

EQUALITY COMMISSION FOR NORTHERN IRELAND

Final Investigation Report September 2017

Complainant & the former Lisburn City Council

1. Introduction

- 1.1 Section 75 of the Northern Ireland Act 1998 places a statutory duty on public authorities to pay due regard to the need to promote equality of opportunity between various categories of persons, including persons with a disability and persons without. Designated public authorities are required by Schedule 9(2) to submit an Equality Scheme to the Equality Commission (the Commission) for approval. Such Equality Schemes are both a statement of the public authority's commitment to fulfilling the Section 75 duties and a plan for their performance. Prior to the restructuring of Northern Ireland Councils on 1 April 2015, the Equality Scheme setting out the former Lisburn City Council's Section 75 commitments was approved on 28 March 2012. Schedule 9 Paragraph 10 of the Act allows the Equality Commission to investigate complaints by persons who claim to have been directly affected by an alleged failure by a public authority to comply with its approved Equality Scheme.
- 1.2 On 10 March 2015 the Commission authorised a Paragraph 10 investigation to consider whether the former Lisburn City Council had complied with its Equality Scheme commitments in relation to the implementation of Public Realm construction work in Lisburn City Centre.
- 1.3 As in normal course, the former Lisburn City Council engaged a private Contractor to execute the construction works. The Commission wishes to make it clear at the outset of this Report that the Contractor is not the subject of this investigation. The Contractor is not a designated public authority subject to the Section 75 of the Northern Ireland Act 1998 equality duty, and the Commission's powers for this purpose do not extend to its activity.

- 1.4 The purpose of the investigation was not therefore to consider the conduct of the contractor in any way and it was not asked to comment on any issues arising. The Commission emphasizes that it has made no factual findings in respect of it and nothing in this Report should be construed to the contrary.

2. Background to the complaint

2.1 Public Realm Works

The Lisburn City Centre Masterplan (2010) included a proposal for a Public Realm improvement scheme aimed at improving the streetscapes and shared spaces. The scheme included replacement of paving, kerbing, resurfacing, signage and planting and bespoke elements including street furniture, street lighting and water features. The former Lisburn City Council secured funding support for this work from the Department for Social Development. The work commenced in October 2013 and was scheduled for completion during 2015.

- 2.2 The Complainant who is blind and is assisted by a Guide Dog, was not complaining about the improvement scheme per se but about the way the construction work was being undertaken. He found himself in “considerable difficulty because of unexpected barriers” when trying to access Lisburn City Centre. He complained that the actual construction works had a serious negative impact particularly on people with a visual impairment.

He highlighted that the 2011 Northern Ireland Census showed that 1737 people in the Lisburn area had declared themselves as having serious visual impairment.

3. The Complaint

- 3.1 The Complainant alleged that: the former Lisburn City Council failed to identify the method in which the construction work would be carried out as a policy likely to have a major impact on equality of opportunity for disabled people trying to access Lisburn City Centre; failed to screen this policy; failed to carry out an equality impact assessment; and in so doing failed to comply with its S. 75 duty to have due regard to the need to promote equality of opportunity for disabled people.

3.2 Equality Scheme Paragraphs alleged to have been breached as follows:

1.1 Section 75 of the Northern Ireland Act 1998 (the Act) requires Lisburn City Council to comply with two statutory duties: [the first of which is]

Section 75 (1)

In carrying out our functions relating to Northern Ireland we are required to have due regard to the need to promote equality of opportunity between...persons with a disability and persons without.

4.1 In the context of Section 75, ‘policy’ is very broadly defined and it covers all the ways in which we carry out or propose to carry out our functions in relation to Northern Ireland. In respect of this equality scheme, the term policy is used for any (proposed/amended/existing) strategy, policy initiative or practice and/or decision, whether written or unwritten and irrespective of the label given to it, eg. ‘draft’, ‘pilot’, ‘high level’ or ‘sectoral’.

4.4 The purpose of screening is to identify those policies that are likely to have an impact on equality of opportunity and/or good relations.

4.5 Screening is completed at the earliest opportunity in the policy development/review process. Policies which we propose to adopt will be subject to screening prior to implementation. For more detailed strategies or policies that are to be put in place through a series of stages, we will screen at various stages during implementation.

4.11 If our screening concludes that the likely impact of a policy is ‘major’ in respect of one, or more, of the equality of opportunity and/or good relations categories, we will normally subject the policy to an equality impact assessment.

4.14 If a consultee, including the Equality Commission, raises a concern about a screening decision based on supporting evidence, we will review the screening decision.

4. Council’s Initial Response

4.1 The former Lisburn City Council wrote to the Complainant on 3 September 2014 stating “the Council does not have an Equal Opportunities Policy that relates to the Public Realm Works. No adverse impact was identified for any particular Section 75 group, so as per legislation guidance, no Equality Impact Assessment was undertaken”.

It stated that prior to full planning permission being granted it:

- undertook consultations with Disability Action and RNIB which covered the holistic approach to the scheme at the early stages in order to gain a greater understanding of the difficulties that visually impaired, blind and wheelchair users had in the City Centre;
 - organised public and stakeholder events at which design plans were presented and discussions included those representing visually impaired and other disability groups;
 - built into the Planning Application process, the display of the design for public consultation.
- 4.2 The former Lisburn City Council outlined a number of measures that it put in place to aid communication and ensure that the site was as accessible as reasonably possible. These included:
- a weekly email sent to Lisburn in Focus¹ outlining where works would be taking place in the following week which was then to be circulated by Lisburn in Focus;
 - information relating to the ongoing works included in the Talking Newspaper on a weekly basis;
 - all site staff receiving awareness training from Lisburn in Focus to ensure they could properly assist any visually impaired users while visiting the City Centre;
 - trip hazards associated with equipment being removed or contained within the confines of each site area;
 - hosing for water source contained within the site fencing to minimise trip hazards;
 - cutting operations only completed within designated cutting areas;
 - all traffic movement accompanied by a Banksman to ensure no contact with the public;
 - speed restrictions for traffic movement all site vehicles moving afforded flashing beacons and warning sirens when reversing;
 - all traffic management, site signage and temporary fencing monitored and inspected frequently by a designated member of the team and recorded;
 - all work areas fully cordoned off to prevent unauthorised access.

¹ Lisburn in Focus is a five-year project funded by the Big Lottery Fund's Safe and Well Programme. It is designed to make the Lisburn City Council area as accessible and inclusive as possible for people with sight loss. It brings RNIB Northern Ireland together with Guide Dogs, Lisburn City Council and Lisburn City Centre Management to improve all aspects of safety, well-being and social inclusion in the city of Lisburn and surrounding villages.

4.3 The former Lisburn City Council also stated “Health and Safety protocols are in line with the relevant legislation and are in place to ensure that accidents are unlikely to occur. Where the ongoing health and safety checks flag up any issues or concerns, the Contractor is required to implement the necessary recommendations”. It argued that it always took concerns from the public regarding site safety very seriously and passed them on formally to the professional team and the Contractor for comment or immediate attention. The former Lisburn City Council expressed its belief that it had “followed appropriate procedures in achieving an approved design and that it will accommodate all user groups” and that organisations representing the interests of disabled people (including those with a visual impairment) were included in pre-Planning Application consultations.

5. Para 10 Investigation authorised

- 5.1 On 10 March 2015, the Statutory Duty Investigations Committee considered the Complainant’s complaint and the former Lisburn City Council’s response to him. It considered that although the former Lisburn City Council’s letter to the Complainant showed that it had clearly considered health and safety implications of the Public Realm Scheme and put measures in place to prevent accidents, it had not supplied evidence of any equality screening/impact assessment of the effect the construction work would have. Accordingly, the Committee authorised a Paragraph 10 investigation.
- 5.2 On 20 May 2015 Commission staff met with Council Officials who agreed to provide *inter alia* the following information/documentation as evidence that it had complied with its Section 75 duties:
- A narrative of the way the former Lisburn City Council dealt with the equality aspects of the implementation of the Public Realm Works;
 - Minutes from consultation meetings that refer to equality implications of the works;
 - Site records for 14 October 2014 and any other date referred to in The Complainant’s complaints, showing whether or not the Contractor was carrying out work not previously scheduled to happen on those days/departing in any way from agreed contractual terms.

- 5.3 Due to the Council's delay in furnishing its further evidence, the Commission wrote to it in December 2015 expressing its disappointment at the delay. The Council replied stating "in view of the ongoing Judicial Review proceedings in respect of the Public Realm Scheme, we are taking legal advice on our proposed response to you. We shall provide our response to you as soon as we are able to do so". (Those proceedings were taken by another person in respect of another aspect of the works).

6 Lisburn & Castlereagh City Council's Further Response

- 6.1 An evidence bundle was received by the Commission on 1 February 2016 from Lisburn & Castlereagh City Council. This largely consisted of accounts of the Design process; Tender Preamble Documents; Information on Procurement and Contract; Copies of Designer's Risk Assessment; Pre-Construction H(ealth) & S(afety) Information Pack; Contractor's Traffic Management Plan; Copies of site inspections; Construction Phase Plan Implementation Check Sheets; Copies of emails; Considerate Constructors Scheme Monitor's Site Report; Photographs and Maps.
- 6.2 The Council essentially submitted as follows:

Re Design Phase (Consultation)

Following the Design Team's appointment, consultations and presentations to relevant stakeholders took place over several years prior to the works being commenced.

Reference was made, for example, to a meeting on 22 January 2010 between the Landscape Architect and Disability Action and RNIB which "covered the holistic approach to the scheme at its early stages In principal (sic), the meeting was to gain a greater understanding of the difficulties partially blind, blind and wheel chair users had in the City Centre".

There was a Stakeholders' event set up by the former Lisburn City Council on 27 March 2012 at the Linen Centre, Lisburn. Representatives of a number of stakeholders were in attendance and this included those representing visually impaired groups and other disability groups. The Landscape Architect delivered the presentation which covered the main design details of the overall scheme.

Reference was made to a meeting on 5 April 2012 between the Landscape Architect with Disability Action to discuss the scheme and how it would be delivered.

The Council stated that all of the feedback received through these consultation procedures was considered by the Design Team. Once a final design was settled, the former Lisburn City Council made a formal planning application, which involved a further public consultation exercise on the detailed design.

Re Procurement Process and Contractor Arrangements:

The Public Realm Works were carried out on behalf of the former Lisburn City Council by an independent contractor, who was appointed following a competitive public procurement exercise.

The Council explained that the site was a busy town centre containing premises of wide-ranging usage - residential, commercial etc. One of its objectives was to preserve normal town activity, including traffic flows and pedestrian access, as far as possible during construction. To this end it strove from the outset to ensure that the actual construction operations should be conducted in such a manner as to afford accessibility to all town users (e.g. pedestrian/vehicular).

Health and Safety & Resolving Issues:

Particularly in light of that objective, the Council highlighted that continuous attention to health and safety matters in respect of site operatives and others was therefore a major preoccupation.

The Council supplied details of consideration given from the outset to the matter of risk that execution of such a project entailed. In accordance with Health and Safety in construction and other standards, the former Lisburn City Council sought to ensure that both risk and inconvenience for the public/workers should be eradicated/minimized.

It charted in evidence a process of identification, mitigation and strategies for management of same, as well as various details of its contact with the contractor and other relevant entities directed at resolving any issues.

The Council submitted evidence to the effect that it had been mindful of the needs of various groups of vulnerable users and particularly cognizant of those users who had visual impairments. In this regard, it pointed for

example to training having been provided for key personnel involved in construction/implementation of the works on how to assist blind/visually impaired people who may be disorientated by the different works areas on the streets. This included e.g. how to guide a person with visual impairment to where they wish to go.

Communication:

The Council submitted that it had tried to make everyone aware of what the works would involve from the outset and monitoring of the works scheme took place on a daily basis through stakeholder engagement. It pointed to specific arrangements it had put in place to disseminate information about the works to visually impaired persons via established communication channels such as Lisburn in Focus and Talking Newspapers.

It also referred to other methods of ensuring ongoing, effective communication regarding the works such as having a full-time stakeholder liaison officer; a 24 hour helpline; a stakeholder group which met fortnightly and whose needs and interests it said were communicated to the relevant responsible entities on a regular basis throughout the course of the works. Indeed this group included a representative of Lisburn in Focus. There were also regular public updates on the former Lisburn City Council's website. The former Lisburn City Council submitted that on a weekly basis, Lisburn in Focus was provided with information relating to the arrangements for the works in the following week. This information was included in the Talking Newspaper service provided to subscribers in the area.

Issues raised and addressed:

The Council submitted that when any issue was raised in relation to the works by a member of the public then this was dealt with as soon as was practical generally, through contact being made with the design team and/or the contractor with necessary measures put in place to address the issue.

The Council drew attention to its customer care system which records and tracks complaints across a range of functions to ensure a timely response.

The Council also referred to the difficulty of other bodies starting works in Lisburn City Centre at short notice. In its opinion, this had led to a public

perception that the former Lisburn City Council was responsible for this additional restriction on access when in fact it had no control over those operations. It did assert that it had monitored the situation and taken all reasonable actions to minimize any negative impact on the implementation of the Public Realm works.

7. Council's Response to alleged Breaches of Equality Scheme

7.1 In conclusion, the Council highlighted that the former Lisburn City Council had taken into consideration the following points (amongst others):-

- “Particular functions and policies will be more relevant to the Section 75 duties than others;
- Any public authority has to provide the best services it can within the public monies available to it;
- Implementation of policies and the provision of services will often include health and safety matters
- When looking at the potential impact of any policy or implementation/action on the promotion of equality of opportunity it is appropriate to ensure that due regard is given to all Section 75 categories;
- Consequently, a proportionate approach requires to be taken in determining the “weight” or the relevance of equality of opportunity to a particular function or policy (or indeed to any designated group as no one group takes precedence over any other group or groups);
- There will be “technical” policies which will have virtually no impact on equality of opportunity for any of the designated Section 75 groups”.

7.2 Para 4.1

The Council stated that it did not accept that it had failed to comply with this paragraph in its Equality Scheme. The reasons for this being:

“Council recognises the breadth of the term “policy” as contained within the Commission’s Guidance and also recognises that it is the likely impact of any “policy” (in relation to the promotion of equality of opportunity) that is crucial.

Due to this the [former Lisburn City] Council, in relation to the Public Realm Works, was very aware of potential adverse impact on (in this instance) those with disabilities (and other groups such as those with dependants) while progressing the scheme for the benefit of all (residents and visitors).

The information and evidence supplied in other parts of this response will in the view of Council illustrate the proactive approach taken in relation to such groups and the actions taken to mitigate and deal with any potential adverse impact throughout the course of the public Realm Works”.

7.3 Para 4.4

The Council did not accept that it had failed to comply with this paragraph in its Equality Scheme. The reasons for this being:

“Again [the former Lisburn City] Council was aware of potential adverse impact on those with disabilities (and a number of other designated groups) and again approached the implementation of the public Realm Works with the benefit of all the designated groups given due regard with respect to the promotion of equality of opportunity.

It can be emphasised that the Public Realm Works is for the benefit of all citizens (and also those who visit the city) and it was this approach that has driven the Public Realm Works”.

7.4 Para 4.5

The Council did not accept that it had failed to comply with this paragraph in its Equality Scheme. The reasons for this being:

“[the former Lisburn City] Council took the view that the Public Realm Works was an outworking of a government initiative, aimed at rejuvenating local city and town centres, in order to help facilitate economic recovery within local economies and consequently provide benefits to all who would work in, shop in or visit our local city centre.

The Public Realm Works would be rolled out over an agreed period of time and this in itself exemplifies the considerable scale of the Public realm works and the commitment of [the former Lisburn City] Council to work with the relevant government department in respect of this strategic regional initiative and bring these works to fruition for the benefit of all.

Indeed it can be made explicit that this initiative was fully supported across all political parties within [the former Lisburn City] Council”.

7.5 Para 4.11

The Council did not accept that it had failed to comply with this paragraph in its Equality Scheme. The reasons for this being:

“Council would take the view that any potential adverse impact on one or more groups that may have been identified was mitigated (both prior to and during implementation of the Works). Consequently there was no requirement to give consideration to the undertaking of an EQIA”.

7.6 Para 4.14

The Council did not accept that it had failed to comply with this paragraph in its Equality Scheme. The reasons for this being:

“The Complainant has raised a number of matters in relation to his access to and around the city centre at certain dates in time within the overall implementation of the Public Realm Works in the city centre area.

Council would argue that all the mitigating actions [the former Lisburn City Council] has undertaken to ensure both the health and safety of all who utilise the city centre as well as give due regard to the promotion of equality of opportunity for a number of groups which were identified as potentially being impacted upon by the Works, would indicate that there is insufficient evidence provided to support such a review”.

7.7 Para 1.1

In light of the responses given to the above paragraphs (as specifically mentioned by the Complainant) and the additional information and evidence provided by the Council regarding the implementation of the Public [R]ealm Works, Council did not accept that [it] acted contrary to 1.1:

“Indeed Council would be of the view that given the context in which the Public [R]ealm Works was being undertaken and implemented, as well as the proactive stance taken by [the former Lisburn City] Council in relation to disability matters locally, support and provide evidence that due regard was taken in relation to the promotion of equality of opportunity for not only all groups but specifically for those identified for whom there may have been a potential adverse impact, in this specific instance those with disabilities (within which those with visual impairment would be included)”.

8 Law and Guidance

- 8.1 All designated public authorities are required in carrying out their functions relating to Northern Ireland to have due regard to the need to promote equality of opportunity between persons in the nine equality categories (which include disability). The objective in doing so is to improve policy, practice and service delivery in respect of these groups.

The ECNI has issued a body of guidance to assist public authorities to act in conformity with their Section 75 duties when carrying out their particular functions. This guidance flows from legislative imperatives and is also derived from interpretive assistance provided by relevant case law.

8.2 Due regard

Public authorities must take the duty to have due regard to the need to promote equality of opportunity properly into account in the way they carry out their functions. This is achieved by giving appropriate consideration based on relevance and proportionality to meet the due regard duty.

‘Due regard’ is the regard given that is appropriate in all the particular circumstances in which a public authority is carrying out its functions relating to Northern Ireland. Essentially, having ‘due regard’ means that the weight given by a public authority to the need to promote equality of opportunity is proportionate to that duty’s relevance to a particular function.

8.3 Carrying out their functions

Section 98 (1) of the Act defines the term ‘functions’. It states that ‘functions’ includes ‘powers and duties’ of a public authority. The expression ‘carrying out’ also embraces a wide range of activity. For example, a health authority is carrying out its powers, duties and other functions not just when its employees are performing surgical procedures but also when it is recruiting nursing or medical staff to perform the procedures and procuring the equipment and facilities to enable them to do so. Therefore, the functions covered by Section 75 statutory duties are broad enough to include employment and procurement.

8.4 Equality Schemes Generally

Schedule 9 of the Northern Ireland Act 1998 provides for enforcement of the Section 75 duties. It sets out a range of requirements, on public authorities, to give effect to their duties under Section 75. In particular it requires that each public authority develop an equality scheme – a

document showing how the public authority proposes to fulfil the duties imposed by section 75 in relation to the relevant functions. Public authorities designated for the purposes of Section 75 are required to submit an equality scheme to the Commission for approval. A public authority's equality scheme therefore outlines the procedural arrangements that the authority proposes to follow to fulfil the Section 75 statutory duties.

8.5 Policies

Schedule 9 of the Act requires an equality scheme to state the public authority's arrangements for assessing and consulting on the likely impact of policies adopted or proposed to be adopted by the authority and for monitoring any adverse impact of its policies on the promotion of equality of opportunity

The term 'policies' is widely defined. Commission Guidance states that the term 'policy' is used to denote any strategy, policy (proposed/amended/existing) or practice and/or decision whether written or unwritten. It points out that:

- a. Policy is a broad, inclusive term. A policy is defined in the New Oxford Dictionary of English as – "a course or principle of action adopted or proposed by a government, party, business or individual".

In the present context, the term policies covers all the ways in which an authority carries out or proposes to carry out its functions relating to Northern Ireland.....[A]n authority's employment and procurement policies are an integral aspect of the way in which an authority carries out its functions. Accordingly, the scheme must cover the arrangements for assessing the impact of such policies. Policies include unwritten as well as written policies.

- b. The policies referred to in schedule 9 are not just policies on the promotion of equality of opportunity. It is the likely impact (on the promotion of equality of opportunity) of any of the authority's policies that has to be assessed.
- c. Most policies are not static, but dynamic. Policies are often reviewed and amended, or the way they are implemented changes, in response to new situations. The Section 75 statutory duties should be utilised as a developmental aid for policy development. Changes to a policy that are likely to have an impact on access to equality of opportunity should be assessed for such impact in the same way as the original,

existing or new policy is assessed. The Commission recommends that such an assessment of a policy includes the screening of the policy and consideration of subjecting the policy to an equality impact assessment (EQIA).

8.6 Screening & EQIA

The purpose of screening is to identify policies which may have an impact on equality of opportunity and to prioritise those policies for further consideration of an Equality Impact Assessment.

Whatever status or label is accorded to an amended or new policy, for example, 'draft', 'pilot', 'high level strategy' or 'sectoral initiative', the equality.... implications must be considered in terms of assessing the likely impact of a policy.'

Issues of relevance and proportionality come into this policy analysis. Consequently, the Commission's advice on methodology makes provision for the two levels of review (screening and EQIA) in determining whether a policy is relevant to the s75 duty, thereby facilitating an appropriate assessment to inform final policy options and decisions.

If screening identifies that a policy has major potential to impact on equality of opportunity and good relations, then it should be subjected to an equality impact assessment. The Commission's guidance recommends that Public Authorities commit in their equality schemes to using these tools; Public Authorities must have arrangements in their Equality Schemes for assessing and consulting on the equality impact of policies.

It is important that public authorities, when assessing policies, commit to doing so at the start of the policy development process, rather than when the policy has been established. It is also important to remember that the assessment of the policies includes the assessment not only of high level strategy/policies but also of those developed at other stages of implementation. Section 75 is important to policy formulation (new or proposed policies) and policy review (existing policies).

This process means that if analysis shows that there may be adverse impacts on any of the equality groups, there can then be consideration of what may be done to mitigate these. It is important therefore to retain a degree of vigilance for potential impacts.

8.7 Case law (the *Brown Principles*) and the duty to have due regard

Case law has determined some principles (commonly known as the Brown principles from the case of R (Brown) v Secretary of State for Work & Pensions & others (20080 ewhc 3158 (Admin)) which courts in Great Britain take account of when assessing compliance with the public sector duties. These indicate that

- The decision-maker must be aware that he/she is obliged to comply with the public sector duties;
- The duties must be fulfilled before and at the time that a particular decision is being considered, and not afterwards;
- The duties must be exercised in substance, with rigour and an open mind, and not as a ‘tick boxing’ exercise;
- The duties are non-delegable, meaning that it is the actual decision-maker who must comply with the duties, and not some other person;
- The duties are continuing ones;
- It is good practice to keep adequate records that will show that the statutory goals have actually been considered and pondered and to promote transparency and discipline in the decision-making process.

Complying with the arrangements outlined in its equality scheme will considerably help a public authority to comply with, and importantly to demonstrate that it has complied with, the “due regard” duty of Section 75(1), and indeed with the Brown principles.

9 Conclusions

- 9.1 The Commission acknowledges that the ultimate objective of the Public Realm Works Scheme was to provide an enhanced experience of the shared public spaces for Lisburn occupants and visitors – including persons with visual impairment. It also acknowledges that the Council has a number of statutory duties which it must fulfil and that it must do so whilst making best use of public money.
- 9.2 The Public Realm Works Scheme was a significant project - in scope and duration, and there is no doubt that much effort and expertise have been invested in it. Covering the Lisburn City Centre area, it was intended to last some 62 weeks but overran. With a construction project of that scale, it is almost inevitable that from time to time, matters will not always go precisely according to plan.

- 9.3 Given that contingencies will arise, it was particularly important that the planning phase should be meticulous and that there be inbuilt mechanisms for addressing these as time progressed. Clearly much scrutiny was brought to bear upon those early design/planning stages of the scheme.
- 9.4 It is also to be expected that fulfilment of Health and Safety duties would be a consideration occupying much of the foreground in the minds of relevant parties. Indeed the Council's written evidence mirrored its oral evidence in that it included a preponderance of Health and Safety information.
- 9.5 Notwithstanding this, the Council also had statutory equality obligations under S75 of the NI Act 1998. These applied to the carrying out of its ordinary functions. Crucially, a public authority should be able to demonstrate that it is fulfilling those duties through adherence to the commitments contained in its own Commission-approved Equality Scheme. In this document it commits itself to subjecting its policies to equality scrutiny both from their earliest inception and continuously as appropriate.
- 9.6 Clearly, in order to assess policies – they must first be identified as such. This responsibility falls to each public authority in the context of its particular functions and is pivotal as significant consequences will flow from doing so - as well as from failing to do so.
- 9.7 The Council itself acknowledges the broad scope of the term “policy”. It should be recognised however, that some policies are less readily identifiable than others. This is particularly so when matters move from higher to lower levels – and especially when they may be in danger of being characterised as ‘merely the out workings’ or ‘operationalizing’ of a higher level strategy/policy.
- 9.8 Public authorities have recourse to various sources of assistance in identifying policies – both in house and external. It is also to be expected that they would derive some additional assistance in such policy recognition by having advertence to the inherent/potential consequential effects of the function in question. The greater the potential for impact on any of the equality groups, the sharper should be the public authority’s equality focus. Policy recognition is the first step to further analysis in accordance with the process set out in Equality Schemes. Other red flag indicators include, for example, complaints which the subject area has generated/might generate.

- 9.9 The Complainant complained to the Commission that contrary to Paragraph 1.1 of its Equality Scheme approved on 28 March 2012, the former Lisburn City Council failed to comply with Paragraphs 4.4; 4.5; 4.11 and 4.14 thereof in relation to the implementation of the Public Realm construction work in Lisburn City Centre.
- 9.10 The former Lisburn City Council's Masterplan 2010 dealt essentially with the high level vision and design of the Public Realm Works scheme.
- 9.11 The first question to be addressed is whether the implementation of the works constituted a policy in itself. Based on the foregoing, the Commission takes the view that the implementation of the Public Realm Works was of sufficient substance, and had sufficient inherent potential for impact upon visually impaired persons to warrant categorisation as a policy in its own right.
- 9.12 Despite the Council's assertions, the Commission takes the view that there was no obvious identification and delineation by it of the implementation of the works as a policy. Had this been so, the Commission would have expected to see evidence of that consideration recorded in a screening document to accompany the 2012 Equality Scheme. There was no such document.
- 9.13 Not having identified the implementation of the works as a policy, it followed that it was not subjected to screening nor to EQIA - either at the outset or indeed at subsequent appropriate stages of implementation.
- 9.14 With Health and Safety considerations predominating, the former Lisburn City Council placed a degree of reliance on reacting to various equality issues as they arose. These actions were in addition to the anticipatory work the former Lisburn City Council had undertaken in the pre-construction and construction phases of the Scheme. Whilst reacting to issues as they arise reaction is important per se, over-reliance on this negates valuable opportunity to take a well defined and considered approach to implementation impacts. This effectively deprived visually impaired users of an essential opportunity to be aware of issues which might affect them and put forward their views specifically. This is illustrated by the fact that faced with a physical environment which was both unfamiliar to him and, he said, changed at short/no notice, the Complainant would have welcomed more assistance with navigation of the locality.

10 Findings

- 10.1 The Commission finds that the former Lisburn City Council breached its Equality Scheme commitments in the following ways:

Paragraph 4.1

The former Lisburn City Council breached its commitment in that it failed to identify the implementation of the Public Realm Works as a policy, for the purpose of the Equality Scheme;

Paragraph 4.4

The former Lisburn City Council breached its commitment to screen in order to identify those policies that were likely to have an impact on equality of opportunity.

Paragraph 4.5

The former Lisburn City Council breached its commitment in that it failed to screen this policy at the earliest opportunity in the development/review process/prior to implementation or at various stages during implementation.

Paragraph 4.11

The former Lisburn City Council breached its commitment in that it failed to identify the works implementation as a policy, failed to screen it, and failed to consider equality impact assessment.

Paragraph 4.14

The former Lisburn City Council breached its commitment in that it did not review its screening decision despite the Complainant's request that it do so, the evidence of his complaint and internal evidence of implementation difficulties/hazards.

- 10.2 The Commission also considered whether the former Lisburn City Council had met its overarching duty to have due regard to the need to promote equality of opportunity in respect of the Section 75 grouping to which the Complainant belongs.

As noted above, there was a preponderance of evidence of Health and Safety considerations by the former Lisburn City Council. Whilst it may be said that at times there was undoubtedly convergence between the interests of visually impaired people in terms of health and safety and

equality of opportunity, conscious and continuous consideration of equality of opportunity should have been more evident than it was. It also should have been specifically documented.

The Commission also believes that the former Lisburn City Council should have made more connection between the Complainant's complaint and their Section 75 equality duties.

The Commission noted the measures taken by the former Lisburn City Council in the planning stages, through the tender and engagement processes and subsequently. These were directed at engaging, explaining and communicating with the visually impaired community and addressing issues and non-conformances. The Commission considers that, on balance, these are evidence that the former Lisburn City Council did not fail to meet its duty to have due regard to the need to promote equality of opportunity in the particular circumstances of a live and extensive construction project.

11 Recommendations

It is recommended that the Lisburn & Castlereagh City Council:-

- takes steps to improve its policy recognition;
- makes appropriate connection between complaints and its statutory equality duties;
- raises the profile of equality in its procurement contracts; and
- observes the Brown Good Practice Principles as set out in (para 8.7 of this report) of documenting its equality considerations more thoroughly.

September 2017