

Request to Equality Commission for Northern Ireland (ECNI) for a 'Paragraph 11' Investigation into the Department of Communities (DfC) into multiple failures to comply with Equality Scheme in relation to the Community Halls Pilot Programme (S464)

This is a request to the Equality Commission to use its paragraph 11 powers under Schedule 9 of the Northern Ireland Act 1998 to investigate 19 substantive and procedural breaches of the Department for Communities Equality Scheme in relation to the 'Community Halls Pilot Programme'.

In summary the breaches include: failures to consult on matters relevant to the section 75 duties; not undertaking Equality Screening prior to decision making; not paying due regard to the equality duty when devising funding criteria; not undertaking 'evidence-based' policy making in relation to funding opportunities; treating the Screening process as a 'tick box' exercise; decision-makers not being aware of the obligation to comply with the duties; the branding and marketing of the fund in a manner not conducive to promoting equality of opportunity; miscategorising adverse impacts on equality of opportunity as positive impacts; not conducting an EQIA, and consequently failing to consider alternative policies/mitigating measures as obliged under the legislation; and not abiding by recommendations of previous Equality Commission investigations into the Department.

There are strategically important reasons why we believe the Commission should exercise its powers in relation to this matter that both relate to the Community Halls Fund itself but also to the broader impact of the practices followed on other policy making. We believe enforcement by the Commission is vital for non-recurrence.

At the level of the Halls fund itself a number of organisations (which engage section 75 categories) may have been put off or de-prioritised for funding under criteria devised for the 2016 call for applications. The last official statement from the Department on the matter states that it intends to distribute further resources in this new financial year on the basis of the original application call and criteria,¹ without an EQIA having been conducted. In a broader strategic sense the identified failures to comply with the Scheme are so systemic that a failure to take any action against the Department could essentially constitute a green light for continued flouting of the section 75 duties. The equalities questions surrounding the fund have been a key matter of public interest, covered extensively in the media, and have related to practices which have contributed to the collapse of the devolved institutions.

This document is structured chronologically in relation to the evolution of the Community Halls Scheme, with a summary chronology and list of the alleged breaches of the Scheme provided by way of introduction.

¹ The programme was launched in 2016 as a 'pilot'. Minister Givan on announcing the first batch of successful applicants stated "other applicants to the scheme have been advised that their projects may be considered for support in the future, subject to the availability of budget." (DfC. 'Givan announces £1.9 million for community halls') 13 January 2017.

Documents and Principles informing this submission:

- The provisions of the interim DfC Equality Scheme (May 2016);
- Previous Equality Commission investigation reports, including the recommendations of the investigation into DSD Strategic Housing Policy Equality Screening;
- The Equality Screening Template on the Halls Fund issued by DfC on 2 February 2017;
- The Screening Decision review request by CAJ;
- The revised Equality Screening Template on the Halls Fund issued by DfC on 28 March 2017;
- Documents released by DfC under the Freedom of Information (FoI) Act namely:
 - two submissions to the Minister in August 2016;
 - extracts from the Community Halls Project Plan;
 - the Community Halls Pilot Programme Assessment record;
 - the Community Halls Business Case.²
- The ‘Brown Principles’ established by case law in relation to compliance with statutory ‘due regard’ equality duties.³ The Six Brown Principles have been summarised by the Equality Commission as providing that:
 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 “box ticking” exercise;
 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 actually been considered and pondered and to promote transparency and discipline in the decision-making process.⁴

² We also rely on the DfC response that there were no further documents in relation to the requested aspects of the fund

³ *Brown v Secretary of State for Work and Pensions and Ors* [2008] EWHC 3158 (Admin)

⁴ ‘Section 75, Northern Ireland Act 1998 and Section 49A, Disability Discrimination Act 1995 (short guide)’ *Equality Commission*, 2015), p3.

Summary Chronology:

May 2016 – Department of Communities established interim Equality Scheme adopted;

August 2016 – initial submissions on Fund

- DfC capital spend Submissions to Minister set out scope of the proposed “Community Halls Refurbishment Programme” initially proposing a £1m+ joint programme with DAERA but noting that that would require Department of Finance approval and instead proposing £200k pilot for halls ‘most in need’ in current financial year.
- A ‘very popular’ *Community Facilities Improvement Scheme* fund had previously run but was currently closed as no funding had been allocated to it. Community Halls fund proposed capital allocations of up to £25k per organisation (noting higher amounts would need tendering) to allow upgrades of community halls through for example “*boiler replacement, new flooring, disability access, fire fighting equipment, car park upgrades, roof repairs, alarm systems, secondary glazing and air conditioning unit upgrades.*”

October 2016: fund developed including criteria

- The criteria and application process for the Community Halls fund were devised. But no records at all were kept of this process and there was no consultation or equality screening of the proposals for the fund.
- Equality Commission signs off on implementation of recommendations to the Department following a previous investigation into failures to equality screen housing policy decisions, including a pilot programme.

19 October 2016: launch of fund and call for applications

- The fund is launched, as the ‘Community Halls Minor Works Pilot Programme’ in Salterstown Orange Hall by the Communities Minister Paul Given and First Minister Arlene Foster. The budget has increased to £500k, the main priority criteria are also announced.

23 November 2016: fund closes, business case produced to increase resources

- The fund closes for applications. A business case produced after analysis of applications received observes that the highest category of applicants (the diverse umbrella category of ‘community organisations’ constituting 31% of applicants) scored well as regards usage – offering the widest range of activities responding to social need and disadvantage. It notes the second and third highest applicant categories (Orange Halls – 26% and Church Halls – 25% respectively) were much more limited and less varied in their activities.
- The Business Case then proposes a significant increase of the budget of the programme of an additional £1.3 million to be sourced from slippage monies available from other (unspecified) business areas within the Department in order to increase the number of successful applicants to 76; there is no analysis of any equality implications of either the increasing the funding for Halls and its transfer away from other areas of business.

13 January 2017: announcement of grantees

- The DfC Minister at formally announces at Sixmilewater Orange Hall details of successful applicants in this phase of the fund, which sees £1.9 million allocated to ninety organisations, described as those most in need. The Department states other currently unsuccessful applicants may have their proposals funded if further monies become available in future (financial) years.

16 January 2017: Equality Screening and FoI requests

- Further to allegations that the fund was discriminatory CAJ requests a copy of the mandatory Equality Screening Template for the fund and issues a Freedom of Information (FoI) request for documents on how the criteria were devised;

26 January 2017: Department does not provide screening document

- CAJ issues a 'failure to comply' with Equality Scheme complaint when the Department does not respond to the request for a Screening Template within its own timeframes;

2 February 2017: the First Equality Screening Exercise

- On the 2 February the DfC publishes a screening template on its website, which states the screening exercise had only been initiated on the 17 January.
- The Equality Screening exercise provides no analysis of impact on any specific Section 75 categories at all. Rather the sections of the Template designed for each section 75 category are merged into one box dealing with 'all categories' and no differentials are identified.

3 February 2017: Screening Decision review triggered

- CAJ triggers the process for the Screening Decision to be reviewed.

17 February 2017, FoI non-compliance complaint

- Despite a number of reminders the Department does not respond to the FoI request within the timescales set out in law. The matter is referred to the Information Commissioner for enforcement action and the Department issued with an instruction to comply.

2 March 2017, Assembly Elections

- Elections to the Northern Ireland Assembly held, and the department ceases to have a Minister.

3 March 2017, initial FoI Response

- A response is issued by the Department to the FoI request. CAJ lodges an appeal (internal review) against significant redactions in the documents.

28 March 2017: the Revised Equality Screening Exercise

- The Department completes its review of the screening exercise and publishes a revised template. This shows significant differentials on Section 75 grounds such as gender, religious belief and political opinion. The Screening Decision finds that this does not constitute an 'adverse impact' but a positive impact as it reflects an 'unmet' need within Protestant faith-based organisations (including the Orange Order) who do not apply for lottery funding. Consequently no full Equality Impact Assessment (EQIA) is proceeded with.

5 April 2017

- The Departments response to the CAJ FoI appeal is released, redactions are removed from the documents and additional materials are provided, including the fund's Business Case.

10 April 2017

- The *Irish News* publishes figures from the Lottery that contradict the assertion that the Orange Order and other faith-based groups have not availed of lottery funding.

Summary of failures to comply with duties under the Equality Scheme:

1. Failure to engage in Consultation on a matter relevant to the Section 75 duties (the Community Halls Fund), in contravention of paragraph 3.1 of scheme
2. Failure to Equality Screen the fund at the earliest opportunity in the policy development process (paragraph 4.5)
3. Failure to ensure the fulfilment of Section 75 in all parts of the Department's work where the duties were 'overlooked' by officials in this business area at a time when the Department was committed to remedies over housing policy in light of the Commission Investigation (paragraphs 1.4 / 2.2)
4. Failure to respond to a request to provide a screening template under the scheme (4.1)
5. Substantive failure to pay due regard to the promotion of equality in devising the criteria for the fund (1.4)
6. Not complying (in relation to the Community Halls fund) with the live recommendation of the Equality Commission investigation into the Department that in the initial stage of policy development screening decisions, inter alia, be robust, support evidence based policy making and provide tangible evidence as to how the Department gave due regard to the statutory duties (8.9)
7. Substantive failure to comply with the duty to pay due regard to the need to promote equality of opportunity, and use a range of accessible communications channels in relation to the branding and provision of information on the scheme (1.4 & 6.6)
8. Substantive failure to comply with the duty to pay due regard to the need to promote equality of opportunity when devising the prioritisation criteria for the fund in particular in light of the Brown Principles that "the duties must be fulfilled before and at the time that a particular decision is being considered, and not afterwards" and that "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" (1.4)
9. Substantive failure to comply with the duty to pay due regard to the need to promote equality of opportunity in relation to the decision making on increasing the proportion of the Department's resources available in the 'pilot' phase of the fund, in light of the Brown Principles that the duties are "continuous" and that "the duties must be fulfilled before and at the time that a particular decision is being considered, and not afterwards" (1.4)
10. Substantive failure to comply with the duty to pay due regard to the need to promote equality of opportunity in relation to the first screening decision, in particular in light of the Brown Principle that "the duties must be exercised in substance, with rigour and an open mind; and not as a 'box ticking' exercise"
11. Specific failure to comply with paragraph 4.3 of the scheme which provides that "The Department will use the tools of **screening** and **equality impact assessment** to assess the likely impact of a policy on the promotion of equality of opportunity and good relations. In carrying out these assessments the

Department will relate them to the intended outcomes of the policy in question and will also follow Equality Commission guidance...”

12. Failure to comply with the commitment in Paragraph 4.8 of the Equality Scheme: “In order to answer the screening questions, we will gather available relevant information and data, both qualitative and quantitative. In taking this evidence into account we consider the different needs, experiences and priorities for each of the Section 75 equality categories. Any screening decision will be informed by this evidence [emphasis added].”
13. Consequent failures to properly apply the Screening Questions at paragraph 4.7 – namely “What is the likely impact on equality of opportunity for those affected by this policy, for each of the Section 75 equality categories? (minor/major/none),” and consequently to commission an EQIA and monitor the adverse impact of the policy in accordance with paragraph 4.29
14. In relation to the category of gender the department did not adequately gather and take into account relevant information and data in informing the (revised) Screening Decision (4.8 with 4.3)
15. In relation to the categories of Religious Belief and Political opinion did not adequately gather and take into account relevant information and data in informing the (revised) Screening Decision (4.8 with 4.3)
16. In relation to the category of Age, did not gather or take into account relevant information and data in relation to impacts on young persons in informing the (revised) Screening Decision (4.8 with 4.3)
17. In relation to categories including sexual orientation and racial group did not adequately consider further opportunities to promote equality of opportunity, including through a binding equalities statement (4.7 with 4.3)
18. Did not conduct an EQIA when proper consideration of the evidence should have identified adverse impacts and did not nevertheless consider alternative policies or measures that might mitigate the policy impact when deciding not to conduct an EQIA (4.13 & 4.11)
19. In all of the above (in relation to the revised screening exercise) failed to pay due regard to the substantive duty to promote equality of opportunity (1.4)

Detailed analysis of development of Community Halls fund:

May – October 2016: Establishment of the Community Halls Fund

- **Origin:** DfC documents state that the Community Halls Pilot Programme “was developed as a response to requests from voluntary and community sector stakeholders for capital support that would enable them to deliver their services”⁵ DfC officials have conducted a “detailed search” of all their recorded information “(electronic records, paper files, e-mails)” and have confirmed that they do not hold any information as to who these groups in question who requested the fund were.⁶
- **Designation as a ‘Ministerial Priority’** The Minister, Paul Given MLA, identified investment to improve “the fabric of Community Halls” as one of his Ministerial Priorities at an early stage in the mandate.⁷
- **Formal Submission Papers August 2016:** on the 19th and 24th August 2016 officials submitted papers to the Minister and his Special Advisor who had asked for proposals for the remaining 2016/2017 Capital Budget including schemes to assist the community/voluntary sector. This document sets out five potential programmes one of which is the “Community Halls Refurbishment Programme” (details of the other programmes are redacted) for which £200k is proposed for 2016/7 and £1m for 2017/18, with potentially an extra £1m of funding from the Department of Agriculture, Environment and Rural Affairs (DAERA).
- Officials set out that the predecessor Department of Social Development (DSD) had operated grants programmes which provided capital grants to organisations for minor works on community centres etc. This was under the Transformation Fund, a strand of which was the £3m “**Community Facilities Improvement Scheme**” which had been ‘very popular’ but was currently closed as ‘no funding was allocated for 2016/17’. DAERA (then DARD) had also funded community hall refurbishment schemes in partnership with the International Fund for Ireland.⁸
- The paper states that capital applications through the programme could allow upgrades of community halls through for example “boiler replacement, new flooring, disability access, fire fighting equipment, car park upgrades, roof repairs, alarm systems, secondary glazing and air conditioning unit upgrades.”⁹
- A joint programme with DAERA is proposed, but it is noted that a £1m+ plus programme would require Department of Finance approval – it is therefore

⁵ DfC (revised) Screening Template March 2017, page 6.

⁶ DfC FoI Internal Review response to CAJ, page 2.

⁷ DfC Business Case Community Halls Fund, (undated but after 23 Nov 2016), pages 4 and 7.

⁸ DfC Community Halls Programme Managers submission 19 August 2016 on Capital Programme 2016/17 and DfC Deputy Secretary, Strategic Policy and Resources Submission of 24 August 2016 on Unallocated Budget to Special Advisor and Minister;

⁹ As above, Paragraph 25.

proposed that a “pilot” scheme is operated for 2016/17 of £200k focusing on “halls most in need of support; this would take into account of [sic] recent arson attacks and identify halls which have either been damaged recently or are vulnerable to attack because of their location, or other factors”.¹⁰

- The maximum grant would be £25k as anything over £30k “would breach the Central Procurement Directorate Procurement Control Limit of £30,000” requiring tendering; Official evaluation assessed the aforementioned previous DSD/DARD programmes for capital funding for community facilities as being “oversubscribed” and “very successful” and “particularly successful in achieving tangible benefits.”¹¹

October 2016: programme developed

- The Criteria and Application Form for the fund were developed in October 2016 and the fund was launched later that month as the “**Community Halls Minor Work Pilot Programme**”.¹² It is not clear if other capital programmes put to the Minister in the aforementioned submissions of the 19th and 24th of August were taken forward. The only other formal Ministerial announcement of the opening of a DfC fund around the same time was for a £270k ‘community equipment scheme’ of small grants to community organisations.¹³
- Despite other consultations by DfC at the time no consultation on the Community Halls Minor Works Programme (nor the community equipment scheme) took place.
- No Equality Screening took place on the community halls fund, DfC later stated that this was due to an ‘oversight’ by officials.¹⁴ No screening took place on the ‘community equipment scheme’ either.
- Before it was known that equality screening had been bypassed, the Screening Template was requested by CAJ under the terms of the Equality Scheme; no response was received within the statutory timescales.¹⁵

¹⁰ As above, Paragraphs 28-29.

¹¹ DfC Business Case Community Halls Fund, (undated but after 23 Nov 2016), page 5 see also page 15.

¹² Community halls pilot programme 2016-17 project plan; (undated but at least after 29 Nov)

¹³ ‘Minister announces funding for a community equipment scheme’ 01 November 2016.

¹⁴ <https://www.communities-ni.gov.uk/news/minister-announces-funding-community-equipment-scheme>

¹⁵ ‘DUP community halls scheme not equality tested ahead of cash awards’ the Detail, 3 February 2017

¹⁵ CAJ requested a copy on the 16 January 2017 under a provision in the Equality Scheme. (“4.15. As soon as possible following the completion of the screening process, the screening template, signed off and approved by the senior manager responsible for the policy, will be made available on our website www.communities-ni.gov.uk and upon request from the Department.”) No Template had been placed on the website. The Departmental response time for correspondence is 10 Working Days. No response was received in this time. A reminder was sent. No response was forthcoming and CAJ issued a formal failure to comply complaint under the Equality Scheme. On 2 February 2017 the Department put a screening template on the website which had been commenced on 17 January 2017, the day after our request. At no point did the department inform CAJ it could not comply with the request as the screening had been overlooked.

October 2016 Previous Equality Commission Investigation into DSD closed

In October 2016 the Equality Commission's Statutory Duty Investigation Committee signed off on the discharge of its recommendations to the Department. This related to a Commission investigation which had found that the Department had failed to comply with its equality scheme in not conducting timely screening or equality impact assessments on key policies. This included the strategic "*Facing the Future: Housing Strategy for Northern Ireland 2012 – 2017*" and a new regeneration programme resourced by the Department entitled "Building Successful Communities" which the Department had unsuccessfully argued that it did not have to Equality Screen as it was a 'pilot'.¹⁶

Having held the Department had breached its Equality Scheme the Commission made remedial recommendations which if not complied with in a reasonable time can be referred to the Secretary of State who can issue directions. The Recommendations included "*that the Department ensures that the screening decisions, that is, whether or not to conduct equality impact assessments, are robust; provide an opportunity to improve decision making; support 'evidence based' policy making; and provide tangible evidence as to how the Department has given due regard to the promotion of equality of opportunity and regard to the desirability of promoting good relations, in the initial stage of policy development.*" In October the Commission concluded the Department had now complied with the recommendations in the report and confirmed in correspondence to the DfC Permanent Secretary on the 25 October 2016 that they had been signed off.¹⁷

Given this context the Department should have been very aware of its duties to Equality Screen policies such as the Community Halls Fund, which had been reinforced by the Commissions' recommendations.

Initial Failures to Comply with the Equality Scheme:

We have identified the following initial failures to comply under the following provisions of the scheme:

1. *Failure to engage in Consultation on a matter relevant to the Section 75 duties (the Community Halls Fund), in contravention of paragraph 3.1¹⁸*

¹⁶ "[the] Investigation found no evidence of equality screening or equality impact assessment in relation to the selection of the six pilot areas. The Commission does not accept that the pilot nature of this intervention exempted it from the commitments made by the Department in its 2001 Equality Scheme to screen, and where appropriate, equality impact assess proposed policies emerging during the lifetime of the Scheme." Equality Commission for Northern Ireland '*Investigation Report under Schedule 9 of the Northern Ireland Act 1998, Department for Social Development: Housing Policy Proposals*' November 2015. The investigation report also highlighted that DSD had conducted equality screening exercises on other policies which formed part of the 'Facing the Future' action plan including the Social Housing Reform Programme. However these equality screening exercises were only initiated *after* the Equality Commission had launched its investigation (paragraphs 4.10 and 4.14).

¹⁷ ECNI Correspondence to CAJ of 26 January 2017, on file.

¹⁸ "The Department recognises the importance of consultation in all aspects of the implementation of its statutory equality duties. We will consult on our Equality Scheme, action measures, equality impact assessments and other matters relevant to the Section 75 statutory duties."

2. *Failure to Equality Screen the fund at the earliest opportunity in the policy development process (paragraph 4.5)¹⁹*
3. *Failure to ensure the fulfilment of Section 75 in all parts of the Departments work where the duties were 'overlooked' by officials in this business area at the time the Department were committed to remedies over housing policy in light of the Commission Investigation. (paragraphs 1.4 / 2.2)²⁰*
4. *Failure to respond to a request to provide a screening template under the scheme (4.15)²¹*
5. *Substantive failure to pay due regard to the promotion of equality in devising the criteria for the fund (1.4)*
6. *Not complying - in relation to the Community Halls fund - with the live recommendation of the Equality Commission investigation into the Department that in the initial stage of policy development screening decisions, inter alia, be robust, support evidence based policy making and provide tangible evidence as to how the Department gave due regard to the statutory duties (8.9)²²*

October 2016 – the process of devising the criteria

As alluded to earlier the criteria were devised quickly, being in place just over a month after the Community Halls programme was proposed, and without any being informed by public consultation or equality screening; the FoI request also revealed there is no paper trail as to how the criteria were arrived at, and hence no evidence of consideration of the duties to promote equality of opportunity.

The Criteria for the fund and its application process were devised in October 2016. Prior to this the only relevant documents available are the two submissions to the Minister in August. These state that the purpose of the then proposed programme would be to allow capital allocations for Community Halls through for example “boiler replacement, new flooring, disability access, fire fighting equipment, car park upgrades, roof repairs, alarm systems, secondary glazing and air conditioning unit upgrades” and proposes:

A business case for investment of £200k would be developed focussing on community halls most in need of support. This would take into account of [sic] recent arson attacks and identify halls which have either been damaged recently or are vulnerable to attack because of their location, or other factors.²³

¹⁹ “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...”

²⁰ “We are committed to the discharge of our Section 75 obligations in all parts of our organisation and will commit the necessary available resources in terms of people, time and money to ensure that the Section 75 statutory duties are complied with and that our Equality Scheme can be implemented effectively.” (1.4) “The Department is committed to the fulfilment of Section 75 obligations in all parts of its work.” (2.2).

²¹ “As soon as possible following the completion of the screening process, the screening template, signed off and approved by the senior manager responsible for the policy, will be made available on our website www.communities-ni.gov.uk and upon request from the Department” 4.15.

²² “We will give full consideration to the implementation of any recommendations arising out of any Commission investigation. (8.9)”

²³ DfC Community Halls Programme Managers submission 19 August 2016 on Capital Programme 2016/17 paragraphs, 25, 28-29.

This paper was produced shortly after Salterstown Orange Hall (where the fund was subsequently launched) had been damaged in an arson attack which destroyed instruments and extensively damaged the inside of the building. Reportedly this was the 21st attack by arsonists or vandals on an Orange Hall in 2016.²⁴ Whilst the document indicates this was a context at the advent of the fund, it also is clear that the fund is not designed as a fund supplementary to criminal injuries compensation to repair damage or replace equipment per se resulting from vandalism or arson. Rather the capital activities of the fund are focused on general refurbishment of halls.

DfC have stated that the funds criteria were then devised by DfC officials “on the basis of experience of previous programmes” but have also confirmed after a ‘detailed search’ that no records (including electronic records, paper files, e-mails) were kept of this process.²⁵

The actual four prioritisation criteria and their sub-criteria are set out in the funds Assessment Record template. In summary they are:

Criteria	Sub-criteria (summary)
1. Previous funding: “ <i>how recently the community hall has benefited from grant funding from central/local gvmt or lottery</i> ” (25 marks)	Assessed on a sliding scale of the amounts of previous funding received;
2. Need: <i>current state of community hall</i> (50 marks)	A Number of sub-criteria are set out on sliding scales in relation: <ul style="list-style-type: none"> - to the condition of the hall (worse condition, higher the mark); - to the Age of the Hall (the older the higher marks); - to number of ‘issues’ with the building, (highest marks for premises posing a health and safety risk); -amount of previous investment in the hall (highest marks for no investment); -extent the hall has been subjected to or a risk of anti-social behaviour/criminal damage (high marks for level of threat)
3: Benefits: “ <i>how proposed modifications will benefit local community by maintaining or increasing use</i> ” (25 marks)	A number of sub-criteria (within this criteria) are set out including scoring; relating to size and number of organisations using hall; number of users and impact to stop existing users discontinuing use of hall;
4: Benefits as “ <i>hall provides space or services not otherwise available nearby.</i> ”	Sub-criteria relating to whether there are other services within the local vicinity with maximum marks if the “Hall is in a rurally isolated location”

²⁴ ‘Pictures emerge of arson aftermath at Orange hall in Co Londonderry’ Belfast Newsletter 15 August 2017 <http://www.newsletter.co.uk/news/crime/pictures-emerge-of-arson-aftermath-at-orange-hall-in-co-londonderry-1-7527115> see also <http://www.bbc.co.uk/news/uk-northern-ireland-37084952>

²⁵ DfC Correspondence to CAJ, 5 April 2017, page 2.

The relationship between some of these criteria/sub-criteria and the objectives of the fund to target those community premises most at need are evident, in for example the need criteria regarding the 'condition of the hall' and the benefits the investment may provide in retaining or attracting users.

The relationship between some of the other criteria and ascertaining objective benefits in line with the fund is less clear. It would have been apparent at this stage if an equalities assessment had been conducted that some of the criteria were difficult to justify as relating to the state and usage of community premises and risked adverse impacts on Section 75 categories.

This includes the de-prioritisation of applicants who had previous lottery funding, which risks adversely affecting, for example sporting organisations and women's groups, who are likely to have availed of such funding. As such funding itself may already prioritise groups in most objective need it is not clear if this is a reliable indicator to discharge the policy aim. The sub-criterion of being in a 'rurally isolated location' may also be beneficial to groups such as Orange Halls, other faith based organisations and sports clubs but are difficult to justify as directly correlating with the objectives of the fund. The criterion of having suffered anti-social behaviour/criminal damage is potentially targeted at the Orange Order given the references in the initial documents to arson attacks.

There are also no equality considerations within the prioritisation criteria; nor are there any-records of evidence-based policy making. In light of this we consider that there has been a further:

7. *Substantive failure to comply with the duty to pay due regard to the need to promote equality of opportunity when devising the prioritisation criteria for the fund in particular in light of the Brown Principles that "the duties must be fulfilled before and at the time that a particular decision is being considered, and not afterwards" and that "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" (1.4)²⁶*

²⁶ Paragraph 1.4 of the Scheme relates to substantive commitments to implement the duties.

19 October 2016 – Launch of the ‘Community Halls Minor Work Pilot Programme’

The programme was launched as a £500,000 fund in Salterstown Orange Hall Ballyronan, by the Communities Minister Paul Given MLA and the First Minister Arlene Foster MLA, but not the joint office holder deputy first Minister Martin McGuinness MLA. Some of the main criteria were highlighted in the DfC launch statement as giving priority to applications:

- where there has been limited previous investment by central government, local councils or Lottery funds;
- [which] are currently restricted in their use or underutilised because of disrepair;
- [which] have been subject to recent criminal damage or result of anti-social behaviour;
- [which] are located in areas where access to similar services is limited.

The DfC put out a press statement with a photograph of the launch with the two ministers and Billy Thompson of the Orange Community Network. An online search indicates this was covered in the *Newsletter* newspaper.²⁷ The DfC states it was covered in a number of other (unspecified) media outlets (who may be missed by online searches). The Department also states that it ‘understands’ the Ulster Council of the GAA decided to circulate the information to GAA clubs as did the Rural Communities Network to its members.²⁸

A number of official documents refer to the programme as not just being open to ‘Halls’ but also ‘clubs’ and other types of community premises. The programme is officially set out as trying to achieve the provision of:

... investment in community halls across all of NI. It invests in those halls and clubs that are in the worst condition i.e. lack of basic amenities and therefore do not meet reasonable standards for community use (emphasis added).²⁹

DfC emphasised that the programme was “open to all types of community halls such as church, Scout, Masonic, Orange, AoH, other not for profit community halls and sports clubs”³⁰ The eligibility of sports clubs was however qualified, as sports clubs had to demonstrate the hall was delivering benefits to the wider community and not just sports club members.³¹ The predecessor DSD funds did not refer to community halls, but community premises. As reproduced above the DfC also chose to highlight some of the prioritisation criteria at the time of the launch. This included highlighting “criminal damage or anti-social behaviour” in the press statement, despite these being sub-criteria, and also singled out ‘not having access to lottery funds’ as the first highlighted criterion.

²⁷ <https://www.communities-ni.gov.uk/news/foster-and-givan-announce-ps500000-funding-community-halls>; <http://www.newsletter.co.uk/news/500-000-funding-boost-for-community-halls-1-7636164>

²⁸ DfC Revised Screening Template, page 2.

²⁹ DfC Revised Screening Template, page 3.

³⁰ As above page 2.

³¹ DfC Business Case, p13.

There is a risk that the manner in which the Department branded and marketed the fund, as one for 'Community Halls', the highlighting of certain sub-criteria and the promotion of the fund by two DUP Ministers in an Orange Hall led to a understandable perception that the fund was targeted at Orange Halls.

The previous DSD fund was entitled 'community premises' rather than 'community halls;' there is no evidence in the documentation of any consideration of the potential impact of rebranding this funding stream as one tied to 'community halls' rather than premises and of the marketing of it in this way. DfC documents provide figures based on Rates policy that record 1,500 community halls in Northern Ireland as a whole, over half of which (800) would be Orange Halls.³² Unless 'halls' is being used as a synonym for all community premises, a figure encompassing all community facilities (centres and other premises that are not necessarily 'halls') would presumably be significantly higher.

A reliance by the DfC that the GAA and RCN might, of their own initiative, circulate some of its information round its members is not evidence of a considered approach as to how the scheme could be presented and promoted in a manner likely to reach across Section 75 groups.

The singling out of receipt of Lottery funding as one which would disadvantage applicants can put off women's and sports organisations who are likely to have availed of such funding, but may have premises that would benefit from the fund's stated objective of targeting those most in need. We are aware of a GAA club that was initially put off from applying through perceiving the fund to be open only to Orange Halls, before a discussion with officials clarified that the fund was open beyond that. We have also heard that some women's organisations were put off from applying by the criteria.

We consider therefore that there has been a further:

8. *Substantive failure to comply with the duty to pay due regard to the need to promote equality of opportunity, and use a range of accessible communications channels in relation to the branding and provision of information on the scheme (1.4 & 6.6)*³³

³² DfC Business Case, p13.

³³ Paragraph 1.4 of the Scheme relates to substantive commitments to implement the duties. Para 6.6 provides that "The Department is committed to achieving effective communication with the public. Recognising the growing range of communications channels and the differing needs and preferences of different groups, the Department will use a range of communications channels to enable wide access to information, to mitigate the risk that some sections of the public might not enjoy equality of opportunity in accessing information provided by the Department. For example some members of the public may not have access to a computer to obtain information from websites. They may require access to information in different formats due to a visual impairment or their first language. The Department will consider a range of communication methods to ensure wide access to its information...."

January 2017 - Allocation of first funding tranche of £1.9m

On Friday 13 January 2017 the DfC Minister formally announced details of successful applicants to the Community Halls fund. In the interim a decision had been taken to increase the funding pot to £1.9 million. The Minister stated that the programme had been oversubscribed with over 850 applications received. The announcement stated:

Ninety community halls were successful in this pilot programme which was developed to provide capital assistance to groups and communities most in need and assist organisations to benefit their community.³⁴

The Minister also stated that unsuccessful applicants to the scheme had been advised that they may still receive funding support in the future if further monies become available. The Minister also cited the huge level of interest in the scheme as justifying his decision to introduce this programme.

Following this announcement there was extensive coverage in the media of allegations from the nationalist parties regarding potential adverse impacts of the fund. Sinn Féin, who had access to the funding list, claimed that the fund had been primarily directed at the unionist community and looked like ‘blatant discrimination.’ The SDLP raised similar concerns, queried whether the criteria had precluded applications from GAA clubs and called for the list of successful applicants to be published.³⁵ The Department responded by publishing the list of successful applicant organisations on Wednesday 18 January.

The materials released under FoI in April 2017 include a business case document that was the procedural basis for the decision to increase the funding pot to £1.8m. Originally the budget had been set at £200k and had been increased to £500k by the time the fund was announced. The Business Case is filled in on a Pro-Forma form which is for funds between £500k-£1m only, and is a detailed 59 page document. The document is undated but provides an analysis of the different categories of organisation that had applied during the funding round that closed on the 23 November, and hence was produced after the application process had been closed and there had been time to categorise the 860 applications.

The analysis sets out, for example that the largest category of applicants had been the umbrella category of ‘Community’ organisations (31%), comprising of “Community Associations, halls and centres” broken down into sub types including for example 2 ‘ethnic minority’ organisations. The second largest category is the single category of Orange Halls (26%) closely followed by church halls (25%).

The analysis sets out that the Community Organisations category is diverse and is that which “offered the widest range of activities” responding to social need and tackling social disadvantage in a local area, and consequently would have scored high on the benefits to local communities indicator. The analysis then states: *“The next largest applicant category is Church Halls and Orange Halls. Their use is less varied, with some limited only to their membership with limited evidence of other groups or activities using the hall. Such applicants score poorly in relation to demonstrating use and the potential*

³⁴ <https://www.northernireland.gov.uk/news/givan-announces-ps19-million-community-halls>

³⁵ <http://www.bbc.co.uk/news/uk-northern-ireland-38622869>

*benefits of enhancing the fabric of the hall” although some groups had more varied activities.*³⁶

It is clear therefore that data was available to the Department. At no stage however are considerations made within this document as to what the equalities impact would be of both increasing the monies into the fund (for example, whether it would alleviate or compound any adverse impacts on section 75 groups in funding recipients or not) or the impacts of diverting monies into this fund rather than other funds.

The Business Case explains the decision to seek further funding for the fund in the following terms: *“A unexpected high level of interest was registered, with 860 applications received. This has led to consideration of the potential to invest additional funding to increase the £500,000 programme budget in 2016/2017.”* It is perhaps somewhat surprising that the high level of interest had not been anticipated as the previous page of the Business Case sets out that the previous similar programmes had been “oversubscribed, suggesting significant need for further investment.”³⁷

The document identifies slippage monies from other areas of the Departments budget that had made available a potential £1.3m for the fund. Whilst the risk assessment identified that this conferred a ‘high risk’ that some projects would not be completed upon time this is the ‘preferred option’ that is adopted.

It is notable that at this time there were ongoing cuts to other areas of public sector provision affecting Section 75 groups. Most notably, in a decision that contributed to the resignation of the deputy First Minister and the consequent collapse of powersharing, DfC itself announced in late December 2016 that the £50k Líofo bursaries scheme, which had allowed children on low incomes to attend summer Irish language courses, was being cut. The Minister at the time maintained the fund had been cut as the Department was under pressure to find efficiency savings; (although documents released under FoI state that the department has no records of any consideration of any efficiency savings in December 2016).³⁸

In light of this we consider there has been a further:

9. *Substantive failure to comply with the duty to pay due regard to the need to promote equality of opportunity in relation to the decision making on increasing the proportion of the Departments resources available in the ‘pilot’ phase of the fund, in light of the Brown Principles that the duties are “continuous” and that “the duties must be fulfilled before and at the time that a particular decision is being considered, and not afterwards” (1.4)*

³⁶ DfC Business Case, p25-26;

³⁷ DfC Business Case, pages 5-6.

³⁸ DfC Liofo FoI Internal Review correspondence to CAJ 12 April 2017.

February 2017 First screening exercise produced by DfC

The Department first commenced the Equality Screening exercise on the 17th January 2017 and published a screening template on the 2 February 2017. The screening exercise only began when CAJ requested a copy of the screening template (assuming it had been undertaken) and after monies had been announced.

It is also clear from the Business Case document that the Department had already at this time conducted a level of assessment of the impact of the funding criteria on different categories of applicant, many of which would have an interface with Section 75 grounds.

The Department would have had, in equality scheme terms ‘available relevant information’ from the list of awardees that indicated a significant majority of male-led or male only organisations have received funding with a much smaller number of women’s or mixed organisations having been successful. As conceded in the second screening exercise there was also significant available information in relation to religious belief and political opinion; demonstrating that there was a significant differential with a high majority of funding going to organisations primarily in the Protestant and unionist groups within these respective section 75 categories.

Despite this however this first Equality Screening document provides no analysis of impact on any specific Section 75 categories at all. Rather the sections of the Template designed for each section 75 category are merged into one box dealing with ‘all categories’ and no differentials are identified.

It is the role of the Screening Exercise to, *inter alia*, identify Adverse Impacts on equality of opportunity and conduct an EQIA when such impacts are identified. An adverse impact is defined by the Equality Commission as “Where a Section 75 category has been affected differently by a policy and the effect is less favourable, it is known as adverse impact” A differential on its own is not an adverse impact. A differential could be an indicator that a fund is meeting the objective need of groups within section 75 categories who face specific and greater disadvantage than others, or indeed that the fund is targeting a specific need concentrated within a specific group and in these instances the policy would produce a positive impact on equality of opportunity for the group in that Section 75 category. However, if there is a significant differential on Section 75 grounds and no objective evidence of greater disadvantage or a specific need within the beneficiary Section 75 group the policy may be unlawfully discriminatory and is to be categorized as an ‘adverse impact’ and a full EQIA is to be conducted, and alternative policies and mitigating measures must be considered by the decision maker.

In this instance however the screening exercise contained no analysis of the known differentials on any of the section 75 categories, and consequently no consideration as to whether the differentials constituted an adverse impact. The Screening Decision nevertheless concluded that there were “no adverse impacts on any Section 75 category” and that “any impact is expected to be positive in that the funding will help improve access to the facilities in community halls in NI”. Elsewhere in the screening form there is an allusion to potential positive impacts on persons with disabilities, older persons and persons with dependents but the general tone of the exercise is that the Community Halls fund “will have a positive impact overall” on local communities.

Case law on substantive due regard equality duties has held that the quality of impact assessment is important. It cannot be ‘vague and general’ and requires the gathering of the necessary information to conduct the exercise properly. Specifically it has also been

held that impact must be measured in relation to the *protected groups* and not just general impact.³⁹

We consider that the following failures to comply occurred in relation to the first Screening Decision on the policy:

10. *Substantive failure to comply with the duty to pay due regard to the need to promote equality of opportunity in relation to the first screening decision, in particular in light of the Brown Principle that “the duties must be exercised in substance, with rigour and an open mind; and not as a “box ticking” exercise.”*
11. *Specific failure to comply with paragraph 4.3 of the scheme which provides that “The Department will use the tools of **screening** and **equality impact assessment** to assess the likely impact of a policy on the promotion of equality of opportunity and good relations. In carrying out these assessments the Department will relate them to the intended outcomes of the policy in question and will also follow Equality Commission guidance...”*
12. *Failure to comply with the commitment in Paragraph 4.8 of the Equality Scheme: “In order to answer the screening questions, we will gather available relevant information and data, both qualitative and quantitative. In taking this evidence into account we consider the different needs, experiences and priorities for each of the Section 75 equality categories. Any screening decision will be informed by this evidence [emphasis added].”*
13. *Consequent failures to properly apply the Screening Questions at paragraph 4.7 – namely “What is the likely impact on equality of opportunity for those affected by this policy, for each of the Section 75 equality categories? (minor/major/none)”. And consequently commission an EQIA and monitor the adverse impact of the policy in accordance with paragraph 4.29.*

Under paragraph 4.16 of the Scheme the Department must review the screening decision if a consultee raises a concern with supporting evidence for it to do so. CAJ made such a request following this screening exercise raising the following concerns (in summary that the template):

- Makes no reference in the ‘available evidence’ section to the differentials on grounds of Gender, Religious Belief and Political Opinion of successful applicant organisations and presents no evidence as to objective need in particular s75 categories that would justify such differentials;
- Contains no consideration as to the accessibility of community halls to minorities (such as ethnic minorities or LGBT) and hence how opportunities to better promote equality of opportunity in these s75 categories could be maximised;

³⁹ See *R (on the application of JM and NT) v Isle of Wight Council* [2011] EWHC 2911 (Admin); *R (W) v Birmingham City Council*, at [124] & [179]; *R (on the application of JM and NT) v Isle of Wight Council* [2011] EWHC 2911 (Admin) [140]; *R (Winder and Others) v Sandwell Metropolitan Borough Council and the Equality and Human Rights Commission (intervening)* [2014] EWHC 2617 (Admin).

- Makes no consideration of the impact on equality of opportunity of most of the section 75 categories (Religious belief, Political Opinion, Gender, ethnic group, sexual orientation, marital status) in the relevant section of the form beyond a generic sentence applying to all categories that it is 'hoped' the programme will have a positive impact overall;
- Contains no information on any consideration of patterns on the range of service users in Section 75 groups of applicant organisations;
- Contains no evidence as to how the funding criteria were determined as meeting the policy aim of targeting resources at those most in need and duly considering promoting equality of opportunity;
- Contains no analysis as to how the funding criteria may have impacted on the range of section 75 constituencies, and conversely makes an assumption that having a fund will be a good thing for all Section 75 categories;
- Contains no analysis of monitoring data that should have been gathered in relation to successful and unsuccessful applicants to identify any differentials and reasons for them;
- Contains no consideration of any impact on s75 categories regarding the manner in which the funding was promoted;
- Reaches a conclusion that there will be no adverse impact on any section 75 category without due consideration of any of the above matters;

The Department complied with this request and produced a revised screening exercise in March 2016.

The Second Screening Exercise of March 2017

The Department reviewed its Screening Exercise and published a revised version in March 2017 that on this occasion did identify significant differentials on some section 75 categories. The screening decision is that these differentials constitute positive and not adverse impacts as they meet unmet need in the identified groups – ultimately mostly Protestant male-led organisations.

As alluded to earlier, methodologically this is the correct *approach*. The policy aim is to prioritise the funding to groups in most need. Should there be an evidence base that indicates that the community halls used by mostly male groups, mostly Protestant/unionist groups are in most objective need, the prioritisation of such groups would not constitute an adverse impact, and may even be a positive step to redress existing disadvantage. However if no such evidence base exists, or a contrary evidence base exists, the differentials are likely to be indicative of less favourable treatment and hence an ‘adverse impact’ in these categories. The range of service users across section 75 groups for applicant organisations would also be a relevant consideration in making such a determination.

However, the limited evidence the Department puts forward in support of the contention that there is unmet need in the beneficiary group is deeply flawed. Consequently the Department should have found ‘adverse impacts’ on a number of Section 75 groups had occurred, and conducted a full EQIA and considered alternative policies and mitigating measures. The evidence base is considered below.

Analysis of Religion /Political Opinion in revised screening form

The first Section 75 category dealt with by the screening template is ‘perceived religious belief’. The form also references the correlation with the category of ‘political opinion’ and applies the same outcomes to both together. The use of ‘perceived Religious Belief’ (on the categories of Catholic, Protestant and Cross-community) is based on a review of the application form. Whilst this was no doubt necessary in light of the screening exercise taking place in the absence of other data, it is also be indicative of no equality monitoring having taken place during the formal application process.

The revised Screening acknowledges significant differentials at both application and awardee stage. 55% of applicant organisations were Protestant, with 33% cross-community and 12% Catholic. In relation to awards issued the figures are 64% Protestant, 26% cross-community and 10% Catholic. The single biggest category of organisation is the Orange Order constituting 26% of applicants and 38% of awardees.

The analysis of the differential does not conclude that this constitutes an adverse impact on Catholics/nationalists or others. Rather the conclusion is reached that this is a positive impact on Protestants/unionists due to meeting ‘unmet need’. The exercise concludes that:

From the analysis of the numbers of applications received, applicant organisations and awards made, this policy is expected to have a positive impact on people of a Protestant religious belief and inferred political opinion, in that it will go some way to identifying their previously unmet need for improvements to community halls.⁴⁰

⁴⁰ DfC Revised Screening Template, March, 2017, page 18.

No empirical evidence is presented in the Screening or other DfC documents that supports the contention that there is greater unmet need within community facilities in the Protestant/unionist categories. Rather the Department relies on the general assertion that the argued 'unmet need' is resultant from faith-based groups not seeking similar lottery funds. The screening document states:

Faith based organisations such as Churches, scouts & guides, Masonic/Orange Order account for 54% of applications received. Lottery Awards for All programme is a key source of funding support for organisations to undertake minor repairs to the fabric of building [sic]. As many faith based groups in Northern Ireland do not apply for lottery funds as this is regarded as benefiting from Gambling so DfC Community Halls Pilot Programme was possibly their only opportunity to secure funding for hall improvements.⁴¹

This assertion then leads to the conclusion in the Screening decision that:

Of the 861 funding applications received 453 (53%) were from perceived Protestant organisations. The high uptake by perceived Protestant organisations can be explained by their previous inability to draw down lottery funding due to their religious beliefs regarding benefiting from gambling.⁴²

However, there is no empirical evidence presented to support such a differential being resultant from the applicant groups not applying for lottery funds.

Figures from the Big Lottery Fund sourced by the *Irish News* strongly contradict this reasoning. The newspaper reports that in the last two years 40 Orange Lodges or halls have shared more than £350,000 in Big Lottery fund grants (which runs the Lottery Awards for All programme). The *Irish News* reported that organisations linked to the Orange Order had also been awarded monies from the Heritage Lottery Fund along with Protestant churches. Over £1million had been awarded to churches under the Heritage Lottery.⁴³

The Lottery does publish annually its Awards for All grant recipients and at a glance there appears to be no similar imbalance in relation to these Section 75 categories. As set out earlier some of the prioritisation criteria for the Community Halls fund are difficult to justify and could reasonably be considered as responsible for producing the significant differential. It is notable that the purported justification of meeting unmet need was not asserted in any of the documents produced *before* the funding had been allocated. In this sense there is a risk the 'unmet need' argument has been put forward as retrospective justification for differential impact to avoid finding an 'adverse impact'.

Another issue raised in Departmental documents produced after the funding applications process had closed was the desire that the fund targeted 'low capacity' organisations. Such an objective could be potentially reflected in the criteria de-prioritising applicants with previous funding (although this is not explicitly stated). The Community Halls Programme plan (which was written after November 2016) states that programme had been commissioned by the Minister with Commissioning Objectives that included to:

⁴¹ DfC Revised Screening Template, March, 2017, page 12 and 13.

⁴² DfC Revised Screening Template, March, 2017, page 15.

⁴³ Young, Connla 'Orange Lodges accept lotto funds despite Stormont Claims' (p1) and £350k in lottery cash given to Orange Halls and lodges' Irish News 10 April 2017.

Reach low capacity organisations who have not attracted previous public funding (including organisations who do not wish to attract Lottery funds for religious reasons).⁴⁴

The reaching out to 'low capacity' organisations is later described in the plan as a 'key objective' of the Community Halls Programme. At no stage does the Department claim that 'low capacity' organisations are concentrated within the Protestant/male/unionist sector, and seek to use this as justification. CAJ is aware however of previous official approaches a decade ago which had argued there was 'weaker community infrastructure' within Protestant communities. This assertion was however a myth contradicted by official statistics; we are not aware of any change in the situation or whether this perception nevertheless persists.⁴⁵

In our view on the basis of the available evidence any reasonable decision maker should have considered the differential on religious belief and political opinion categories as indicative of likely adverse impacts, reflected this in the Screening Decision and commissioned an EQIA.

Analysis of Gender in revised screening form

A table in a similar format to that provided for the above two categories provides analysis of applicants and awardees by 'perceived gender affiliation' under the three categories of 'male', 'female' and 'all'. Again it appears this data had to be deduced following the funding round rather than being a product of formal monitoring. The figures state that 9% of applications were from male organisations, 1% from female and 90% from All. In relation to awardees 7% were male, 0% were female and 93% 'All'.

Whilst this in itself is indicative of a differential it is not clear which criteria were used to come to the determination of the organisations' gender affiliation. For example, whether the affiliation relates to an assessment of all of the persons using a hall for some sort of activity in general or whether it extends to analysis as to whether the awardee organisation itself is male-only, male dominated or where most or all of the decision-makers are men. This is likely to be the case in relation to many faith-based organisations.

The figures set out different affiliations for the same type of organisation - the largest single organisation category relates to the Orange Order – and 54 of its applicant organisations are described as 'male' with 167 described as 'all'; the figures for Masonic Lodges are 13 and 5 respectively.⁴⁶

An analysis of gender indicative of organisations run by men would have produced a much higher differential in the analysis. It is also notable that Women's Centres and similar community facilities constitute considerable stakeholders in the community sector, yet the data presented states that there was not one single Female awardee organisation.

However, by contrast there is no analysis in the screening decision at all of even the identified gender differentials. The evidence analysis is limited to stating that 91% of

⁴⁴ DfC Community Halls Project Plan (undated) 'guidance notes' section.

⁴⁵ See commentary on the Taskforce for Working Class Protestant Communities, p112-118 Rhetoric and Reality, CAJ, 2006.

⁴⁶ DfC Revised Screening Template, March, 2017, page 10.

applicants and 91% of awardees [sic]⁴⁷ are from organisations that are ‘open to both males and females’. This assertion is not reliable yet it is then used to conclude that there is no evidence of any different needs and experiences in relation to gender and that the policy is not expected to have any impact on gender.

In reality the differentials as regards gender are even more stark than those on community background. Given the well-evidenced disadvantage faced by women, a reasonable decision maker should have assessed this as an adverse impact and proceeded to an EQIA.

Analysis of Disability Impact

The screening decision records that 27% of the applications received and 38% of awardees included a request for funding to improve disability access/provision at their hall. Disability access needs are identified within the needs and experiences section and the equality impact question states that the policy is expected to have a positive impact on people with a disability.

Given this it is unclear why the formal ‘level of (equality) impact’ indicator is then recorded as ‘none’ rather than positive (minor or major) on the screening form.

Analysis of Age/ Racial Group/marital status/sexual orientation / dependents in revised screening form

The revised screening form states that there is “no data available” in relation to any of the above categories and concurrently concludes, using the same phrase that there is no evidence of different needs, experiences and priorities for each of these Section 75 groups. For most of the above groups it therefore concludes that there will be no impacts on these categories.

In relation to two of the categories – age and dependents- the Screening Decision records potential positive impacts. In relation to age the form states that the policy ‘could impact positively on people of different ages’ and later singles out ‘older persons’ as particular beneficiaries given improvements in accessibility. In relation to dependents a similar observation is made. It is not clear if the Department is arguing that there will be more beneficiaries in the awardees organisations who are older persons; nor is there specific consideration of any impacts on young persons in relation to the types of organisations and facilities funded.

Whilst there is a note of ‘some levels of intercommunity working’⁴⁸ in 38% of applicants and 29% of awardees; there is no specific consideration in the section on steps to better promote equality of opportunity to ensure organisations would be welcoming to persons in other section 75 categories. Whilst this can encompass community background and gender it should also have led to consideration of whether created a friendly environment for, for example, ethnic minorities and LGBT persons.

It is in the public domain that this is an issue to be addressed in some of the awardee organisations. For example a number Orange Halls in Fermanagh are awardees under the Community Halls scheme. In the year prior to the scheme the Fermanagh County Grand Master, in a widely reported interview with the *Impartial Reporter* newspaper,

⁴⁷ DfC Revised Screening Template, March, 2017, page 12 (nb these figures differ slightly from those on p10).

⁴⁸ DfC Revised Screening Template, March 2016, p17.

stated that any gay members of the Order would be compelled to leave as the rules and regulations would not allow their membership.⁴⁹

The DfC does state that each applicant organisation has to submit an organisational Equality Policy which can be either a model policy provided by the Department or the organisation's own provided it commits to equal and fair treatment on disability, race, sexual orientation, religious belief, political opinion, gender, age, marital status and people with dependents.

Whilst this is a positive step the Department has stated in response to a query that there is no formal enforcement mechanism in relation to the Equality Policy, nor are the constitutional/rules and other documents submitted as a condition of funding scrutinised against it.⁵⁰ The Equality Policy would therefore appear to be a tick box rather than a binding document.

In the context of the above the Screening Exercise could have therefore considered further steps to promote equality of opportunity, for example making the equality policy binding and/or taking other steps to ensure awardee organisations were LGBT friendly.

In light of all of the above we regard the following further failures to comply with the DfC Equality Scheme have occurred in the revised screening exercise:

- 14 *In relation to the category of gender the department did not adequately gather and take into account relevant information and data in informing the Screening Decision (4.8 with 4.3)*
- 15 *In relation to the categories of Religious Belief and Political opinion, did not adequately gather and take into account relevant information and data in informing the Screening Decision (4.8 with 4.3)*
- 16 *In relation to the category of Age, did not gather or take into account relevant information and data in relation to impacts on young persons in informing the Screening Decision (4.8 with 4.3)*
- 17 *In relation to categories including sexual orientation and racial group did not adequately consider further opportunities to promote equality of opportunity, including through a binding equalities statement (4.7 with 4.3)*
- 18 *Not conducting an EQIA when proper consideration of the evidence should have identified adverse impacts and did not nevertheless consider alternative policies or measures that might mitigate the policy impact when deciding not to conduct an EQIA (4.13 & 4.11).*
- 19 *In all of the above failed to pay due regard to the substantive duty to promote equality of opportunity (1.4)*

Overall we are concerned that the exercise has been conducted in a manner which was designed not to trigger an EQIA in spite of the evidence. We therefore ask the Commission to conduct a 'Paragraph 11' investigation to ensure both an EQIA on this policy and non-recurrence of the practices identified.

CAJ, May 2017

⁴⁹ See <http://www.belfasttelegraph.co.uk/news/northern-ireland/orange-order-stands-by-fermanagh-county-grand-master-after-homosexuality-is-wrong-remarks-31468545.html>

⁵⁰ Correspondence to CAJ from DfC, 4 May 2017.