75 of the Northern Ireland Act 1998, A Guide for Public Authorities, April 2010 Chapter 5

<sup>4</sup> R (Brown) -v- Secretary of State for Work & Pensions & others [2008] EWHC 3158 (Admin)

4. the duties are non-delegable, meaning that it is the actual decision-maker who must comply with the duties, and not some other person
5. the duties are continuing ones
6. it is good practice to keep adequate records that will show that the statutory goals have been conscientiously considered and to promote transparency and discipline in the decision making process.

While the Section 75 (2) good relations duty requires that consideration is properly paid to *the desirability of promoting good relations* when a policy or practice is being formulated or reviewed, it does not dictate that the policy or practice must have any particular content or lead to any particular outcome. Nevertheless, if a decision is made to initiate or continue with a policy or practice that damages good relations or which is likely to frustrate the promotion of good relations, then it may raise a doubt that the decision-maker properly paid regard to the desirability of promoting good relations. If such a decision is challenged by way of a complaint to the Equality Commission or otherwise, the decision-makers will have to provide convincing evidence that they considered the desirability of promoting good relations “in substance, with rigour and an open mind” and not as a mere ‘tick box’ exercise. Where the Commission finds that a public authority has not complied with its Equality Scheme it will make recommendations that the public authority properly applies Scheme arrangements. This may influence the final policy where a re-consideration of the policy decision has been prompted. Where the Commission is satisfied that a public authority has complied with the requirements of its Equality Scheme then the final decision on the policy or practice remains a matter for the public authority.

While this paper focuses primarily on the Section 75 (2) good relations duty, it should be noted that there are other duties that are also relevant to promoting good relations. These are:

- The obligations on public authorities and others under the ***Race Relations (Northern Ireland) Order 1997*** (RRO) not to discriminate on racial grounds. In addition, Article 67 of the RRO places a specific duty on Councils “to make appropriate arrangements with a view to securing that its various functions are carried out with due regard to the need to eliminate racial discrimination and to promote equality of opportunity and good relations between persons of different racial groups.”

- An obligation on public authorities and others under the **Fair Employment and Treatment (NI) Order 1998** not to discriminate on the grounds of religious belief and/or political opinion in employment and the provision of goods and services. Importantly, the **Fair Employment Code of Practice** recommends that employers promote a good and harmonious working environment.

## Defining Good Relations

Although there is no current statutory definition of good relations within Section 75, or in any other Northern Ireland legislation, the Commission included a definition in its 2007 guidance, [Promoting Good Relations – A Guide for Public Authorities](#). The guidance references a number of other definitions in use by public authorities at that time and recommended that public authorities themselves determine a definition of good relations, and a vision and aims, appropriate for their circumstances.

In the context of the Northern Ireland Executive strategy on good relations, [Together: Building a United Community](#), the Commission has proposed that there should be a definition of good relations in statute, to ensure clarity and consistency of purpose in shaping actions and promoting good relations.

The Commission has indicated that there are a number of elements that would be helpful in the formulation of such a definition. Good relations could be said to exist where there is:

- a high level of dignity, respect and mutual understanding
- an absence of prejudice, hatred, hostility or harassment
- a fair level of participation in society.<sup>5</sup>

The definition contained in Section 149 of the Equality Act 2010 in Great Britain is also useful in that it provides public authorities there with direction on how they should comply with their duty to have due regard to the need to foster good relations, as follows:

*(5) - Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:*

- (a) tackle prejudice, and*
- (b) promote understanding*

The Commission will build upon the above and give further consideration to a definition through review of and updating of its good relations guidance.

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<sup>5</sup> This draws on provision originally made in section 10, Equality Act 2006, in respect of powers and duties of the Equality and Human Rights Commission in Britain.

## Fulfilling the statutory good relations duty (Section 75 (2))

Each of the Councils established in 2015 has assumed responsibility for all previous Councils' staff, policies and buildings and each will be working through previous equality and good relations practices to decide which ones should continue or should be reviewed. Councils must give appropriate consideration and time to develop policies in order to fulfil their responsibilities to have regard to the desirability of promoting good relations.

In essence a Council should consider what actions it could or might take to secure or improve good relations. Councils should also consider whether to refrain from taking any proposed actions that could damage good relations, or consider how to limit or mitigate any damage that might result from such actions. It should do so by having a process by which it can assess what effect on good relations (positive, negative or neutral) particular policies or practices are having or may have.

Furthermore, the duty is to have regard to the desirability of promoting good relations between persons of different religious beliefs, political opinions and racial groups. It is important to pay attention to the specific statutory language, as emphasised above. Considering how to promote good relations between persons of different religious beliefs, political opinions or racial groups differs to considering how to promote the interests (e.g. economic, religious, political or cultural) of any one particular group, though the two matters may sometimes be interrelated. This has been noted in case law.<sup>6</sup>

While the Commission has developed broad policy advice on some matters relating to identity<sup>7</sup>, it is for each Council to pay regard in the specific context in which it is working and to develop policies which work towards the Council's own good relations objectives.

<sup>6</sup> See the comments of Lord Justice Pill at paragraph 38 in R (Harris) -v- London Borough of Haringey [2010] EWCA Civ 703

<sup>7</sup> For example as contained in Equality Commission guidance, 'Promoting a Good and Harmonious Workforce: A Guide for Employers' October 2009

## Using Section 75 (2) to inform the policy framework to promote good relations

- 1. Leadership, especially at Councillor and senior levels, should be key to ensuring the promotion of good relations.** Leaders should seek to have a positive influence and should publicly acknowledge that it is desirable to promote good relations and commit their Councils to this. They should also, for example, seek to:
  - Unify to a common purpose
  - Tackle prejudice and promote understanding
  - Establish positive working relationships
  - Facilitate collaboration and ensure participation
  - Exhibit empathy and respect for diversity
- 2. Good governance, especially in relation to conduct and behaviours, should be demonstrable in all decisions.** Decision makers should not only demonstrate leadership, but also adhere to appropriate regulations relating to conduct and behaviours; the two are clearly and closely aligned in the Code of Conduct for District Councillors<sup>8</sup>. The Code is based on 12 principles of conduct, which are intended to promote the highest possible standards of behaviour for Councillors, including promoting equality and good relations.
- 3. Policy objectives to encourage good relations should be established.** Such policy objectives and goals should be coherent and consistent with a Council's agreed definition of good relations and encourage greater integration of communities, particular to further sharing, cohesion, common purpose and mutual understanding.
- 4. Policies and practices relevant to good relations should be considered strategically for consistency with the Council's commitment to promoting good relations.** Policies and practices which are likely to be relevant to the promotion of good relations which are linked in terms of their aims and objectives should be considered within a strategic policy framework. This should ensure that the policy development process, under the arrangements in the Council's Equality Scheme, enables policies to be developed which are

<sup>8</sup> Paragraph 3.3 for 12 principles in the Northern Ireland Local Government Code of Conduct for Councillors, DoE May 2014



consistent with the Council's overarching framework for promoting good relations.

- 5. Council policy making should be informed by a sound evidence base.** The policy development process should involve consideration of evidence, whether qualitative or quantitative. Relevant guidance should be considered as part of the process, for example the Equality Commission's guidance, [Promoting Good Relations: A Guide for Public Authorities](#); the [Fair Employment Code of Practice](#) and the Commission's [Guide to Promoting a Good and Harmonious Working Environment](#). Decision making on sensitive matters relating to community identity, which may have an impact on the promotion of good relations, should be evidence based. While community consultation contributes to the development of an evidence base, policy making should not simply be about reflecting the wishes of the majority. Where the policy is particularly contentious, over-reliance on data from consultation could potentially intensify sectarian divisions.
- 6. Councils should consider the cumulative impacts on good relations and put in place appropriate mitigation measures.** Such impacts and mitigation measures may be more easily identified when policies are reviewed or developed at a strategic level rather than on a single issue basis. For example, a particular emblem or decision may have little adverse impact on the promotion of good relations when viewed in isolation or in the context of an environment that is otherwise generally welcoming to everyone, but might have a greater adverse impact if displayed in an environment in which it is merely one amongst a large number of similar items that are directed towards the interests of one particular community to the exclusion of others.
- 7. Good relations should be central to the policy development process.** A Council's Equality Scheme outlines the procedural arrangements that the Council proposes to follow to fulfil the Section 75 statutory duties. Complying with the arrangements outlined in its Equality Scheme will help a Council to comply with and to demonstrate that it has complied with the 'regard' duty of Section 75 (2).
- 8. Any policies and practices adopted should be lawful, in terms of anti-discrimination law.** Policies or practices should not contravene the equality provisions relating to employment or the provision of goods, facilities or services.

## Further information and advice

For further information and advice on the public sector equality, disability and good relations duties, please contact us at:

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