

Equality Duty Enforcement Project (EDEP)

A narrative report 2018 to 2021



Published September 2022
By the Equality Coalition

Equality
Coalition



Acknowledgements: This report was researched and written by Eliza Browning and Daniel Holder in CAJ. We thank the Equality Commission for Northern Ireland who gave feedback on the contents of this report, and the contribution of Equality Coalition members to the interventions described in the report. We are also grateful for the meticulous proofing of our board member Rory O’Connell and the design work by Robyn Scott.

© Equality Coalition 2022

The material may be reproduced, free of charge, in any format or medium without specific permission, provided the reproduction is not for financial or material gain. The material must be reproduced accurately and not used in a misleading context. If the material is to be republished or issued to others, acknowledgement must be given to its source, copyright status and date of publication.

The Equality Coalition is co-convened by the Committee on the Administration of Justice (CAJ) and UNISON.

Equality Coalition c/o CAJ
1st Floor, Community House, Citylink Business Park, 6A Albert Street, Belfast, BT12 4HQ
Tel: 028 9031 6000
Email info@caj.org.uk
Website: www.caj.org.uk
Twitter: @CAJNi

Contents

1. Introduction.....	5
1.1 Background to the Equality Duty Enforcement Project.....	5
1.2 Enforcement of Section 75	7
1.3 Reflecting on recommendations to ECNI from Equal to the Task	9
1.4 The Equality Duty Enforcement Project (EDEP)	11
2. Changes to the Strategic Policy Framework for the equality duty during EDEP	13
2.1 Ombudsman complaint into avoidable delay by ECNI in investigative decisions.....	13
2.2 ECNI revised investigation procedures	15
2.2.1 Timeframes in proposed policy once complaints to ECNI lodged and/or investigations requested.....	17
2.2.2 Factors for investigating (or not) a complaint	19
2.3 Duty to consult on Equality Schemes.....	23
2.4 Changes to Ministerial Code Guidance	29
3. Public Authority Compliance with Section 75	30
3.1 Budget interventions and ECNI investigation	30
3.2 Effectiveness of enforcement over advisory and promotion functions	32
3.3 Improved compliance through civil society intervention	34
4. Complaints to the Equality Commission	37
4.1 ECNI recommendations regarding paragraph 10 complaints: before and after procedure change.....	37
4.2 The issue of not investigating valid complaints:	37
4.3 The application of the Revised Investigation and Complaints Procedure	40
4.3.1 Case Example: Complaint to the Northern Ireland Office regarding the Dedicated Mechanism.....	40
4.3.2 Case Example: Complaint to Ulster University regarding Bilingual Signage	42
5. ECNI Investigations.....	43
5.1 Complainant and the Department of Infrastructure	43
5.2 Complaint to the NIO regarding Legacy	44
6. Conclusion and Recommendations	46
6.1 Recommendations	46
6.1.1 ECNI Corporate Plan.....	46
6.1.2 ECNI investigations.....	47
ANNEX 1: Complaints per year	48
2014: 6 complaints considered	48
2015: 5 complaints considered	50

2016: 4 complaints considered	52
2017: 5 complaints considered (3 by same complainant)	54
2018: 8 complaints considered	55
2019: 4 complaints considered	58
2020: 7 complaints considered (post new investigations and complaints procedures)	60
February 2021: 1 complaint considered	64

I. Introduction

I.1 Background to the Equality Duty Enforcement Project

CAJ is an independent human rights organisation with cross community membership in Northern Ireland and beyond. It was established in 1981 and lobbies and campaigns on a broad range of human rights issues. CAJ seeks to secure the highest standards in the administration of justice in Northern Ireland by ensuring that the Government complies with its obligations in international human rights law.

The Equality Coalition, co-convened by UNISON and CAJ, is the umbrella representative body for the equality sector, composed of NGOs and trade unions from all of the Section 75 categories and beyond. The Coalition successfully campaigned for the introduction of the statutory equality duty, which was provided for in the Belfast/Good Friday Agreement. The Coalition regards the equality duty as a key safeguard within the peace agreements

The Equality Duty Enforcement Project (EDEP) was a three-year project launched in December 2017 and was designed to support the work of Equality Coalition members to take forward complaints and other interventions to ensure Northern Ireland's "Section 75" public sector equality duty is complied with; and to share and embed CAJ's human rights based approach and legal expertise with other Equality Coalition members. The post holder of the project in CAJ was responsible for scrutinising policy initiatives in NI that impact on Economic, Social and Cultural rights for non-compliance with the statutory equality duty, drawing such policies to the attention of directly affected member groups and facilitating enforcement processes.

Published in January 2018, the Equality Coalition's *Equal to the Task?* report¹ was designed to overview the application and impact of enforcement powers over the 'Section 75' statutory equality duties, and to make recommendations to improve effectiveness. This report laid the foundation for the EDEP.

The Belfast/Good Friday Agreement provided for a statutory equality duty subsequently legislated for as Section 75 and Schedule 9 of the Northern Ireland Act 1998.² The Section 75 duties apply to most public authorities in Northern Ireland, and oblige public authorities to have 'due regard to the need to promote equality of opportunity' in carrying out their functions across nine protected grounds (in summary): religious belief, political opinion, racial group, age, marital status, sexual orientation, gender, disability and dependents and, subordinate to this, to have 'regard' to the desirability of promoting good relations between people of different religious belief, political opinion or racial group.

Schedule 9 'Equality: enforcement of duties' of the same Act makes further provision in relation to the duties and the role of the Equality Commission for Northern Ireland (ECNI) in their oversight. Under Schedule 9, ECNI is to keep the effectiveness of the duty under review and provide advice to public authorities in relation to the Section 75 duties.³ Public authorities subject to Section 75 are to

¹ <https://caj.org.uk/2018/01/31/equal-task-investigative-powers-effective-enforcement-section-75-equality-duty-jan-2018/>

² The 1998 White Paper *Partnerships for Equality* started public consultation on the duties, following SACHR recommendations on enacting a statutory obligation to promote equality. This was subsequently committed to in the GFA.

³ <https://www.legislation.gov.uk/ukpga/1998/47/schedule/9> see Schedule 9 (1)

adopt Equality Schemes, which set out the ways in which they demonstrate their compliance with having due regard to equality of opportunity.⁴ Equality schemes are to conform to guidelines issued by ECNI who also issue a template Model Equality Scheme.⁵ In practice, arrangements for impact assessment are provided for in equality schemes through a two-stage methodology recommended by ECNI of:

1. Initial Equality Screening (leading to a screening decision which either ‘screens out’ the policy or identifies the need for an Equality Impact Assessment).

And,

2. Where required by a Screening decision, full Equality Impact Assessment (EQIA).

A public authority can be subject to an ECNI investigation for ‘failing to comply’ with the provisions of its Equality Scheme. If, after an investigation, ECNI determines that the Scheme has been breached it can make recommendations to the public authority to remedy the breach. If the recommendations are not complied with, ECNI can refer the matter to the Secretary of State who has powers to give directions to the public authority in question.⁶ There is also growing scope to judicially review particular failures to comply in certain situations.⁷

The *Equal to the Task?* report researched and detailed the patterns and problems of compliance with equality schemes. The research found that there was a general sense that whilst the duties were not working effectively, they could work, if operationalised properly. While there were examples of good practice demonstrating how the duties could work, there were significant patterns of noncompliance including, lack of data gathering and monitoring; not Equality Screening at all; rarely done EQIAs; and issues with the quality of equality screening.

Some of the issues related to equality screening quality included:

- **Issues around the timing and conclusions of screening:** Screening happening at the end of the policy making process, and very few screenings identify the need for an EQIA or mitigating measures.
- **Misinterpreting adverse impacts:** Research raised recurring mistaken conclusions that there are ‘adverse impacts’ on equality based on general differentials (such as population statistics) or even attitudes. Conversely, there are conclusions as to ‘no adverse impacts’ despite evidence of a direct correlation between Section 75 groups and adverse impacts of the proposed policy.
- **Blanket impact ‘it will be great for everybody’:** A significant recurring misinterpretation of the duty was the question of ‘blanket impact’ where a public authority makes a general assertion that a policy will impact positively on everybody without any proper consideration of the impact on Section 75 groups. This approach assumes that there are no existing inequalities.
- **Unsustainable conclusions:** Situations where screening decisions were taken to rubber stamp a policy and/or to avoid an EQIA. This included circumstances where a policy had been the subject of a prior political deal.

⁴ Ibid., at Schedule 9(4)(1)

⁵ Ibid., at Schedule 9(4)(2)

⁶ Ibid., at Schedule 9(11)(3)

⁷ See this summary of the *Toner* case, which expanded the options for judicially reviewing breaches of Section 75: <https://www.equalityni.org/Employers-Service-Providers/Public-Authorities/Section75/Case-Law/Legal-Case-6> There is also a narrative of case law in the *Equal to the Task* report. See also *R(Stach) v DfC & DWP* [2020] NICA 4.

1.2 Enforcement of Section 75

The *Equal to the Task?* report indicated that most participants were frustrated by the efforts to challenge the poor application of Section 75 with public authorities. There was general agreement that raising deficiencies in the application of the Equality Screening directly with the public authority was not making a significant impact. However, most groups had not gone down the route of formal complaints to ECNI. The reasons for this included:

- The legal-technical complexity of issuing complaints that must be grounded in a ‘failure to comply’ with the elements of the equality scheme.
- Concerns that this would damage an organisation’s relationship with the public authority – particularly when the public authority in question was their funder.
- Concerns, based on the experience of others, that complaints would take too long to provide an effective remedy.
- Views that lobbying and campaigning around the issue would ultimately be more effective than the use of the formal mechanisms.
- View that there was an enforcement body in ECNI and it should be proactively challenging public authorities and not leaving it to the sector and directly affected persons.

The *Equal to the Task* report details that evidence gathered showed criticism of ECNI regarding their role of ensuring compliance and the effective enforcement of Section 75, while also highlighting a complimentary attitude towards the way in which ECNI exercised other functions, for example policy papers and guidance documents.

Notably, the report explained that concerns ranged from difficulties getting a ‘straight answer’ from ECNI in relation to its advice-giving function on Section 75, to an expectation that ECNI should be doing more as an enforcement body, and that ECNI was too heavily invested in ‘good relations’ approaches rather than challenging practices of adverse impacts on equality. Member groups felt mystified that ECNI would also agree with many of the concerns of the sector about systematic poor practices in screening exercises yet did not appear to regard it as the Commission’s role to address this through its enforcement powers.

During the formation of the report, it was evident that ECNI wished to consider its whole ambit of powers (e.g., advice and the adoption of equality schemes) as ‘enforcement’, and to prioritise advice provision over investigation (which were deemed adversarial and as having limited impact).⁸ This left

⁸ See the ECNI report “*Section 75 Statutory Equality and Good Relations Duties Acting on the evidence of public authority practice.*”

<https://www.equalityni.org/ECNI/media/ECNI/Publications/Employers%20and%20Service%20Providers/Public%20Authorities/S75ActingOnEvidence-FullReport.pdf>

In this report ECNI highlights the poor compliance with S.75 by public authorities, the adversarial nature of investigations and their limitations, and that their enforcement powers encompass advice provision. The recommend actions for the Commission include prioritising its advisory activities. There is no focus on investigations other than to “revise its approach to investigations generally”.

We asked ECNI for comments on this (EDEP) report and they disagreed with our findings, stated the following: “We set out clearly in our letter of 7 December 2017 on the *Equal to the Task* report that we continue to base our interventions within the statutory framework as set out in Section 75 and Schedule 9 of the Northern Ireland Act 1998, and deployed our resources along the continuum of the ‘enforcement’ functions that we have available – listing the functions set out in Schedule 9 for the Commission under the heading Equality:

and furthered the impression of reluctance on the part of ECNI to enforce Section 75 through its powers of investigation.

The primary conclusions of the report were:

- Notwithstanding pockets of good practice, there is currently widespread flouting of equality schemes compliance in relation to policy decisions and functions that have significant equalities impacts.
- The approach of seeking to collaborate, encourage and persuade public authorities to remedy patterns of non-compliance has become insufficient and ineffective; non compliance with the duties appears low down the 'risk register'. In our view, only more effective enforcement of the duties and a 'zero tolerance' approach to significant failures to comply can reverse the patterns of non-compliance.
- Whilst the enforcement powers could certainly be stronger and strengthened at present it is also the case that they are very much underused both by civil society and ECNI. ECNI has a good track record of, for example, obtaining significant publicity for tribunal cases – by contrast the Section 75 enforcement work – with some exceptions – has had a low profile.”

The report made the following recommendations to ECNI:

- ECNI in its assessment of public authorities' policies should make use of the screening decision review process when it has demonstrable concerns regarding a screening decision.
- ECNI should develop a strategic enforcement strategy in relation to compliance with the statutory duties and proactively identify opportunities for 'Own- Initiative' investigations.
- ECNI should give clear reasons for not investigating an admissible complaint.
- ECNI should address the issues of long delays in relation to initiating investigations and consideration should be given to ECNI to a 'fast track' investigative and enforcement process for more obvious procedural failures.
- ECNI should also refer failures to comply with recommendations expeditiously to the Secretary of State.

The report provided the following recommendations to civil society:

- Much greater use should be made of the enforcement procedures in relation to Section 75, we conclude this is the only way left to make the duties effective.
- In particular, the screening decision review process with public authorities is rarely known and used by organisations and should be harnessed more to challenge ineffective screening exercises.

Enforcement of Duties. It is difficult to see how this gives an impression of reluctance to use our investigation powers.”

I.3 Reflecting on recommendations to ECNI from *Equal to the Task*

In writing this report, we checked with ECNI to see what specific work had been done in the past three years to implement the recommendations to ECNI from *Equal to the Task*?. We asked ECNI for an update regarding some of these recommendations. Our questions, and their responses, are as follows:⁹

Question: **How many times from 2017-present has ECNI used the Screening Decision Review request process when it has been concerned about a public authorities’ screening of a policy?**

Answer: The Commission does not hold or collect information in these terms specifically.

Question: **How does ECNI monitor the quality of screenings? Has this process changed at all since 2017? How many screenings have ECNI been concerned about since 2017?**

Answer: The Commission provides advice to public authorities on occasions when it considers screening could be improved and this information is recorded in Commission business plan reporting. It does not hold a record of the number of times this has been done since 2017. In the period 1 April 2019 to 31 March 2020, staff provided advice to 22 public authorities on improving screening practices, which included feedback on 37 screening templates.

Question: **How does ECNI ensure that public authorities follow the recommendations set out in ECNI investigations or in remedy agreements that the public authority makes in order to avoid an investigation? How many times has this process been instigated in the last three years? Has ECNI referred any failure to comply to the Secretary of State?**

Answer: For recommendations made following an investigation into a public authority’s compliance with its Equality Scheme commitments, please see the Commission’s Procedures for Complaints and Investigations at paragraphs 7.19 to 7.24.

There is no reference in these procedures to “remedy agreements” and therefore no such information is held.

Since 2018, the Commission has issued 4 investigation reports – two investigations into complaints, two into its own belief of a failure by the public authority to comply with its Equality Scheme. In each case the public authority’s actions on the recommendations has been or is due to be considered by the Statutory Duty Investigations Committee, as set out in the Procedures at Paragraph 7.20 and as provided for by Paragraph 11(3) of Schedule 9 of the Northern Ireland Act 1998.

Paragraph 7.20 of our Procedures sets out: “An assessment of the action taken by the public authority and whether action has been taken within a reasonable time (which is what is required by Paragraph 11(3) of Schedule 9 of the Northern Ireland Act 1998, but which does not define “reasonable time”) will be considered by the SDIC.” If the Commission considers that the public authority’s action on the recommendations has not been taken in a reasonable time, the Commission may

⁹ The ECNI responses have been edited to reflect the most relevant information to the question.

refer the matter to the Secretary of State. The Commission has not made any referrals to the Secretary of State in the last three years.

Question: What is ECNI's strategy for instigating paragraph 11 'own initiative' investigation

Answer: The Commission's *Report on Section 75 Statutory Equality and Good Relations Duties: Acting on the Evidence of Public Authority practices* (2018) ...identified a number of actions that the Commission committed to undertake in support of the recommendations, in particular: The Commission will use the issues identified in this report and review its approach to investigations generally, as set out in the 2018-19 Business Plan.

Question: Statistical information on the amount (and type if available) of equality scheme complaints issued to public authorities each year, from 2010- present.

Answer: The Commission compiled the information below from PA Annual Progress Reports (those received) and provided the quantitative information in reports on the website for the periods 2015- 2019. Summary of Annual Progress Reports

2015- 2016 - 8 public authorities reported receiving 11 complaints during this reporting period.

2016- 2017 - 9 public authorities reported receiving 11 complaints during this reporting period.

2017-2018 - 16 Public authorities reported receiving 24 complaints during this reported period.

2018-2019 - 12 public authorities reported receiving 27 complaints during this reporting period.

Conclusion: While progress has been made in some of the *Equal to the Task?* recommendations, particularly around addressing issues of long delay through timeframes for complaint assessment, other recommendations have not been taken forward. These include developing a strategic enforcement strategy, particularly around pursuing 'own initiative' paragraph 11 investigations, and a fast track' process for obvious procedural breaches.¹⁰

Additionally, the EDEP project has identified new areas of recommendation for ECNI.

¹⁰ In their response to comments on a draft version of this report, ECNI state: "For accuracy, the Commission has not at any stage adopted, accepted or committed to act upon the recommendations made in the Equality Coalition's Equal to the Task report."

I.4 The Equality Duty Enforcement Project (EDEP)

In part to address the recommendations put forward by the *Equal to the Task?* report, the Equality Duty Enforcement Project ('EDEP') was launched by CAJ in December 2017, with the aims of encouraging and assisting Equality Coalition members in raising equality scheme complaints, screening decision review requests and overall enhancing the level of understanding and awareness of Section 75 as a vehicle for challenging policies that have adverse impacts.

While the primary goal of EDEP was to assist other Equality Coalition members in taking forward complaints, CAJ played an important role not only in setting an example of using strategic Section 75 interventions, but also taking forward complaints in situations where organisations and members of the public felt unable to do so themselves, due to fear of financial repercussion or other retaliation as a result of complaining about a public authority. From 2017-2018, the EDEP project coordinator post was part time. This was expanded in 2018-2020 to a full-time post.

The three key outcomes of the project were:

1. The mainstreaming of technical legal skills and a HRBA within a range of Equality Coalition members to enforce the effective application of the Section 75 equality duty.
2. A significant improvement in the effective application of Section 75 by key public authorities in strategic policy.
3. Measurable public policy improvements in remedy for discrimination, disadvantage and inequality faced in Economic Social and Cultural (ESC) rights.

Outcome	Activities	Indicators and Measures
The mainstreaming of technical legal skills and a HRBA within a range of Equality Coalition members to enforce the effective application of the Section 75 equality duty.	<ol style="list-style-type: none"> 1. Development, promotion, and application of compliance framework, including training and awareness raising actions. 2. Drawing attention to instances of non-compliance and HRBA remedies. 3. Direct work through encouragement and technical support to other groups to issue challenges to non-compliance. 	<ul style="list-style-type: none"> - Number of recipient groups and persons engaged and involved in promotion. - Number of liaison instances drawing attention to non-compliance. - Number of subsequent facilitated challenges. - Increase in self-sustaining use of HRBA challenge approaches to noncompliance by groups themselves.
A significant improvement in the effective application of Section 75 by key public authorities in strategic policy.	<ol style="list-style-type: none"> 1. Monitoring key consultation, screening, EQIA and other policy initiatives for compliance. 2. Submission of review, complaints, formal investigation and other remedies. 3. Following up to ensure remedies to non-compliance. 	<ul style="list-style-type: none"> - Increased number of scheme- compliant policy initiatives over time of project. - Number of screening reviews granted; number of complaints issued and substantiated; number of formal investigation or other remedies. - Number of alternative policies/mitigating measures considered/introduced.
Measurable public policy improvements in remedy for discrimination, disadvantage and inequality faced in ESC rights.	<ol style="list-style-type: none"> 1. Monitoring the outworking of interventions and the impact of scheme compliance on the realisation of the ESC rights in question. 	<ul style="list-style-type: none"> - Measurable improvements/preventing regression for S75 groups in relation to ESC rights resultant from policy intervention.

The project focused on using strategic Section 75 intervention, and civil society capacity building as the primary methods of achieving the stated outcomes.

This report will examine the interventions taken by the EDEP and relevant trends to provide a stocktake of the effectiveness of the statutory equality duty three years on from the *Equal to the Task* report.

2. Changes to the Strategic Policy Framework for the equality duty during EDEP

While progress was made since the start of the EDEP project regarding ECNI procedural changes, and public authority compliance with Section 75, several identified issues remained unaddressed. These are further discussed in this chapter, and include issues of avoidable delay in investigating complaints, and a general trend of not investigating valid complaints.¹¹

2.1 Ombudsman complaint into avoidable delay by ECNI in investigative decisions

In 2018 the EDEP took a complaint against ECNI to the Northern Ireland Public Services Ombudsman's office for avoidable delay in assessing a request for a paragraph 11 investigation. The settlement of this ultimately assisted in a revision of ECNI's investigation procedures, although ECNI contest this was a result of the Ombudsman complaint.¹²

The request for a paragraph 11 investigation related to the First Minister's decision in 2016 to block the clearance of a funding bid to the UK Government from the Department of Justice for the establishment of the proposed 'Legacy Inquests Unit'. CAJ contended the decision to block the funding bid breached the Executive Office (TEO) equality scheme, as the decision had not been equality screened, despite having major adverse impacts on several Section 75 groups.

ECNI took almost a year before making a decision on the request for a paragraph 11 investigation.¹³ The decision was not to investigate.¹⁴ By this time, separate judicial review proceedings had been concluded more quickly than the ECNI process. The legal proceedings did not concern the Section 75 duties but otherwise found that the then First Minister's actions had been unlawful.¹⁵

The EDEP had attempted on several occasions to clarify the nature of the delay in the assessment of the request for an investigation from CAJ. It ultimately transpired that:

- It had taken around four months for ECNI to raise the matter with TEO.
- ECNI had waited a further four months for TEO to respond to its correspondence.
- Consideration of the request thereafter took around a further four months.

The project filed a maladministration complaint against ECNI for the delay in deciding on the request. In response, ECNI acknowledged the delay was 'regrettable' but stated that they were in the process of revising their investigation procedures with a view to incorporating timeframes.¹⁶

¹¹ ECNI disagree with this issue, stating (in part): "This is not an accurate statement. It would not be reliable to report on any potential trends for fact specific complaints considered and where the total complaints considered for an investigation in any year numbers less than 10."

¹² From the ECNI response to a draft of this report.

¹³ The request was submitted to the Commission on 4 October 2016, the assessment was dated 6 September 2017.

¹⁴ ECNI disagree that such a decision was taken, stating (in part): "This is inaccurate. The matter was not subject to an SDIC decision on whether to investigat[e] or not in 2017, in accordance with the Procedures at that time... By letter of 11 October 2017 ..., we communicated a number of factors identified in the assessment of the matter and that it concluded that the matters of concern would not be addressed through an investigation of failure to comply with an approved equality scheme."

¹⁵ Hughes (Brigid) Application [2018] NIQB 30 <https://www.judiciaryni.uk/judicial-decisions/2018-niqb-30>

¹⁶ Correspondence from ECNI to Mr Brian Gormally, dated 9 February 2018

In response to the issue of allowing the process to be stalled for months whilst a response to correspondence was awaited, ECNI conceded that follow up was possible but also pointed to a lack of powers of compulsion:

In your complaint, you state that no explanation was given as to why the Equality Commission had waited 4 months without further pursuing the matter or drawing inference from the lack of response. While it might be expected that the Commission would have sent a reminder to TEO requesting a detailed response to its letter of 19 January 2017 the Commission has no statutory power to compel a public authority to respond to its correspondence nor does it have any powers in relation to disclosure when considering Paragraph 11 investigations.

TEO's response ultimately reflected their initial response to CAJ (i.e., contending that the policy relating to legacy inquests does not fall within TEO functions). ECNI attributed the further time taken (between receiving TEO's response and presenting the request for investigation to the Statutory Duty Investigation Committee (SDIC) for decision) as necessary in order to further explore this issue.

Among other issues identified, part of the assessment of the request stated:

It is noted that the matter of legacy inquests remains a current and yet to be resolved political matter ... The particular issues of funding historical inquiries **have not** otherwise been raised within the Commission, through our advice or other functions, nor is this wider issue a priority in the Commission's business plan for public policy intervention.¹⁷

In light of this, CAJ raised concerns that the decision to not take a paragraph 11 investigation may have been influenced by wanting to avoid the politically contentious nature of the issue. In response, ECNI stated:

I find no evidence whatsoever to support your concern that the Commission may have treated the request in this manner because the subject is politically contentious.¹⁸

CAJ subsequently referred the matter of the delay to the Northern Ireland Public Services Ombudsman. On 21 June 2018, we were informed that the Ombudsman's office reached a settlement with ECNI, which stated that as an alternative to investigation:

1. The Commission is prepared revisit CAJ's original request for a Paragraph 11 investigation, taking into account all correspondence received from CAJ in this matter, including all correspondence with the Ombudsman's Office;
2. The Commission is currently reviewing its Complaints Procedure generally. While the Commission is of the view that it is already committed to support good complaint management and has a culture that values complaints, including ensuring staff are

"It is clear from the chronology set out above that there was a lengthy delay between the receipt of your complaint on 19 October 2016 and the Commission writing to TEO on 19 January 2017. It is regrettable that there was such a delay between receipt of the request for a Paragraph 11 investigation and sending a letter to TEO. The Commission's "Investigation Procedure Under Paragraphs 10 and 11 of Schedule 9 of the Northern Ireland Act 1998" (the Investigation Procedure) is currently being reviewed and I will be recommending that a timetable for writing to public authorities and the period given for a response is included in the amended procedure"

¹⁷ Potential Paragraph 11 investigation Consideration Summary, dated 6 September 2017

¹⁸ Correspondence from ECNI to Mr Brian Gormally, dated 9 February 2018, page 5.

empowered to act decisively to resolve complaints, these issues will form part of that review; and

3. The Commission has already initiated a review of its Investigation Procedure under Paragraphs 10 and 11 of Schedule 9 of the Northern Ireland Act 1998. This review will look at setting clear timeframes for each step of the process, including waiting times for responses from Public Authorities, a timeframe for decisions and other matters.¹⁹

On 7 December 2018, ECNI wrote to CAJ to state that pursuant to the NIPSO settlement, the Commission revisited CAJ's request for a paragraph 11 investigation. The SDIC decided it could not "form a belief of a potential failure by public authority to comply with its approved Equality Scheme" based primarily on legal advice that the Commission received on the issue as to whether the TEO was exercising its functions, which was the primary issue for investigation.²⁰ The issue of ECNI citing confidential legal advice as the basis for not authorising an investigation will be discussed again later in this report.

2.2 ECNI revised investigation procedures

ECNI published a revised Investigation Procedure for consultation in April 2019, (almost a year after the NIPSO settlement in June 2018 which stated that revised procedures would be published).

In the interim there had been considerable engagement between the EDEP coordinator and ECNI to progress the commitment. Following an initial meeting, we had concerns that the revised procedures, due to ECNI statements that investigations were adversarial, may try and limit the circumstances in which a complaint-driven investigation (a 'Paragraph 10' investigation) would take place by introducing a pre-requisite that investigations fulfil a broader strategic impact have a 'ripple effect'.²¹ We were concerned that this could reduce the already low number of Paragraph 10 investigations being undertaken, and that enforcement itself was key to creating a ripple effect of compliance.²² In response, ECNI stated that they were not proposing to restrict Paragraph 10 investigations in this way.²³

¹⁹ Correspondence from NIPSO to Mr Brian Gormally, dated 21 June 2018

²⁰ Correspondence from ECNI to Mr Brian Gormally, dated 7 December 2018.

"The legal advice concluded that the balance of the law was that the decisions of the former First Minister did not equate to the exercise of a function by the Executive Office and that they thereby did not engage Section 75 of, and Schedule 9 to, the Northern Ireland Act 1998.

The Committee decided it could not form a belief of a potential failure by a public body to comply with its approved Equality Scheme and so could not investigate the matters raised under Paragraph 11 of Schedule 9 of the Northern Ireland Act 1998."

²¹ In CAJ-ECNI correspondence 3 July 2018 we alluded to ECNI concerns set out in the Commission's 2018 Report "Section 75 Statutory Equality and Good Relations Duties Acting on the evidence of public authority practices" which states on page three:

"Investigations are adversarial, given the statutory requirement that they are considered in relation to a belief of non-compliance with an Equality Scheme. They have mostly been driven by particular circumstances. They have provided some learning for public authority practices, but can be limited in the ripple effect of the findings, particularly when arising from a breach of paragraph 10 complaint."

<https://www.equalityni.org/ECNI/media/ECNI/Publications/Employers%20and%20Service%20Providers/Public%20Authorities/S75ActingOnEvidence-SummaryReport.pdf?ext=.pdf>

²² Correspondence to ECNI from Caroline Maguire, EDEP coordinator, dated 3 July 2018

²³ See Correspondence to Caroline Maguire from ECNI dated 18 July 2018

The draft Investigation Procedures contained significant improvements, but also weaknesses including a lack of clear timelines (despite this being expressly included in the NIPSO settlement), issues with the process for ECNI investigations and the factors for determining whether to investigate a complaint, and confusion about the role of the Commission and SDIC.

The Equality Coalition submission to the consultation highlighted issues including: the absence of any timeframe for actual investigations, that the SDIC would aim to meet only five times per year, and that the only timescale in the proposals that applied to ECNI was in section 9.4-9.5:

9.4 Written complaints to the Commission will be assessed by the [SDIC] Committee in a timely manner...

9.5 The Commission aims to present complaints to the [SDIC] Committee within 16 weeks of receipt of the written complaint and consent from the complainant.²⁴

Regarding the aim of a 16-week assessment, the Equality Coalition submission stated:

We can see no justification whatsoever for a period of almost four months to decide whether to investigate a complaint or not. This timeframe would stifle effective enforcement by ECNI (as [public authority] decisions may have long been taken). Furthermore, the four-month waiting period may prevent a complainant from being able to proceed to judicial review if they are not satisfied with the result of the ECNI investigation (an application for leave for judicial review must usually be filed no later than three months from the date when the grounds for the application first arose).²⁵

The submission stressed that most failures to comply with equality schemes are fairly straightforward matters which are often immediately apparent, for example failures to Equality Screen or consult on a policy decision at all, or the completion of an Equality Screening Report so bad it clearly has not involved an assessment of the potential impacts on equality of each Section 75 category (for example, when a public authority has simply copied and pasted the same sentence into all of the boxes). The Equality Coalition advocated for monthly meetings of the SDIC and a request for investigation being considered at the next available meeting and stated that it was not unreasonable for an initial assessment of a complaint to be done usually within two weeks, with a public authority being given ten working days to respond, and potential for that timeframe to be extended if the complaint was particularly complex.

The Equality Coalition recommended that a period of one month would suffice to conduct an investigation in most straightforward cases, suggesting that this could be a period subject to extension by a further month in more complex cases. This would allow complaints and investigations, particularly into straightforward matters, to be completed within three of months (including time to gather comments on a draft). Ultimately significant welcome revisions were made to the draft procedures by ECNI on the back of the Equality Coalition submission, including on timelines, as set out in the table overleaf.

²⁴ This aspirational commitment was itself subject to a provision, at paragraph 7.1 that ECNI may “at any time and at its own discretion, vary or amend this policy and procedure.”

²⁵ The Coalition also pointed out that in practice the time period could be longer as “The sixteen weeks will only commence once a complaint is submitted and subsequent consent is obtained from the complainant in writing – which further will delay the start of the process, it is not clear why this cannot be done concurrently as part of, for example a complaints form/template” <https://www.equalitycoalition.net/wp-content/uploads/2019/05/EC-submission-on-ECNI-investigation-powers-May-2019.pdf>

2.2.1 Timeframes in proposed policy once complaints to ECNI lodged and/or investigations requested

Responsible body	Process	Timeframe Set in draft [para]	Timeframe Set in Final Policy [para]
ECNI	General timeframes for process	"A number of months" but depends on circumstances [1.10]	"A number of months" but depends on circumstances, and references "specific timescales" that apply [1.12]
ECNI	Assessment of Complaints by ECNI decision-making Committee (SDIC)	"Timely manner", "aims" to be "within 16 weeks" of receipt of complaint AND consent from complainant [9.4-5]	"The assessment process may therefore take at least two months to complete" [5.8]
Public Authority	Time given to respond to ECNI on matters raised in a complaint	"Reasonable time" which is "normally 20 working days"[9.5]	"Normally within 20 working days " [5.7]
Complainant/ public authority	Review of an ECNI decision to or not to investigate	Strictly 20 working days from decision [9.16]	"A request must normally be made within 20 working days " [5.21]
ECNI	Decision of the Review Request	No timeframe set – beyond "timely manner" [9.19]	No timeframe set, aside from notifying both parties of the outcome of a review " within 10 working days " [5.24]
Public Authority	ECNI seeks response from public authority when raising concerns that may lead to an 'own initiative' investigation	20 Working Days [10.4]	"Commission staff will raise the concern with the relevant public authority within 10 working days for the SDIC's identification of its concern, asking that the public authority respond within 20 working days " [6.4]
ECNI	Decisions as to whether to launch own initiative (Paragraph 11) investigations	No timeframe set [Section 10]	No timeframe set [Section 6]
ECNI	Timeframe for actual investigation to take place	No timeframe set [section 10]	No specific timeframe set, although "Where the complaint alleges a failure to apply a process at all (to screen, consult on an assessment), there may be little further evidence gathering required. In such circumstances, Commission staff will aim to complete the assessment of the evidence in order to present the report of the investigation to the next scheduled SDIC meeting." [7.7]

Responsible body	Process	Timeframe Set in draft [para]	Timeframe Set in Final Policy [para]
ECNI	Assessment of evidence for an investigation	"Timely manner" [11.5]	"Timely manner" [7.5]
ECNI	Approval of draft Investigation reports	No timeframe Set [Section 11]	No timeframe Set [Section 7]
Public Authority / complainant	Comments on draft reports (re accuracy, further evidence or on findings)	"Reasonable time" [11.9]	"to do so within 20 working days " [7.11]
ECNI	Approval of final report following comments on draft	No Timeframe Set (but Committee will only meet five times a year [6.3])	No Timeframe Set (SDIC "normally meets five times a year, but will meet more frequently in the event of, for example, decisions being required on written complaints received.") [2.8]
ECNI	Publication of approved reports	No Timeframe Set [11.10]	No timeframe set [7.14]
ECNI	Whether action recommended in an investigation was undertaken by a Public Authority	"Reasonable time" [1.9/11.18]	"An assessment of the action taken by the public authority and whether action has been taken within a reasonable time (which is what is required by Paragraph 11(3) of Schedule 9 of the Northern Ireland Act 1998, but which does not define "reasonable time") will be considered by the SDIC." [7.20]

2.2.2 Factors for investigating (or not) a complaint

Another area of concern in the draft procedures were the factors involved in the consideration of whether valid (defined as meeting the procedural requirements) complaints would be investigated or not. A particularly concerning factor was “The Commission has investigated similar matters alleged within the preceding two business years.” In its submission, the Equality Coalition stated that the purpose of this factor was ambiguous, and if it was a factor in favour of an investigation, to target ongoing and recurring breaches, it made sense. But if it was a factor *against* investigation, it would provide a way out of being investigated for public authorities who commit recurring breaches.

At an Equality Coalition meeting in April 2019, the specific question was asked as to the purpose of the factor, and members received confirmation from ECNI that this was a factor that was intended to favour an investigation. However, examination of SDIC records shows that the only time this factor was previously cited, it was used to justify *not* investigating a breach.²⁶ Ultimately, the factor was removed from the final Investigation procedure after Equality Coalition engagement.

In the final Investigation Procedure, ECNI confirmed that all the factors identified were factors for *not* investigating a complaint. The draft policy, the EC response and the final decision taken by ECNI regarding the inclusion of factors for not investigating a complaint are as follows:

Factor in revised draft policy	Equality Coalition comment	Final policy
The public authority has committed to action to remedy the matters complained of, in line with its Equality Scheme commitments.	If a decision is taken not to investigate on these grounds the agreed remedial action should be published on ECNI website. This should include whether the remedy was agreeable to the complainant. We also consider ECNI should include a review procedure when invoking this factor to monitor whether the PA has complied with its commitments to remedial action within a reasonable stipulated timeframe set down by ECNI. If not, the procedure should provide for consultation with the complainant and reconsideration of the decision not to investigate.	This factor remains in the new policy as “The public authority has committed to action to apply its Equality Scheme commitments to the matters complained of”. There is no information regarding the remedial action being published on the website, or an ECNI review procedure to ensure compliance with the remedial action. There is no procedure to follow up with the complainant.
The matters alleged in the complaint relate more to policy goals or policy outcomes sought by the public authority than its Equality Scheme commitments.	We cannot see how this factor sufficiently differs from the following factor that there is not an arguable case the scheme has not been complied with, and suggest it is deleted. In doing so ECNI should bear in mind the initial process of advising a complainant, which may lead to initial contacts better tailoring complaints to actual breaches of scheme.	This factor remains in the new policy as, “The matters alleged in the complaint relate more to policy outcomes sought by the public authority than reach of its Equality Scheme commitments.”

²⁶ See section 4 of the report.

Factor in revised draft policy	Equality Coalition comment	Final policy
There is not an arguable case that a failure to comply with the approved Equality Scheme has occurred.	We concur that this should be the primary factor for not investigating. Again, in the context of this outcome being published.	This factor remains in the policy.
The Complainant is not cooperating with Commission staff.	It is unclear under the present proposals how this issue could possibly arise – there is currently no role for the complainant once the complaint is submitted beyond awaiting the outcome – there is nothing not to cooperate with. If the procedures are revised, ECNI should have a clear policy as to what such a circumstance would entail, including a written warning process for complainants if they intend to halt or dismiss a complaint investigation due to non-cooperation. There also needs to be a set policy with consequences for PA non-cooperation. We are concerned that non-compliance with undue ‘confidentiality’ restrictions should not be considered as a reason for ending an investigation. There is also no provision to discontinue or not investigate if a complaint is withdrawn.	<p>This factor remains in the policy.</p> <p>There are no new procedures for describing what circumstances involve ‘non-cooperation’</p> <p>There is no additional policy for repercussions for PA non-cooperation.</p>
The alleged failure to comply with the approved Equality Scheme is already subject to Commission investigation.	Whilst we understand this consideration, there may be circumstances where it is more effective and fair to join or augment a complaint to an existing investigation. This could be the case whereby an additional complaint either provides additional insight or information into an on-going investigation, or contains additional grounds (breaches) to the ongoing investigation;	This factor has been altered slightly and now reads, “The alleged failure to comply with the approved Equality Scheme is already subject to Commission investigation and can augment a current investigation.”
Investigation of the matters alleged would be disproportionate in terms of its impact in the public authority fulfilling its Section 75 duties.	We respond to these factors jointly as they seem to significantly overlap. We would prefer to see a category whereby the consideration is given in favour of investigation as to whether there are potential significant impacts on equality of opportunity in relation to the policy in question.	This factor has been removed.
The extent to which the likely resources required for an investigation is commensurate with the benefits to be gained.		This factor remains, and is therefore considered a factor for not investigating a valid complaint.
The Commission has investigated similar matters	This is new to the policy and deeply ambiguous – if it is a factor in favour of	This factor has been removed.

Factor in revised draft policy	Equality Coalition comment	Final policy
alleged within the preceding two business years.	an investigation – to target ongoing and recurring breaches, this makes sense. If it is a factor against it would provide a way out of being investigated by PAs who recur.	
Any other relevant consideration	We would suggest this is replaced not only by the above measure of the policy potentially adversely impacting on equality but also, by tying a factor in favour of investigation to a strategic enforcement strategy of ECNI and identified persistent areas of non-compliance with Section 75.	This factor has been removed, although the list of factors in paragraph 5.14 contains the caveat, “The following factors are for illustration only and are not an exhaustive list.”

Factors removed from previous policy	Equality Coalition comment	Final Policy
The policy/matter could properly be considered to be affirmative action to correct disadvantage or combat inequalities.	We strongly recommend that this remain in the current Investigation policy, as it is still very relevant and necessary.	This factor is still removed in the final policy.
1. The public authority has agreed to submit the matter to Equality Impact Assessment or, if already doing so, has agreed to consider the particular issue and consult about it as part of that Assessment. 2. The action taken by the public authority when the complaint was brought to its notice was sufficient to remedy any potential failure by it to comply with its approved Equality Scheme 3. The policy/matter under consideration is due to be reviewed, discontinued, or superseded.	These appear to have been superseded by the above factor on committing to action in line with equality scheme.	This factor is still removed in the final policy.
The nature of the complaint is such that the individual or person affected by it will not derive any benefit from investigation.	The Coalition and an independent review ²⁷ had criticised this factor and we welcome its removal.	This factor has been removed from the final policy.

The EDEP and the Coalition strongly urged changes in the procedure for Investigation that would introduce legal certainty into the decision-making process as to when the SDIC is likely or not to approve the investigation of a procedurally valid complaint. Overall, the EDEP maintains the position

²⁷ Brice Dickson and Colin Harvey ‘Assessing the Role of the Equality Commission in the Effectiveness of Section 75 of the Northern Ireland Act 1998’ cited in Equality Coalition ‘Equal to the Task’, January 2018, page 23.

that ECNI should be striving to investigate a substantive majority of admissible complaints, and that the discretion around deciding not to investigate a valid complaint should be narrow rather than broad to assist in legal certainty for complainants. While there was some progress in the removal or amendment of factors between the draft Investigation Procedure and the final version, concerns remain about the stated factors being 'illustrative' rather than a complete list, about the lack of clarification around 'non co-operation' of the complainant, the ambiguity in the analysis of the benefits vs. resource allocation factor, and the removal of the factor to explicitly prioritise investigations in areas to correct disadvantage or combat inequalities.

The factor which is essentially a cost benefit analysis for a paragraph 10 investigation is particularly troubling as it echoes the rationale of the limited 'ripple effect' of paragraph 10 investigations contrasted with resource allocation as stated in the Commission's 2017 report, and the EDEP coordinator's letter to ECNI. Since the new procedures were published,²⁸ the EDEP is aware of at least one valid complaint which was rejected for investigation due in part to an analysis that the resource required of an investigation outweighed the potential benefit that an investigation would have.²⁹

²⁸ <https://www.equalityni.org/ECNI/media/ECNI/Publications/Delivering%20Equality/ComplaintsInvestigationsProcedures.pdf>

²⁹ This refers to a complaint against the Northern Ireland Office (NIO) relating to new powers including for ECNI itself to oversee a UK commitment to non-diminution in certain Good Friday Agreement rights as a result of Brexit. This is discussed in more detail later in the report. . The reasons for not investigating included the following statement:

"Given the stage of development of the policy in question and its imminent commencement, while the NIO states its commitment to review the its initial screening decision, the range of potential outcomes that might be attained by an investigation would be unlikely to be commensurate with the degree of resource investment required for an investigation."

2.3 Duty to consult on Equality Schemes

The consultation commitments sections of the overwhelming majority (if not all) equality schemes contain the following commitment to publicly consult on the content of the equality scheme itself:

3.1 We recognise the importance of consultation in all aspects of the implementation of our 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.³⁰

Every five years, public authorities are obliged to review their equality schemes.³¹

Despite the clear consultation commitment in equality schemes, a concerning trend emerged during the timeframe of the EDEP project of ECNI advising public authorities *not* to consult on their equality schemes as part of the review process.³²

Guidance from ECNI states that a public authority should only ‘resubmit’ an equality scheme if making substantive (rather than cosmetic) changes.³³

Under ECNI guidance and advice, a public authority with an equality scheme that has been approved may essentially maintain that scheme indefinitely without consultee input if they only modify contact or minor details in their schemes. This is problematic when subsequent learning and experience points to progressive changes that could be made to equality schemes.

While we are concerned about public authorities not conforming to ECNI’s model scheme, we also have concerns about some elements of the existing model scheme. Both of these concerns could be raised during consultations on equality schemes.

The issue of how good relations should be defined has evolved considerably since the 2010 ECNI Model Scheme. While there was not a definition of ‘good relations’ on the face of the Section 75 duty in the Northern Ireland Act 1998, the same concept was subsequently legislated for in Great Britain in the Equality Act 2010, which explicitly frames the purpose of the duty as “*tackling prejudice and promoting understanding*”.³⁴

³⁰ ECNI Model Scheme 2010, paragraph 3.10 Emphasis Added.

³¹ Northern Ireland Act 1998, Schedule 9 paragraph 8(3)

³² See for example: Equality Practitioner Meeting Minutes dated February 2017. Item 26. “Equality updates in the absence of Ministers – ...DfI, said that ECNI had confirmed that consultation and Ministerial approval was not needed.” Correspondence from the Department of Infrastructure to EDEP coordinator, dated 23 February 2021 also confirmed that because their revised Equality Scheme follows the ECNI model template, ECNI has told them that they do not have to consult. ECNI have correctly pointed to this advice being consistent with their published guidance.

³³ ECNI guidance from 2016 states:

3.2 Equality schemes may need to be amended to ensure that they are up to date to reflect any changes that have been made to a public authority’s organisational structure, functions or contact details. Such changes should be communicated to consultees however these changes would not require that a new scheme be developed for Commission approval. 3.3 If the proposed changes are more substantive, relating to the public authority’s arrangements regarding consultation, assessment, monitoring or publishing the impact of policies, staff training, or ensuring access to information and services, then this would be treated as a wholly new equality scheme with a requirement to consult on it and to submit it to the Commission for approval

https://www.equalityni.org/ECNI/media/ECNI/Publications/Employers%20and%20Service%20Providers/Public%20Authorities/5yr_Review_Guidance.pdf

³⁴ s149 of the Equality Act 2010

Regarding an authoritative interpretation of ‘good relations’ in international standards, the Council of Europe has set out that that:

Promoting good relations between different groups in society entails fostering mutual respect, understanding and integration while continuing to combat discrimination and intolerance.³⁵

Following the ‘Unequal Relations’ report ECNI, which has a statutory function to advise on the Section 75 duties, has also promoted the ‘*tackling prejudice, promoting understanding*’ definition in the Equality Act 2010.³⁶ In addition, also drawing on legislation in Britain in guidance to NI Councils, the Equality Commission elaborates that: “*Good relations can be said to exist where there is a high level of dignity, respect and mutual understanding; an absence of prejudice, hatred, hostility or harassment; a fair level of participation in society.*”³⁷

These definitions provide a sound basis of how ‘good relations’ at least *should be* interpreted by public authorities in NI. There has, however, been significant criticism from Council of Europe treaty-bodies about the interpretation *in practice* of the good relations duty in Northern Ireland. The Advisory Committee on the Framework Convention for National Minorities has referred to interlocutor reports of the ‘good relations’ duty appearing “*on several occasions to take priority over wider equality and minority rights initiatives, which were blocked on grounds that they would lead to ‘community tensions’*” and elaborated that:

This would be due to the fact that, unlike the rest of the country, Northern Ireland does not interpret the ‘good relations’ duty as including a duty to tackle racism, including sectarianism. Instead, the lack of proper definition allows this notion to be used rather as a ‘tool’ to set aside politically contentious issues, such as legislating on the Irish language, and to justify a “do-nothing” attitude, eventually based on ‘perceptions’ rather than objective criteria. The Advisory Committee reiterates its opinion that the concept of ‘good relations’ apparently continues to be substituted for the concept of intercultural dialogue and integration of society, which would include other national and ethnic minorities present in the region, and regrets that this is used to prevent access to rights by persons belonging to these minorities. [85]³⁸

The Committee recommended that: “*The authorities should begin to implement the ‘good relations’ duty as provided for under the Northern Ireland Act 1998 in a manner that does not run counter to the equality duty and that does not prevent access to rights by persons belonging to all national and ethnic minorities.*”³⁹ We believe that if revised, the ECNI model scheme would be a key vehicle with which to take forward this recommendation.

The current ECNI-recommended formulation in model equality schemes contains a commitment for public authorities to undertake ‘good relations impact assessments’ and to trigger EQIAs when policies are thus assessed to have ‘negative impacts’ on good relations. Under Section 75 legislation, public authorities are required to have “due regard” of the equality of opportunity on protected

³⁵ [ECRI General Recommendation no 2 \(revised\), explanatory memorandum](#), para graph 21

³⁶ The 2013 Unequal Relations report recommended ECNI review its definition and interpretation of good relations in strategic guidance and bring it in line with international standards. ECNI guidance to local councils was subsequently issued in 2015, and ECNI had earlier promoted the above definition in the context of the proposals for an ‘Equality and Good Relations’ Commission in 2014. ECNI maintain these actions were not linked to the recommendation in the Unequal Relations report.

³⁷ Equality Commission advice on Good Relations in local Councils’ 2015

³⁸ <https://www.coe.int/en/web/minorities/-/united-kingdom-publication-of-the-4th-advisory-committee-opinion>

³⁹ <https://www.coe.int/en/web/minorities/-/united-kingdom-publication-of-the-4th-advisory-committee-opinion> paragraph 89.

categories when developing policy.⁴⁰ There also exists a subordinate duty to have “regard” to good relations. Under Schedule 9 of the legislation, public authorities are required to assess and monitor the impact of their policies on equality of opportunity.⁴¹ There is no similar requirement for good relations, and therefore no legal requirement for the assessment of good relations to be in equality schemes.

The Equality Coalition had been critical of the recommendation to conduct ‘good relations impact assessments’ as a departure from the legislation⁴² that in practice led to policies promoting rights and equality being stifled on grounds they were politically contentious and hence ‘bad’ for good relations. In 2016, the Equality Coalition produced a detailed submission to public authorities containing this and other recommended changes when reviewing and consulting on their equality schemes. Among other matters this submission states:

We recommend public authorities **remove entirely** the good relations ‘impact’ question found in **Paragraph 4.7** of the Model Scheme from screening, which currently reads: “To what extent is the policy likely to impact on good relations between people of a different religious belief, political opinion or racial group? (minor/major/none)

The present inclusion of this question means in practice that an EQIA (and concurrent duties to consider alternative policies and mitigating measures) can be triggered when there are no adverse impacts on equality, but rather where there are ‘impacts’ on good relations. Even when a policy has positive impacts on equality of opportunity, it can nonetheless be stalled or reconsidered because of ‘good relations’ impact considerations.⁴³

The submission further recommended that the current (ECNI recommended) screening question on opportunities to promote good relations be retained, but qualified to expressly reflect the subordination of the good relations to the equality limb of the duty on the face of the legislation.⁴⁴ The Coalition urged “consequential amendments within the Equality Scheme to ensure that it is only responses to the question on impacts on equality of opportunity (not good relations) that trigger a full EQIA and associated duties, as the legislation intends.”⁴⁵

The problems caused by the ECNI recommended ‘good relations’ impact assessment methodology were first detailed in the CAJ Unequal Relations research of 2013.⁴⁶ Further examples were cited in the 2016 submission, including a screening exercise by a Council which found same sex marriage equality would have major positive impacts for equality of opportunity, but if taken forward by the

⁴⁰ <https://www.legislation.gov.uk/ukpga/1998/47/section/75>

⁴¹ <https://www.legislation.gov.uk/ukpga/1998/47/schedule/9>

⁴² Schedule 9 of the Northern Ireland Act 1998, which sets out the mandatory duties to be included in equality schemes, intentionally treats the two duties differently. Some of the provisions relate to both limbs of the duty - for example, general compliance, consultation, training of staff, etc. Other elements of the legislation relate only to the equality limb of the duty, including the duties to assess the impacts of policies, monitor adverse impacts of policies, and mitigate against any adverse impact or consider alternative policies.

⁴³ SUBMISSION ON BEHALF OF THE EQUALITY COALITION IN RELATION TO DRAFT EQUALITY SCHEMES, 2016 (updated 2021) available at: <https://www.equalitycoalition.net/wp-content/uploads/2021/08/Equality-Coalition-submission-on-draft-equality-schemes-2021.pdf>

⁴⁴ I.e. changing “Are there opportunities to better promote good relations between people of a different religious belief, political opinion or racial group?” to “Are there opportunities, without prejudice to the equality of opportunity duty, to better promote good relations?”

⁴⁵ EC Submission on Equality Schemes, p4. We also urged that Equality Schemes should still maintain a commitment to taking into account the desirability of promoting good relations at the time of a decision making and policy formulation, and to keeping records of this.

⁴⁶ <https://caj.org.uk/2013/05/19/unequal-relations-policy-section-75-duties-equality-commission-advice-good-relations-allowed-undermine-equality/>

NI Assembly there would be an ‘adverse impact’ on good relations in the category of ‘religious belief.’⁴⁷ A similar conclusion was initially reached by the Northern Ireland Office in relation to policy on abortion services, before being overturned by intervention from consultees.⁴⁸

The Equality Coalition has asked ECNI on a number of occasions for an example of when the ‘good relations’ impact assessment question has ‘worked’ as intended and produced a useful result in an equality screening exercise. Not one single example has been forthcoming.

After consulting on their new Equality Schemes (following reorganisation of local government)⁴⁹ a number of district Councils proposed to adopt the changes recommended by the Equality Coalition and to depart from the ECNI recommended methodology on ‘good relations impact assessments’.

Although ECNI had other approved Equality Schemes that departed significantly from the Model Scheme (most notably the PSNI⁵⁰ and Ulster University⁵¹ schemes), ECNI was resistant to changing its good relations methodology. This led to considerable discussion on changes to the scheme including intervention from the elected bodies of the Councils. Ultimately several Councils – Mid Ulster,⁵²

⁴⁷ EC Submission on Equality Schemes, p4.

⁴⁸ See chapter 3 for further details.

⁴⁹ This reduced local government from 26 councils down to 11 new ‘super councils’.

⁵⁰ The PSNI have adopted an equality scheme with no formal definition of policy, and with general rather than specific commitments to fundamental aspects of a typical equality scheme, including equality screening, the EQIA process and consultation. The PSNI scheme is also embedded in a broader document making it unclear which parts of it actually constitute an approved ‘equality scheme’. In practice, this means that breach of scheme complaints (i.e., regarding a failure to adequately equality screen a policy with adverse impacts) are very challenging for a complainant to lodge. <https://www.psni.police.uk/globalassets/inside-the-psni/our-policies-and-procedures/equality-diversity--good-relations/section-75-equality-scheme-booklet/section-75-equality-scheme-booklet.pdf>

⁵¹ Ulster University also has an approved equality scheme different from the model scheme. In UU’s equality scheme, the definition of policy is only in the appendix, and is substantially different from the model scheme. In 2021, CAJ supported a complainant who alleged that UU breached their equality scheme by failing to equality screen a policy decision. In response, UU argued that they did not have to equality screen the policy decision because their definition of policy did not encompass the alleged breach. Most unusually, UU stated that they relied on a separate (and more limited) definition of “policy” from what was in their equality scheme, found instead in their equality screening template, with the explicit approval of ECNI (ECNI contests this assertion). The typical ECNI model scheme contains this definition of policy:

“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’.”

Appendix 5 to UU’s equality scheme contains the following definition of “policy”:

“The formal and informal decisions a public authority makes in relation to carrying out its duties. Defined in the New Oxford English 40 Dictionary as ‘a course or principle of action adopted or proposed by a government party, business or individual’. In the context of Section 75, the term policies covers all the ways in which a public authority carries out or proposes to carry out its functions relating to Northern Ireland. Policies include unwritten as well as written policies.”

UU has stated that since 2014 they use a definition of policy different from their equality scheme, as follows: “A policy is a written statement, which defines the University’s position or strategy in regard to its core processes. A policy defines the parameters for decision-making and clarifies compliance issues for staff and students”.

⁵² Mid Ulster Equality Scheme see p19 <https://www.midulstercouncil.org/your-council/equality/equality-scheme>

Derry & Strabane,⁵³ and Fermanagh & Omagh,⁵⁴ departed from the ECNI methodology on ‘good relations’ and adopted recommendations from the Coalition submission on good relations (including adding Disability Discrimination Act questions). These schemes were ultimately approved by ECNI, in the context that they met the criteria in the legislation.

At this time new Stormont Departments had been formed following reorganisation to a lower number. A number of the Departments indicated a willingness to consider the Equality Coalition proposed changes once Ministers were in place. However, the 2016 collapse of the Executive meant many public authorities decided not to progress Equality Scheme reviews without Ministerial approval.⁵⁵ At the time of writing there is still discussion on revisions to departmental schemes, with a tripartite meeting taking place in early 2022 between the Equality Coalition, Department of Finance and ECNI regarding their scheme.

In the context of the ECNI advice not to consult the public (including equality stakeholders), people are generally unaware when equality scheme reviews are actually occurring. Without the process of formal consultation of an equality scheme review, there is no safeguard to ensure that Coalition’s response (or any other response) will be given due weight when reviewing an equality scheme.

This general issue does raise questions of a conflict between ECNI’s advice and enforcement roles. There is a clear commitment in Equality Schemes for public authorities to consult on their equality schemes. This is an enforceable commitment. However the enforcement body is ECNI whose advice will have led directly to the failure to comply with the equality scheme. ECNI contest there is a conflict in roles, stating that ECNI advises public authorities to review their schemes every five years.

As well as reiterating our recommendations for changes to the model scheme, we recommend that ECNI cease advising public authorities not to consult on their equality scheme reviews when they don’t contain significant changes, and to revise its own model scheme (which was last issued in 2010) in light of the ongoing criticism of the impact of the application of the good relations duty under the ECNI recommended methodology.

A further key issue for Equality Schemes relates to the definition of policy, for which ECNI rightly promotes a broad definition to ensure significant policy decisions are captured.⁵⁶

In a number of the complaints that end up with ECNI, the main issue in question is whether the public authority’s action, decision, policy, or inaction falls within the definition of “policy” in the approved equality scheme. In these cases, complainants typically argue that it does, whereas Public Authorities typically disagree. Therefore, approved equality schemes that do not comply with the ECNI model’s broad definition of “policy” substantially impacts the level of “due regard” that public

⁵³ See page 20 of the Derry & Strabane Scheme see page 20, and the definition of good relations on p58 <https://www.derrystrabane.com/Council/Equality/Equality-Scheme>

⁵⁴ Fermanagh & Omagh see p15 and the process they then adopt on p17 that shows how they will take into account the GR duty but with the express qualification and “In undertaking this process decision makers will be mindful that the duty to promote good relations must be fulfilled without prejudice to the equality of opportunity duty.”

⁵⁵ [EPG Minutes.pdf](#) 6 February 2018 at page 36, TEO stated that they were launching a revised Equality Scheme, but “The other departments have interim schemes or new schemes in draft pending ministerial approval. Permanent Secretaries won’t sign off on these in the absence of Ministers.”

⁵⁶ Paragraph 4.1 of the Model Scheme: “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’.”

authorities pay to equality of opportunity in decision making, and crucially, limits the ability for complainants to hold them to account for failing to comply with Section 75 processes.

As equality scheme complaints and enforcement action rise, it is predictable that some public authorities may seek to narrow the broad definition of ‘policy’ in their equality schemes, as this is the best way to reduce the number of viable complaints.

Indeed, we have noticed that a push to narrow the definition is already starting. In 2018, ECNI discussed the effectiveness of the equality screening template with public authorities.⁵⁷ The ECNI/NICS Statutory Duties Forum was established in June 2018, to follow up the work done by the “previous Equality Commission established ‘*Improving Screening Practices forum*’, which ceased previous membership in April 2018.”⁵⁸ Further to this, in February 2019, the Equality Practitioners Group (a group of equality practitioners in Departments and chaired by TEO) had a screening template workshop, the purpose of which was to “discuss differences between the screening templates currently used by departments and to come up with possible changes to recommend to the ECNI/NICS Statutory Duties Forum.”⁵⁹

There were some recommendations from the group around issues with equality screening which had also been previously highlighted in *Equal to the Task?* such as a lack of data sources in screenings and how screenings occur after a policy is completed.⁶⁰ One discussion concerningly implied that Ministers’ differing interpretations of human rights (rather than an objective interpretation from international standards) could be determinate:

There was a discussion about the inclusion of Human Rights (HR) screening questions in some of the templates. The group felt that in general “No Impact” was the standard response to the HR questions so they had little added value. In addition, HR is a much contested area with Ministers holding differing views.⁶¹

Overall, however, a primary recommendation was to narrow the definition of policy:

A fundamental issue was the wide definition of policy; screening assessments were being carried out for decisions where it wouldn’t seem appropriate but which met the approved definition of policy for Section 75 purposes.⁶²

So far, ECNI has maintained that this definition cannot be modified in equality schemes without full consultation and submission of the new scheme to ECNI who would then likely not approve it as it does not comply with their guidance.

In practice, deviation from the model scheme can make it more challenging for complainants to progress a valid complaint, particularly if the definition of policy has been modified from the model

⁵⁷ See Equality Practitioners Group Meeting minutes obtained by CAJ under FoI, dated 27 June 2018. (In comments on a draft of this report, ECNI dispute the word “consulted” contained in the minutes).

⁵⁸ See ECNI/NICS Statutory Duty Network DRAFT minutes of meeting obtained by CAJ under FoI, dated 10 October 2018.

⁵⁹ See EPG Meeting minutes obtained by CAJ under FoI, dated 27 February 2019

⁶⁰ “Generally, the group felt that more advice is required on the range of data sources available so that officials would not rely so heavily on census information.

The group discussed the timing of screenings. Many officials still seem to screen once the policy is written rather than earlier in the development process”

⁶¹ Equality Practitioner Group meeting minutes obtained by CAJ under FoI, see meeting on 17 February 2019, at page 47

⁶² See above.

scheme. ECNI is the only body capable of approving or denying an equality scheme, and therefore their adherence to their own high standard for the schemes (in particular the ECNI definition of 'policy') is essential to ensure 'due regard' to equality of opportunity is paid in policy formation.

2.4 Changes to Ministerial Code Guidance

During the EDEP, while the Stormont government was collapsed in 2019, the Equality Coalition produced a Manifesto for a Rights Based Return to power sharing.⁶³ This Manifesto highlighted that the long overdue implementation of rights-based provisions in existing agreements (many of which are existing treaty-based or domestic legal obligations) is not only required but is key in preventing future government collapse. As part of the Manifesto, the Coalition explicitly called for full implementation of the Section 75 equality duty by public authorities, as well as rigorous enforcement by the Equality Commission of failures to comply and the furtherance of single equality legislation. The Manifesto also called for a commitment to a culture of compliance with the existing rules through not actioning Ministerial requests that constitute discrimination on any protected grounds, or that aid discrimination, including making unfair decisions on the provision of public funding. In addition, the Manifesto stressed the need to ensure that the distribution of public money and resources is done based on objective need, non-discrimination and due process.

In March 2020, the Department of Finance produced welcome changes to the Ministerial Code and Guidance which echoed the recommendations in the Manifesto. Paragraph 9.6 of the new Ministerial Guidance on the Ministerial Code of Conduct strengthens the Section 75 Equality Duty, making heads of government departments and chief executives responsible in their role of accounting officers "for compliance with Section 75", among other matters.⁶⁴

This change mitigates against a scenario whereby a Minister hostile to equality can stifle application of the equality duty.

⁶³ <https://www.equalitycoalition.net/wp-content/uploads/2019/04/manifesto-for-a-rights-based-return.pdf>

⁶⁴ Guidance for Ministers in the exercise of their Official Responsibilities, Northern Ireland Executive Committee, MARCH 2020 <https://www.finance-ni.gov.uk/publications/ministerial-code>

3. Public Authority Compliance with Section 75

Over the course of the EDEP, public authority compliance with Section 75 has significantly improved in a number of ways. It appears that an increase in civil society complaints impacts a public authority's awareness of Section 75 and can change or mitigate the adverse impacts of policies, but ECNI formal investigations prompt the most rapid and effective change in Section 75 compliance. A good example of the impact of Section 75 enforcement on policy change over the course of the project is the annual budget process.

3.1 Budget interventions and ECNI investigation

The lack of application of Section 75 to the Executive budget process had long been an issue for Equality Coalition members.

In 2019, in collaboration with several Equality Coalition members, the EDEP submitted equality scheme complaints and/or equality screening review requests to every Department regarding their EQIA/equality screening on the annual budget. While the quality of the equality assessments varied, overall they all breached equality scheme commitments regarding proper equality assessment.

Through Freedom of Information requests, we learned that our complaints/requests were discussed amongst all Departments during a meeting of the Equality Practitioners Group. Our complaints led to the Departments seeking legal advice as well as ECNI advice regarding Departmental budgetary Section 75 responsibilities, which had long been absent from the annual budget process. The minutes of the meeting state:

80. ... it may be useful to prepare internal advice for equality units and business areas on what to expect from statutory ECNI investigations. The group then discussed the range of practice in ECNI investigations. It was agreed that this was worthy of more discussion and that a sub-group should be set up to consider it.

81. There was discussion around the screening of Departmental budgets and the issues raised with finance in each Department. A voluntary sector organisation had sent requests to most departments asking to see their budget screening forms. It was agreed that the range of current practice re: screenings of budgets would be discussed at the next meeting.⁶⁵

At the next meeting on 10 September 2019, the discussions continued under the heading 'Good practice in budget screening':

95. There was discussion around the screening of Departmental budgets and whether the responsibility of the high level screening fell to the department who awarded the budgets i.e. DOF or to individual departments who had bid for the money. [BLANK] suggested that whoever made cuts to a budget was responsible for screening the impact of the cuts. [BLANK] raised the possibility of a sub-group on screening of financial decisions impacting on policy.

The group requested legal advice on this issue as well as requesting that the issue be raised at the ECNI/FORUM meeting.

⁶⁵ Equality Practitioner Group meeting minutes, obtained by CAJ under FoI, at page 50

At the ECNI forum meeting in January 2020, the issue of budgets arose:

[BLANK] raise the issue of S75 and budgets, there is still an urgent need to consider how budgets should be best equality assessed (screened and/or EQIA). [BLANK] suggested that TEO facilitated EPG may wish to convene a specific session on S75 & budgets with Finance and Equality representatives, and that the Equality Commission representatives would be happy to attend such a session. [BLANK] also mentioned that ECNI had previously prepared guidance on Section 75 and Budgets.

AP: ECNI to circulate to forum members S75 and Budgets advice note as well as any policy information in relation to his area that the Commission/other organisations had developed.⁶⁶

Following the EDEP complaints on the budget, in October 2019, ECNI took a Paragraph 11 “own-initiative” investigation into the Department of Finance,⁶⁷ into whether the Department failed to comply with its approved Equality Scheme, relating to equality impact assessment and consultation, in preparation of the Budget for Northern Ireland 2019-20.⁶⁸

The investigation report notes that this was the second year in a row that the Department had published details of the budget in the context of there being no Executive in place, with the annual budget being decided by the Secretary of State.

The investigation report states that ECNI sent a letter to the Department on 27 June 2019, outlining their concerns regarding the lack of consultation and failure to engage on the budget. The Department responded to their concerns on 11 July 2019. In October 2019, the Commission “formed the belief that the Department of Finance may have failed to comply with its approved Equality Scheme” and authorised an investigation. While ECNI does not explicitly reference the pressure from all other Departments following our series of complaints to address the issue of budget equality best practice, it is conceivable that this strongly influenced the decision to take a Paragraph 11 complaint. In the history of ECNI, there have only been eleven Paragraph 11 complaints, and (including this complaint) only two completed since 2016.⁶⁹

The investigation report states that in the investigation meeting with the Department, the Department stressed that they had previously sought ECNI advice regarding aspects of their “EQIA” process which was now under investigation:

The CED [Central Expenditure Division] had issued the template following a series of meetings and advice from the Equality Commission and had considered and broadly applied the recommended headings and approach for collecting and presenting cumulative equality information; and

The Department referred to advice sought from the Commission during 2018 which had been applied to the template headings, as issued on 21 January 2019.

⁶⁶ [ECNI-NICS Forum meeting minutes 21 January 2020.pdf](#) see page 2.

⁶⁷ In reviewing the report, ECNI state that the decision to investigate on own-initiative was not linked to the EDEP complaints, noting a February 2019 SDIC meeting in which concerns are raised about DoF compliance with their equality scheme arrangements. ECNI also references their history of advising on the application of S.75 to the budget process.

⁶⁸ <https://www.equalityni.org/ECNI/media/ECNI/Publications/Employers%20and%20Service%20Providers/S75%20P%2011%20Investigation%20reports/DeptFinanceBudget-P11Investigation.pdf>

⁶⁹ <https://www.equalityni.org/Investigations>

Ultimately, ECNI found that the Department had failed to comply with its equality scheme commitments, specifically regarding the failure to conduct an EQIA on the 2019-20 budget and failing to consult on said EQIA. The investigation report recommends several actions to ensure future compliance with equality scheme commitments. The investigation was published on 2 October 2020.

Since the publication of the report, the equality assessment of the budget formation process has dramatically improved. The 2021-22 draft budget was published on 18 January 2021 and formally consulted on.⁷⁰ Most Departments also published and consulted on their budgets, most notably the Department for Communities, which used the EQIA process to highlight the anticipated deficiencies in the budget for service provision, prompting a wide community response and pressure to increase budget provision for DfC.⁷¹ In February 2021, the Equality Coalition submitted consultation responses to each Department's budget EQIA or equality screening.⁷² As a direct result of the consultation responses received, the Executive allocated an "additional £24.9 million to the Department for Communities for their Benefit Delivery Response, as well as a further £26.9 million for their Labour Market Interventions."⁷³

There are several main points from this intervention. The first is that the mechanisms of Section 75 used by civil society (through both enforcement 'complaints' and advocacy 'consultation responses') are still very important, and have the power to impact on policy provision. The second is that ECNI investigations prompt the type of Section 75 compliance that ECNI advice provision alone has not been able to achieve. Indeed, the Department of Finance relied on ECNI advice in the formation of their budget EQIA in 2019, and used the fact of having sought and received this advice as their defence during the subsequent investigation.

3.2 Effectiveness of enforcement over advisory and promotion functions

ECNI has argued that advice provision to public authorities is an aspect of their enforcement function and has emphasised advice provision over using formal powers of investigation.⁷⁴ The Coalition by contrast has queried this and has emphasised the effectiveness of the use of formal powers of investigation. For example, the ECNI report, *Section 75 Statutory Equality and Good Relations Duties: Acting on the evidence of public authority practices*, highlighted that there was general poor compliance with Section 75, echoing much of what had been reported in *Equal to the Task?*⁷⁵ The ECNI report stated that most consultees "emphasised the need for the Commission to focus more on enforcement of the duties on public authorities." However, the report goes on to state that the Commission views enforcement as a spectrum and articulates a general reluctance to use their powers of investigation to remedy poor compliance.

The Commission deploys its resources along the continuum of the "enforcement" functions that are available: from providing advisory materials and advice to public authorities and

⁷⁰ Although the consultation period was truncated due to delays in approving the draft budget in the Executive, and the delays in the UK Treasury taking forward the budget in the context of the pandemic.

⁷¹ <https://www.communities-ni.gov.uk/consultations/equality-impact-assessment-draft-dfc-budget-2021-2022>

⁷² <https://caj.org.uk/wp-content/uploads/2021/03/EC-submission-on-PfG-and-Budget-Feb-21.pdf>

⁷³ <https://www.finance-ni.gov.uk/sites/default/files/publications/dfp/Final%20Budget%202021-22%20document%2021.04.21%20-%20accessible.pdf> (see page 94)

⁷⁴ See footnote 8.

⁷⁵ The report discusses the low number of equality screenings being completed, issues with the timing of screenings, as well as the quality of screenings, including poor data collection.

others; to approving equality schemes; and to fulfilling its responsibilities in relation to complaints and investigations...

Investigations are adversarial, given the statutory requirement that they are considered in relation to a belief of non-compliance by a public authority with an equality scheme. They have mostly been driven by particular circumstances. They have provided some learning for public authority best practices, but can be limited in the ripple effect of the findings, particularly when arising from a paragraph 10 complaint.⁷⁶

The report states that a priority for ECNI to increase compliance with Section 75 is to focus on “leadership” among public authorities regarding “equality matters” and prioritises its advisory and engagement functions with public authorities. Further to the goal of increased leadership in the report, in 2018 the Commission developed a leadership guidance checklist, which is essentially a checklist of compliance with equality scheme commitments for public authorities. While this document is probably useful for public authorities, the issue of addressing non-compliance remains.

It appears that even internally, public authorities recognise that the advice provision from ECNI is limited in changing the culture of non-compliance with Section 75 among leadership within Departments. In response to this, ECNI has stated that it has noted this issue in its review of practices:

... often equality practitioners are not in a position to have the impact required. The report also highlighted the need for ownership of the duties by [public authorities] – and the leadership guidance was an attempt to ensure leadership was promoted for the duties in [public authorities]... Improving Equality Assessments Forum also reviewed learnings from investigations to make best use of ‘ripple effect’.”⁷⁷

Regarding the Leadership Guidance,⁷⁸ the feedback from equality representatives in public authorities (through the TEO convened EPG (Equality Practitioners Group)) was that ECNI had a more strategic and effective role in ensuring Section 75 compliance than they did:

Members noted that there is a significant risk that the **Section 75 leadership guidance could ‘fizzle out’**.

Members agreed that it needs to be promoted at the Policy Champions Network meeting and that it is important that it continues to be **promoted by ECNI** as forum members felt they did not have enough influence at senior level.

In 2018, the Equality Practitioners Group (EPG) discussed the usefulness of ECNI and TEO’s new ‘Improving Equality Assessments’ Forum, and the limitations of the approach:

The response was that the wrong people were attending them and that senior management needs to be involved. Section 75 awareness needs to be reawakened.⁷⁹

⁷⁶ <https://www.equalityni.org/ECNI/media/ECNI/Publications/Employers%20and%20Service%20Providers/Public%20Authorities/S75ActingOnEvidence-FullReport.pdf> (pages 4-6)

⁷⁷ ECNI response to a draft of this report.

⁷⁸ <https://www.equalityni.org/ECNI/media/ECNI/Publications/Employers%20and%20Service%20Providers/Public%20Authorities/S75LeadershipChecklist.pdf>

⁷⁹ From the minutes of the EPG on 6 February 2018.

After reviewing the ECNI report of its investigation into a complaint brought by NICCY that TEO had breached commitments in its equality scheme, in 2017 EPG members discussed the importance of Departmental awareness of equality scheme commitments:

42. As stakeholders appear to be turning to the Section 75 formal complaints procedure as a meaning[sic] of challenging Department's policy development process, [BLANK] advised EPG members that it was important that staff in Department's[sic] are fully aware of the commitments in their Departmental Equality Schemes.⁸⁰

These public authority internal discussions demonstrate that ECNI investigations and subsequent recommendations do create 'ripple effects' of increased compliance, and the advisory and engagement functions of ECNI have limited potential to change a culture of non-compliance without associated enforcement action.

ECNI guidance is typically very useful for both public authorities and civil society. It is generally of a high quality and due to commitments in the equality scheme to following ECNI guidance, the guidance is useful for complainants in filing equality scheme complaints.⁸¹

3.3 Improved compliance through civil society intervention

A main priority of the EDEP was to improve civil society intervention with Section 75 enforcement mechanisms. To that end, the project facilitated multiple training sessions with a variety of civil society organisations, including trade unions, environmental activists, students and politicians.

The project also led by example, and took a variety of Section 75 enforcement actions which demonstrated the effectiveness of the process even without needing to progress to ECNI.

As well as formal complaints, this included the use of the 'screening decision review' procedure provided for in model Equality Schemes. This states:

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

We had previously recommended that ECNI itself make use of this mechanism (as is clearly intended by the wording of the provision). We are not aware of any examples of ECNI use of this provision however, civil society consultees have made increasing use of same. Some examples of these and other interventions are provided in the table overleaf.

⁸⁰ From the minutes of the EPG on 25 April 2017.

⁸¹ For example, in 2020 ECNI produced a signposting guide to data in policy making which is comprehensive and useful. <https://www.equalityni.org/Footer-Links/News/Employers-Service-Providers/Section-75-data-using-evidence-in-policy-making>

Issue	Impact
<p>In October 2019, CAJ and PPR submitted a Screening Decision Review Request to the Department for Communities regarding issues in the equality screening on the policy which sought to redefine Affordable Housing.</p>	<p>The Department re-screened the policy but maintained the original issues. This was eventually progressed to a complaint to ECNI but was not investigated. However, we met with the Minister for Communities and discussed our concerns about the DfC's attempt to expand the definition of affordable housing by prioritising the needs of the 'least needy' (those without 30 points on the social housing waiting list). After meeting, we provided her with a briefing note which detailed our concerns that the impetus for changing the definition of affordable housing was to increase housing options for private developers and encourage 'mixed tenure development'. A previous DfC report identified that a risk of mixed tenure development is that social housing provision will decrease, and housing associations will effectively become privatised. These concerns were not mentioned or mitigated against in either equality screenings, however after our discussion with the Minister, DfC explicitly committed to there being no reduction in social housing provision and adjusted the proposed definition accordingly.</p>
<p>On 11 December 2019, CAJ, NIPSA, UNISON, NIWEP, Transgender NI, Here NI, Alliance for Choice, NIRWN and ICTU submitted a screening decision review request to the Northern Ireland Office regarding the equality screening on the <i>Provision of a new legal framework for accessing abortion services in NI</i>. The screening recommended an EQIA based on two 'good relations' impacts on religious belief and political opinion and one on 'equality of opportunity'.</p>	<p>We were not opposed to the policy progressing to an EQIA on principle, but rather on the erroneous findings of adverse impact which had been identified.</p> <p>After receiving our request, the NIO revised their screening and decided not to proceed to an EQIA.</p>
<p>In May 2019, CAJ submitted a Screening Decision Review Request to the Department for Communities regarding the issues with the equality screening of the Universal Credit Contingency Fund (UCCF), which was designed to support claimants to UC who (through no fault of their own) encountered financial hardship as a result of the transition.</p>	<p>CAJ argued that the equality screening which had been previously completed on the UCCF should be reviewed in light of the overly restrictive implementation of the UCCF (requiring claimants to take an amount of advance payment prior to accessing the fund), which resulted in a large underspend and made it difficult to access, especially for the people that the fund was explicitly designed to protect. The Department reviewed their screening and removed the requirement to take an advance payment.</p>
<p>North West Regional Transport Hub: This issue was regarding a failure to consider users with disabilities when planning major refurbishment of Derry's train station. After liaising with RNIB, Disability Action and St Columb's Park House, CAJ asked for a review of screening to take into account the significant concerns particularly around the external 'shared space'.</p>	<p>The screening was significantly revised and mitigations put in place to address the concerns raised, in particular around the shared space. Translink has also improved the accessibility of its equality information on its website.</p>

Issue	Impact
<p>In 2018, CAJ and Conradh na Gaeilge submitted a breach of equality scheme complaint to Antrim and Newtownabbey District Council. In response to requests from residents in a number of streets for bilingual street signs in Irish and English, the Council summarily voted to adopt an “English only” street signage policy. This was in breach of domestic and international obligations on minority languages, and reforms introduced as part of the peace settlement to repeal controversial legislation banning such signage. In adopting the policy the Council had bypassed the procedural duties in its Equality Scheme, and the move raised questions of sectarianism in decision making which would substantively breach the scheme. Lawyers for local residents also instigated judicial review proceedings.</p>	<p>The Council maintained all along that the policy was lawful and equality scheme compliant but further to the judicial review proceedings rescinded the policy at the door of the court. A commitment was made to revised policy.</p> <p>Legal and complaint-impact and media coverage will hopefully make it untenable for other Councils to adopt such policies in the future.</p> <p>The Council agreed to adopt dual language street signage; the policy has not been adopted yet, but the EDEP project monitored progress, and prevented a proposed policy which was highly restrictive from being adopted. In 2022 the Council is consulting on a revised policy.</p>
<p>Collection of rent arrears caused by Universal Credit delays directly from tenants: When claimants with housing benefits transitioned to Universal Credit, there was sometimes a delay in processing their rent payments (paid directly from the government to social housing landlords). This caused rent arrears to accrue. The Northern Ireland Housing Executive had a policy whereby they were collecting these rent arrears directly from tenants.</p>	<p>PPR raised this issue with CAJ. We sought the equality screening for this policy to collect rent arrears directly from tenants. After several discussions with NIHE, they communicated with the Department for Work and Pensions and solved the issue which was leading to the delayed payments.</p>
<p>QUB Consultation on Equality and Diversity Policy: A QUB student asked CAJ for assistance regarding the QUB consultation on their draft Equality and Diversity Policy, which was instigated in response to student requests for bilingual Irish-English language. We contacted QUB directly regarding their unusually short consultation period (two weeks when the typical period is 12 weeks).</p>	<p>We followed up with QUB regarding a response to our inquiry. Shortly after our inquiry and the student’s complaint, QUB decided to re-do their consultation process and have extended the consultation for 12 weeks.</p>
<p>DfC use of “Interviews Under Caution”: DfC was investigating potential benefit fraud by conducting “interviews under caution” with benefit recipients without have PACE powers to do so. DfC was issuing correspondence to benefit recipients telling them that they had to attend “interviews under caution” or risk being arrested. In the same correspondence, DfC stated that they were conducting the interview in accordance with PACE. When pressed under FoI, DfC conceded that they do not have PACE powers to conduct formal “interviews under caution” and that these interviews are purely voluntary.</p>	<p>DfC maintained that they did not have a policy on this matter. In collaboration with PPR, we sought the policy that was used under FoI, and were provided with a large document titled “Fraud Procedure Guidance for Interviews under Caution”.</p> <p>We engaged with the Minister for the Department for Communities on this issue and it was confirmed to us that the Department no longer issues the problematic correspondence.</p>

4. Complaints to the Equality Commission

Over the course of the project, the number of ECNI investigations has increased, however the overall number of investigations into valid complaints remains low.

4.1 ECNI recommendations regarding paragraph 10 complaints: before and after procedure change

It is evident that the ECNI recommendation and assessment of the complaint regarding an investigation which is provided to the SDIC carries significant weight with the SDIC and is highly persuasive. There appears to have been only one time since 2014 when the recommendation (to authorise an investigation) was not followed, and only one time when the SDIC requested a second legal opinion which altered the ECNI recommendation (from investigating to not investigating).⁸² The trend of *not* investigating most valid complaints remains the norm. Out of the 38 complaints which were submitted since 2014, 30 were deemed procedurally valid.⁸³ Out of these 30 procedurally valid complaints, five were investigated, three happening since the start of the EDEP project, and two out of the three with CAJ support or direct involvement.

Starting in 2014, the complaints that were submitted to the SDIC prior to the ECNI investigation procedure change are detailed and listed in Annex 1, and include the complaint, the ECNI assessment and the SDIC decision.

Two factors cited to not investigate a complaint highlighted in the “Procedures for Complaints and Investigations” consultation process have been the provisions of 1) a similar complaint having been previously investigated within 2 years, and 2) the resources required for an investigation are not considered commensurate with the benefits gained.

Another factor which was removed from the new Procedures was “The nature of the complaint is such that the individual or person affected by it will not derive any benefit from investigation.” The assessments show that this factor/reason was used at least once to justify not investigating a complaint.⁸⁴

4.2 The issue of not investigating valid complaints:

Whilst ECNI maintain that the respective roles of pre-assessment of complaints and subsequent investigations are clear we do retain concerns including regarding the interface in the respective processes.

In the Equality Coalition’s consultation response to the “Procedures for Complaints and Investigations”, we highlighted some of these outstanding concerns regarding the assessment process. These concerns remain. In our submission, we stated:

It is notable there is no process beyond receipt of the written complaint for any further dialogue with the complainant, at either the pre-investigation or investigation phase (the distinction between these phases is discussed later in the document). There are no

⁸² This is referring to the complaint submitted by CAJ against Translink in 2020 – see Annex 1.

⁸³ It is possible that more complaints were assessed in November 2020 and February 2021 than what is listed in Annex 1, but are not referenced in the SDIC papers. It is also worth noting that six paragraph 10 investigations were authorised since 2014 but only 5 were carried out.

⁸⁴ See “Complaint against DoJ, Programme of Reform- Staff Exit Scheme” under the complaints submitted in 2014 in Annex 1.

provisions for either a face to face meeting or even telephone contact, this appears to only happen with the [public authority](PA). Our experience of lodging complaints to ECNI (including the CAJ complaint that was ultimately sent to the Ombudsman) was that misunderstandings or queries could have been sorted out much sooner had such a process been in place. We would urge that such processes are incorporated.

In relation to the pre-investigation phase, we advocate this should incorporate provisions for staff to assist complainants with filing valid (admissible) complaints, if necessary separately to those presenting the complaints to the SDIC. At the pre-investigation phase the role of ECNI staff should be to receive the complaint, gather any further information needed from the complainant, seek a response from the PA (and seek or gather any further information from them, e.g. screening forms could be readily available) before presentation to the next SDIC. This would mean at most six weeks would normally be the maximum for a decision (depending on how close to an SDIC meeting the complaint is submitted). The admissibility and merits of decisions could then be considered, and a decision taken on an investigation or not, with reasons given.

We also consider there should be provision for Complainants to be able to present their case directly to the SDIC Committee. This would reduce potential misunderstandings, as well as provide the SDIC an opportunity to ask the complainant questions directly.

All SDIC decisions, anonymised where necessary, should be published accessibly by ECNI on their website, in the same section as investigations reports, this would better reflect the level of work undertaken by ECNI. This will also help to shift the current culture of PA non-compliance with Section 75 duties, and will provide guidance and support to claimants. The proposed policy does codify and clarify the process for the review (appeal) of a decision.

At the moment it could be characterised that there are currently two investigations happening: 1. Investigations that are authorised by the SDIC, and 2. De facto “pre-investigations” undertaken prior to the complaint being presented to the SDIC. The issue is that the vast majority of complaints appear to be “pre-investigated” by ECNI prior to an investigation determination by the SDIC. In the “pre-investigation” either a remedy understanding is reached with the PA, or ECNI determines that the complaint should not be investigated on its merits. It appears that ECNI presents their finding and decision about the complaint from the “pre-investigation” to the SDIC for approval. The risk with this is that the ECNI preliminary investigation is not transparent, recorded or published. Furthermore, the “settlement” reached with the PA (typically where they agree to remedy an alleged failure) is not enforceable or published to assist future complainants and/or PAs. There is also no clear recourse available for a complainant if the PA does not comply with the agreed remedy. We therefore recommend the above changes.⁸⁵

ECNI contests this concern, stating:

There is no part of the process in relation to considering para 10 complaints which provides for a ‘remedy understanding’ to be reached with the PA and this does not happen.”

However, we have found multiple examples (listed under Annex 1) of times where a valid complaint was not investigated because a public authority committed to remedy the alleged breach.

⁸⁵ <https://www.equalitycoalition.net/wp-content/uploads/2019/05/EC-submission-on-ECNI-investigation-powers-May-2019.pdf>

While a public authority's actions to remedy an alleged breach should be considered in any investigation of that breach, if the actions are instead used to justify not investigating a complaint, then there is no public record of the impact of the complaint, and the burden of ensuring that the public authority complies with their promised actions lies with the complainant rather than the statutory enforcement body.

Another concern with the pre-investigation assessment process has been that confidential legal advice sought by either ECNI or the SDIC has been used as the reason for not investigating a complaint. On October 2019, on behalf of an affected individual, CAJ requested a paragraph 10 investigation into a complaint against Translink for their failure to equality screen their policy to allow law enforcement to board vehicles to carry out irregular immigration checks. Translink's argument was that this was not a policy subject to screening. This is a common defence used by public authorities when challenged with a breach of scheme complaint, and therefore, we anticipated that part of the investigation would be to determine if the regular practice was a "policy" under the definition of Translink's equality scheme.

ECNI determined that the complaint was valid but recommended that it not be investigated to the SDIC based on confidential legal advice which determined that Translink was not performing a function within the meaning of Section 75 and therefore its actions did not amount to a 'policy'. The assessment stated that the actions of law enforcement are "presumptively lawful, and they are made when Translink is performing a function of a transient contractual relationship nature." In July 2020, the SDIC decided not to investigate the complaint.

Under FoI, we discovered that ECNI actually wrote two assessments of our complaint, and that we had only been provided with the second one.⁸⁶ The first assessment to the SDIC contained separate confidential legal advice which came to the opposite conclusion and determined that Translink's actions amounted to a policy. Therefore, in this first assessment the commission staff recommended an investigation. The SDIC asked for a separate legal opinion, which led to the opposite conclusion, and to the decision to not investigate.

It is concerning that confidential legal advice can substitute an investigation into a valid complaint, particularly when the legal advice centres on the exact issue that an investigation should scrutinize.

⁸⁶ECNI contest this, stating that only one assessment exists as the second one was a modified version of the first one. It is notable however that the first assessment which was presented to the SDIC recommended an investigation based on legal advice, and the second assessment recommended no investigation, based on different legal advice. The complainants were only provided with the second assessment.

4.3 The application of the Revised Investigation and Complaints Procedure

Since the new “Procedures for Complaints and Investigations” was published in January 2020, CAJ has had several opportunities to test the effectiveness of the new procedures, as well as ECNI compliance with their internal procedures. It appears that the issue of avoidable delay which prompted the Ombudsman investigation has been mitigated but still persists, particularly in the amount of time it takes for ECNI to assess and present a complaint to the SDIC.

4.3.1 Case Example: Complaint to the Northern Ireland Office regarding the Dedicated Mechanism

In collaboration with UNISON, the Human Rights Consortium, and the Children’s Law Centre, CAJ submitted a breach of scheme complaint to the NIO on 19 November 2019, and ultimately a request for a paragraph 10 investigation with ECNI on 6 March 2020. The complaint alleged that the NIO breached their equality scheme by failing to properly equality screen the scope of proposed powers for the new “dedicated mechanism” unit to ensure that there is no diminution of rights post-Brexit. The “dedicated mechanisms” are contained within ECNI and NIHRC.

In line with their investigation procedures, ECNI acknowledged the request for an investigation within five days, and informed the NIO about our request. Unfortunately, that was the only timeframe that ECNI complied with in the assessment of the complaint. According to ECNI’s internal procedures, the assessment of our complaint should have been completed by early May 2020. However, it was not completed until November 2020,⁸⁷ eight months after the complaint had been submitted.

The assessment recommended that the SDIC **not** authorise an investigation into the complaint for the following reasons:

- “the complaint has been overtaken by events. The Bill, with the policy for the Dedicated Mechanism is now an Act, with the Dedicated Mechanism powers and duties established, as introduced in the Bill;
- Given the stage of development of the policy in question, as set out at paragraph 3.10 above, and its imminent commencement, while the NIO states its commitment to review its initial screening decision, the range of potential outcomes that might be attained by an investigation would be unlikely to be commensurate with the degree of resource investment required for an investigation.”

Part of the assessment of the complaint acknowledges that the screening was inadequate, and that the NIO’s ‘commitment to re-screening’ the policy has not actually produced a new screening. Despite these acknowledgements, ECNI does not seem to believe investigating the acknowledged breach is worthwhile, due to the ‘degree of resource investment’ compared to the ‘range of potential outcomes’. This logic appears to justify the concern expressed by the EDEP coordinator back in 2018, that ECNI was seeking to introduce a type of ‘strategic’ cost benefit analysis approach to investigating valid complaints, and that this analysis would reduce the number of valid complaints investigated and would reduce public authority compliance with equality schemes. It is concerning that the assessment being delayed itself contributed to the state of affairs that the complaint had been overtaken by events.

⁸⁷ Document provided to CAJ by ECNI titled “200602 P10Assessment CAJetal-NIO” is dated November 2020.

Furthermore, it is unclear how much ECNI anticipated the investigation costing, or if indeed, they provided an estimate of this cost to the SDIC for consideration, an element of the assessment which seems necessary if the investigation is denied based on a cost benefit analysis.

In this case, the complaint was submitted to ECNI on 6 March 2020. ECNI responded within 10 working days both to the complaints and to the public authority. However, it does not appear that the NIO complied with the 20- working day timeframe to present any information to ECNI. Indeed, it took almost three months for them to respond in writing,

2.17 The NIO initially contacted the Commission by telephone on 11 March 2020 and then responded in writing on 18 June 2020.⁸⁸

And the NIO's response indicates that they believed they had already presented all their relevant information (emphasis added):

Dear [redacted],

Thank you for your email dated 9 June and apologies for the delay in responding.

As discussed with [redacted] back in March 2020 **there is very little we can add on this matter.**

The complexities of the UK's decision to leave the EU are well documented and public knowledge and were UK Government policy rather than NIO specific policy. However, the NIO completed an initial screening in the very early stages of the policy development phase based on the limited information known and the time. We also committed to reviewing this initial screening as the policy direction and intent became clearer. Following on from considering potential impacts in our initial screening, as the policy direction became clearer we engaged with a wide range of stakeholders, including CAJ and other interest parties, at Ministerial level to consider views and concerns on the provisions of the Withdrawal Agreement Bill relating to the "no diminution" commitment.

It is unclear why ECNI accepted a delay in the NIO's response which was about three times what the typical timeframe allows under their own procedures. Notably this additional time gained nothing as the NIO's eventual response contained no particularly new relevant information. ECNI confirmed that COVID-19 had not impacted the delay in assessing the complaint.⁸⁹ It is not clear if the NIO requested such a delay but appears from their correspondence with ECNI in June that they believed

⁸⁸ Document provided to CAJ by ECNI titled "200602 P10Assessment CAJetal-NIO" is dated November 2020

⁸⁹ Conscious that COVID-19 had affected the efficiency of many public offices, in August 2020 we sought clarification from ECNI regarding the delay in assessing the complaint at that point, and wanted to know if COVID was a factor in the delay.

"I was wondering if there was a reason why the assessment of this complaint was not presented to the SDIC on 10 June 2020 (i.e. complications from COVID, lack of response from the NIO, or a particular complexity with the complaint?)" (See email correspondence from EDEP Coordinator to the Investigations Team, dated 17/08/2020).

The ECNI response stated that the delay was attributed to a delay in expected correspondence from the NIO, rather than any complexity with the complaint or COVID related issue. (See email correspondence from the Investigation Team to EDEP Coordinator, dated 17/8/2020).

they had already provided ECNI with all of the relevant information they had back in March, so it would seem unlikely that they had requested such a significant delay.

Most concerning, it appears that ECNI did not follow their own procedure of assessing whether the complaint meets the statutory criteria in parallel with the 20 working days for the public authority to provide any information. It is notable that ECNI waited until October 2020, seven months after the complaint was submitted, to request clarification in relation to the statutory criteria, namely the direct affect element. According to ECNI's internal procedures, this clarification should have been requested within 20 working days of the submission of the complaint. Considering the time sensitive nature of the complaint, and the fact that ECNI did not recommend an investigation due to the complaint being 'overtaken by events', the delay in assessing the complaint is particularly concerning.

4.3.2 Case Example: Complaint to Ulster University regarding Bilingual Signage

A second test of ECNI's revised Investigation and Complaints procedures occurred during 2020 when CAJ and Conradh na Gaeilge submitted a request for a paragraph 10 investigation into a complaint against Ulster University's (UU) decision to proceed to an EQIA on a policy introducing bilingual signage. We were particularly concerned that UU's decision was not based on adverse impacts on equality of opportunity, but rather adverse impacts on good relations. These adverse impacts were based on a 'perception' of discrimination that students would feel from looking at bilingual English/Irish signs. We were very concerned that perceptions of discrimination based on an intolerance of the Irish language triggered a comprehensive (and lengthy) EQIA.

The request for an investigation was submitted in early August 2020, and in February 2021 the SDIC decided not to investigate. ECNI sought clarification regarding the statutory criteria from us in December 2021 (far outside of the internal procedure guidelines of 20 working days), and the overall assessment period was six months, rather than the two months stated in ECNI's internal procedures. While this represents progress from the time it would take to assess complaints prior to the new internal procedures, it was not compliant with the new established timeframes.

The SDIC decided not to investigate based primarily on ECNI's determination that our concerns about the use of the EQIA as a delay tactic to avoid implementing bilingual signage were not substantiated because the EQIA was on-going, and that the EQIA process would address our other concern around good relations being used to override equality. In May 2021, UU decided to indefinitely pause the EQIA process, and it has not resumed. At the time of writing, we have submitted a new breach of scheme complaint to UU, and have progressed this to a request for an ECNI investigation.

5. ECNI Investigations

Over the course of the EDEP, ECNI has authorised two investigations in which CAJ was directly involved in or supporting a claimant. As discussed above, ECNI also instigated a paragraph 11 investigation on the back of a CAJ intervention regarding equality scheme breaches around the annual budget.

5.1 Complainant and the Department of Infrastructure

Through the EDEP, CAJ assisted an individual in pursuing a complaint to ECNI that the Department for Infrastructure breached their equality scheme commitments in relation to the 'Experimental Traffic Control Scheme- Permitted Taxis in Bus Lanes 2018' (ETCS).

The Department was considering broadening the definition of 'permitted taxis' to allow additional vehicles to use restricted bus lanes in Belfast. The Department planned to run an experimental traffic control scheme to gather more information regarding the potential expansion.

The complaint was made to ECNI on 28 June 2018, during the consultation on the ETCS. The complainant was directly affected because he relied on the bus for dropping his children off at school and commuting to work, and believed that the proposed ETCS would significantly increase traffic in bus lanes, thereby impacting his ability to use the bus. The complainant argued that DfI breached their equality scheme by failing to equality screen the ETCS.

The Department's argument was that because the ETCS was experimental and a 'data collection exercise', it was not a policy subject to equality screening under the terms of their equality scheme. The investigation report states that "Officers also stressed at the Investigation meeting that as there is currently no Minister for Infrastructure they would not have the power to implement a change in policy."⁹⁰

The issue therefore was whether the ETCS was a policy subject to the equality scheme. The investigation report determined that the ETCS was a policy under the terms of the scheme and therefore should have been equality screened.

9.6 In this case, the Department's existing policy in relation to permitted vehicles in bus lanes is as stated in the Consultation document from 2012, i.e. that Class A taxis were not permitted. The proposed ETCS would have changed this policy, as it was intended to allow access to Class A taxis for a defined, albeit temporary, period.

9.7 Therefore the proposed ETCS does fall within the definition of a policy as set out in paragraph 4.1 of the Department's Equality Scheme.⁹¹

The broader implication from this investigation is a reassurance to complainants that Departments do have to follow the broad definition of "policy" in their equality scheme, and that pilot projects are encompassed within this definition. This finding also has implications regarding the actions of Departments in the absence of a minister. A Department's policies and/or decisions which are deviations from the status quo are policies under the equality scheme, regardless of whether or not a minister is in power.

⁹⁰<https://www.equalityni.org/ECNI/media/ECNI/Publications/Employers%20and%20Service%20Providers/S75%20P10%20Investigation%20reports/DeptInfraPara10-2019.pdf> (see page 22).

⁹¹<https://www.equalityni.org/ECNI/media/ECNI/Publications/Employers%20and%20Service%20Providers/S75%20P10%20Investigation%20reports/DeptInfraPara10-2019.pdf> (see page 24-25)

5.2 Complaint to the NIO regarding Legacy

In September 2020, CAJ and the Pat Finucane Centre submitted a request for a paragraph 10 investigation into the NIO's alleged failure to comply with their equality scheme regarding the equality screening of the Northern Ireland Legacy Bill.

In December 2014 the UK & Ireland concluded the Stormont House Agreement (SHA) providing for a new set of legacy institutions to deal with the past in NI. This included the Historical Investigations Unit (HIU), an independent police-type investigations body to conduct Article 2 ECHR compliant investigations into Troubles-related deaths. In March 2020 in a Written Ministerial Statement (WMS) the Secretary of State unilaterally abandoned the SHA, setting out the intention for a different system. Parliament was informed by the Minister of State for Defence on the 20 July 2020 (in a debate on civil claims for human rights violations by the UK military abroad) that the NIO were preparing a new NI legacy bill. Parliament was told that this would deal with similar issues addressed in the Overseas (Service Personnel and Veterans) Bill.⁹² Further to this statement, CAJ made a request on the 27 July under paragraph 4.13 of the Equality Scheme for a copy of the Screening Template, which the NIO, in accordance with paragraph 4.1 of the Scheme was obliged to produce at the earliest possible stage of the policy development process.

On 7 August 2020, the complainants were informed by the NIO that an equality screening did exist on the proposed legacy bill, but would not be released until the draft bill was published. On 10 September 2020, the complainants submitted a request for a paragraph 10 investigation of the failure to provide the equality screening upon request. In November 2020, the SDIC authorised an investigation into the alleged breach. It is notable that this assessment was well within ECNI procedural timeframe, hopefully an indication of progress.

ECNI published their investigation in September 2021, finding that the NIO had failed to comply with their equality scheme in relation to screening. In particular the report emphasises the purpose of screening in informing the policy development process. It contains a number of recommendations, including that the NIO review its processes for completing equality screenings so they are undertaken in a way that can be presented and inform the policy decision maker of potential equalities impacts of proposals prior to an announcement on legislation. The Commission also recommends the NIO reviews its approach to equality assessment on the legacy bill and procedures with the previous commitment to a full EQIA that it had made in the context of the previous consultation on the Stormont House Agreement. Ultimately, the investigation result provides a crucially important level of accountability to the lack of transparency on the NIO's policy making and may prevent recurrence of equality scheme breaches. The investigation has also led to the NIO producing screening on the July proposals and committing to conducting a full EQIA, which would – if done compatibly with the statute and Equality Scheme – require a proper consideration of equality impacts and consequent alternative policies, as well as full public consultation.

While in general, ECNI investigations⁹³ are comprehensive and of high quality, concerns have been raised that the investigations have avoided addressing and criticising Ministerial interference with equality duties, even when such interference has been both obvious and highly detrimental. This issue was raised in a report commissioned by the Coalition regarding an earlier investigation in 2018.

⁹² [Hansard HL 20 July 2020, Volume 804, C1m 1932].

⁹³ <https://www.legislation.gov.uk/ukpga/1998/47/schedule/9>, see section 11.

This concerned the investigation into the Department for Communities for the Community Halls fund and Líofo Bursary Scheme.⁹⁴

In *Sectarianism: The Key Facts*, a CAJ commissioned report, author Dr Robbie McVeigh argues that the ECNI investigation evaded criticism of the controversial role of the Minister in the decisions and hence whether there had been a substantive breach of the equality duties relating to sectarianism in decision making:

It is striking, however, that ECNI, despite what was widely considered to be straightforwardly sectarian behaviour of the Minister, studiously avoided any criticism of him whatsoever in their investigation. Nor does it appear from ECNI's report that the Commission subjected what would have constituted a substantive breach of the department's Equality Scheme to any inquiry as part of their investigation. Instead ECNI ignored the issue of substantive breaches of the scheme for sectarian acts, blamed officials and stuck very closely to the procedural analysis. The investigation was not initiated until June 2016, six months after the events in question, and took a year to complete. The key point is that ECNI effectively ignored the elephant in the room by focussing on process failings, rather than the failure to apply the substantive duty at all. All this suggests that the enforcement body feels unable to address sectarianism in decision-making, even when it is this blatant.⁹⁵

⁹⁴ The ECNI investigation is published here <https://www.equalityni.org/ECNI/media/ECNI/Publications/Employers%20and%20Service%20Providers/S75%20P%2011%20investigation%20reports/DeptforCommunitiesPara11-May18.pdf>

⁹⁵ <https://caj.org.uk/wp-content/uploads/2020/02/Sectarianism-The-Key-Facts-FINAL-LOW-RES.pdf> (page 40).

6. Conclusion and Recommendations

Overall, the EDEP project has highlighted the effectiveness of Section 75 interventions by civil society to affect change, both in terms of active engagement with the complaint mechanisms as well as with advocacy through consultation responses. The findings of the project demonstrate that, when utilised, ECNI formal enforcement powers prompt the type of Section 75 compliance that ECNI advice provision alone has not been able to achieve. We have also seen conflicts arise between the ECNI advice function and enforcement powers.

The rising use of Section 75 has been a positive development, but we can anticipate that as more complaints are made, public authorities will seek to narrow the grounds of a potential complaint, by modifying the definition of 'policy' under their equality scheme. We strongly urge ECNI to maintain this protective element of the equality scheme. By contrast, we have seen public authorities misuse the provision in the scheme around assessing the impact of good relations and urge ECNI to remove this from their model scheme guidance.

Over the period of the project, ECNI has modified their internal procedures around complaints and investigations and after receiving feedback from coalition members, inserted timeframes around most elements of the complaint process (notably absent are timeframes around the investigation). We very much welcome this change. However, the process around ECNI committing to timeframes on complaint assessments is a good example of how promised commitments require constant attention and follow through. Had CAJ not complained to the NIPSO, the procedures may not have been reviewed. Had the Coalition not submitted a consultation response to the draft procedures, the promised timeframes would likely not have been inserted. Had CAJ and Coalition members not incidentally tested the timeframes through complaints, they might exist only on paper.

We also see that despite an increased awareness of Section 75, the complaints process remains highly technical and confusing to many members of civil society. It is important that an advocate (either vested in CAJ or another entity) be able to assist complainants through the process of a complaint.

It is concerning that so many procedurally valid complaints are not investigated by ECNI. The reasons given for not investigating valid complaints often are often vague and based on a subjective assessment of the value of the investigation. If there is one primary takeaway from this report for ECNI, it should be to focus on its formal enforcement powers to affect change rather than its advice provision, and to investigate all valid complaints, unless there are exceptional circumstances not to.

6.1 Recommendations

Our recommendations for ECNI are in short:

6.1.1 ECNI Corporate Plan

- ECNI should revise its Model Scheme and reflect this in a revised screening template, and as part of that revision, it should remove the requirement to assess good relations 'impacts', as described in section 2.3 of this report. The Model Scheme should mainstream the human rights compliant interpretations and applications of the good relations duty within the model scheme and focus on complimentary actions to promote 'good relations' in line with these definitions. We also believe it is very important for the Model Scheme to retain ECNI's current definition of policy.

- ECNI should stop advising public authorities that they do not have to consult when reviewing their Equality Scheme.

6.1.2 ECNI investigations

- ECNI should investigate all valid Paragraph 10 complaints, save where there are exceptional circumstances. There should be no requirement for the investigation of a valid paragraph 10 complaint to fulfil a broader strategic goal.
- While the new timeframes for complaint assessment are welcomed, the compliance with the new procedures has been inconsistent, and there is still a lack of timeframes around the actual investigation of a complaint.
- Ensure that ECNI assessment of a request for a paragraph 10 complaint does not predict the outcome of an investigation or substitute for an investigation. ECNI should not use confidential legal advice in lieu of investigating a valid complaint.
- ECNI should develop a 'fast track' process for requests for paragraph 10 investigations into complaints where the breach is obvious and/or time sensitive.
- ECNI should develop a strategic enforcement strategy including using its powers under paragraph 11 to conduct strategic 'own initiative' investigations. The recent paragraph 11 investigations are good examples.
- Investigations should ensure that the actions of Ministers are also scrutinised when they contribute to breaches of equality schemes, including the commitments to abide by the substantive duties.
- The full assessment of the complaint provided to the SDIC should be routinely provided to complainants once the SDIC decision is made. It is our experience that the complainant must always ask for it to be provided. While CAJ knows to request the full assessment, most complainants will be unaware of this. The full assessment is often necessary to pursuing a request for a review of the SDIC decision.
- We recommend that the SDIC minutes be routinely published online and easily accessible on the ECNI website. In our experience it is difficult to find SDIC minutes online.
- Public authorities are required to submit annual progress reports on the implementation of their equality schemes. Part of this requires a disclosure of the number of complaints received in relation to the equality scheme. However, the statistics provided to us by ECNI state that only between 8-16 public authorities per year disclose this information. We recommend that ECNI where appropriate utilise their enforcement powers to address this significant underreporting of necessary information.

Cognisant of the duties on ECNI to keep the effectiveness of the Section 75 duties under review, we would urge a further independent review of the operation of the duties, similar to those previously conducted, is undertaken.

ANNEX I: Complaints per year (From 2014- February 2021)

2014: 6 complaints considered

Complaint 1	ECNI Assessment	SDIC Decision
Summary of Complaint: Complaint against DoJ, Programme of Reform- Staff Exit Scheme	The assessment states that following a request for more information the Department provided additional evidence of some compliance. Although outstanding issues remain, the assessment indicated that because significant time had elapsed it was unclear what could be achieved by an investigation. The assessment also stated "It is difficult to see how the individual affected will derive any benefit from an investigation."	The complaint was not investigated.
Date of submission: Unclear when this complaint was submitted, although it was originally assessed in November 2013 and an investigation was recommended at that time. It is unclear why an investigation did not occur at that time.		
Date of SDIC Decision: February 2014		

Complaint 2	ECNI Assessment	SDIC Decision
Summary of Complaint: Complaint against Queens University regarding the display of computer screen savers.	The Investigating Officer determined that the display of screen savers was not a policy, and recommended no investigation.	The complaint was not investigated.
Date of submission: Unknown		
Date of SDIC Decision: February 2014		

Complaint 3	ECNI Assessment	SDIC Decision
Summary of Complaint: Complaint against Armagh City and District Council regarding Equality Reports	The complaint was deemed not within the remit of a Paragraph 10 investigation.	The complaint was not investigated.
Date of submission: Unknown		
Date of SDIC Decision: February 2014		

Complaint 4	ECNI Assessment	SDIC Decision
Summary of Complaint: Complaint against Southern Health and Social Care Trust, regarding the temporary withdrawal of services at Appleby Social Education Centre.	The complaint was assessed as not within the remit of a Paragraph 10 investigation.	The complaint was not investigated.
Date of submission: Unknown		
Date of SDIC Decision: February 2014		

Complaint 5	ECNI Assessment	SDIC Decision
Summary of Complaint: The complaint was made against Southern Health and Social Care Trust, regarding the temporary withdrawal of services at Appleby Social Education Centre.	The assessment is two sentences and states “It appears that the Trust did not fail to comply with its approved Equality Scheme. Paragraph 10 investigation would not therefore be recommended.”	The complaint was not investigated.
Date of submission: Unknown		
Date of SDIC Decision: April 2014		

Complaint 6	ECNI Assessment	SDIC Decision
Summary of Complaint: The complaint was against Department for Social Policy regarding the policy Migration of Incapacity Benefit to Employment Support Allowance.	The assessment determined that some of the complaint did not meet the procedural requirements, and the assessment deemed the complaint to be asking for a screening decision review request.	The complaint was not investigated.
Date of submission: Unclear, possibly submitted on 21 July 2014		
Date of SDIC Decision: October 2014.		

2015: 5 complaints considered

Complaint 1	ECNI Assessment	SDIC Decision
Summary of Complaint: The complaint was made against Strabane District Council regarding a change to public right of way access. Date of submission: Unclear Date of SDIC Decision: March 2015	The assessment determined that the Council carried out a retrospective screening after the complaint and offered to meet with the complainant, investigation not recommended.	The complaint was not investigated.

Complaint 2	ECNI Assessment	SDIC Decision
Summary of Complaint: Complaint was made against Department for Social Development regarding medical assessment relating to migration of incapacity benefit to employment support allowance. Date of submission: Unclear Date of SDIC Decision: March 2015	The assessment determined that the Department failed to provide evidence that they adequately equality screened the policy, an investigation was recommended.	The SDIC decided to investigate, however there is no published investigation.

Complaint 3	ECNI Assessment	SDIC Decision
Summary of Complaint: Complaint was made against Lisburn City Council policy area related to the public realm improvement scheme, and the impact of proposed curb heights on people with visual impairments. Date of submission: Unclear Date of SDIC Decision: March 2015	The assessment determined that the Council had no evidence of equality screening, and therefore an investigation was recommended.	An investigation happened and was ultimately published over two years later in September 2017. A similar issue in this complaint was also addressed in a judicial review and in May 2017 the court determined that the Council had breached their S.75 duties. This case is important because it has opened the door for certain Section 75 cases to be determined by judicial review.

Complaint 4	ECNI Assessment	SDIC Decision
Summary of Complaint: Complaint was made against Belfast City Council regarding the Playing Pitches Strategy and the placement of the 3G pitch.	Investigation not recommended as the investigation team considered that the action taken by the public authority when the complaint was brought to their attention was a sufficient remedy to a potential failure to comply.	The complaint was not investigated.
Date of submission: Unclear		
Date of SDIC Decision: August 2015		

Complaint 5	ECNI Assessment	SDIC Decision
Summary of Complaint: Complaint was made against DoJ regarding the alleged failure to equality screen budget cuts to the Police Ombudsman's office (and resulting delays to historical inquiry cases).	The assessment states: "Considering the reduction in the budget cut to the Police Ombudsman's Office; preparations for the development of a new Historical Investigations Unit; and the Department's assurance that the investigation into the case of Y is currently underway, the Investigation Team does not recommend authorisation of a Paragraph 10 investigation."	The complaint was not investigated. As of July 2021, the Historical Investigations Unit has not been set up.
Date of submission: Unclear		
Date of SDIC Decision: August 2015		

2016: 4 complaints considered

Complaint 1	ECNI Assessment	SDIC Decision
Summary of Complaint: Complaint was made against OFMDFM by NICCY regarding age discrimination (Goods, Facilities Services) Legislation, and alleged failure to consult with young people	Investigation team recommended a Paragraph 10 investigation into the specific issue of the adequacy of OFMDFM consultation with children and young people regarding the proposals to extend age discrimination legislation to include protection from discrimination in the provision of goods, facilities and services.	The investigation was authorised and published in 2017.
Date of submission: Unclear		
Date of SDIC Decision: February 2016		

Complaint 2	ECNI Assessment	SDIC Decision
Summary of Complaint: Complaint was made by the Children's Law Centre against OFMDFM regarding age discrimination (Goods, Facilities Services) Legislation	There is no recommendation provided, rather the Investigation Team asks the SDIC to consider whether any further investigation is required considering the initiation of NICCY's investigation.	The complaint was not investigated.
Date of submission: Unclear		
Date of SDIC Decision: April 2016		

Complaint 3	ECNI Assessment	SDIC Decision
Summary of Complaint: Complaint was made against Craigavon Borough Council regarding the Review of Flag Policy.	<p>The assessment determined the complaint to have not been submitted within the 12 month time frame, and therefore was not procedurally valid and not eligible for investigation.</p> <p>The assessment determined that the complainant became aware of the alleged breach on 19 January 2015.</p>	The complaint was not investigated.
Date of submission: Complaint was originally submitted on 30 March 2015 and was paused at the request of the complainant's solicitor. The complainant submitted a new complaint (on the same issue) dated 19 January 2016. ECNI received the complaint on 26 January 2016.		
Date of SDIC Decision: April 2016		

Complaint 4	ECNI Assessment	SDIC Decision
Summary of Complaint: Complaint was made against the Department of Education policy for Sustainable Schools.	The assessment states that the Department confirmed that once the education proposal was published, there would be a public consultation, so investigation was not recommended.	The complaint was not investigated.
Date of submission: Unclear		
Date of SDIC Decision: April 2016		

2017: 5 complaints considered (3 by same complainant)

Complaint 1 / 2 / 3	ECNI Assessment	SDIC Decision
Summary of Complaint: Complaint was made regarding the amalgamation of schools, this complaint was made by the same complainant separately against: 1) The Council for Catholic Maintained Schools, 2) Department of Education, and 3) Education Authority	The investigation assessment recommended no investigation due to the High Court ruling on the JR which addressed whether the due regard duty had been satisfied in this case, and found that it had been.	The complaint was not investigated.
Date of submission: Unclear		
Date of SDIC Decision: June 2017		

Complaint 4	ECNI Assessment	SDIC Decision
Summary of Complaint: Complaint was made against the PSNI regarding the Firearms Licensing and Application (moving online).	The assessment recommended no investigation based on an analysis that the PSNI had adequately screened/consulted on the policy.	The complaint was not investigated.
Date of submission: Unclear		
Date of SDIC Decision: August 2017		

Complaint 5	ECNI Assessment	SDIC Decision
Summary of Complaint: Complaint was made against Lisburn and Castlereagh City Council regarding the diving pool access times.	The assessment detailed the extent to which the Council accommodated the complainant and determined that the degree of consideration in this matter amounted to a “relevant consideration”.	The complaint was not investigated.
Date of submission: Unclear		
Date of SDIC Decision: October 2017		

2018: 8 complaints considered

Complaint 1	ECNI Assessment	SDIC Decision
Summary of Complaint: Complaint was made against Mid Ulster District Council regarding the removal of a flagpole and the public realm scheme.	The investigation assessed that the complaint was first aware of the removal of the flagpole in October 2016, so therefore was outside of the 12 month statutory limit.	The complaint was not investigated.
Date of submission: 27 November 2017		
Date of SDIC Decision: February 2018		

Complaint 2	ECNI Assessment	SDIC Decision
Summary of Complaint: Complaint was made against QUB and UU regarding equality monitoring of funded PhD students.	The assessment took into consideration that the universities have set out their proposals to review and address monitoring, and recommended no investigation.	The complaint was not investigated.
Date of submission: Complaint was submitted in September 2017, clarified and resubmitted November 2017.		
Date of SDIC Decision: February 2018		

Complaint 3	ECNI Assessment	SDIC Decision
Summary of Complaint: Complaint was made against Newry Mourne and Down District Council regarding pavement cafes designation policy.	The assessment recommended no investigation based on a determination that the Public Authority “appears to have properly considered the evidence provided by the Complainant...to inform its second screening decision.”	The complaint was not investigated.
Date of submission: Unclear		
Date of SDIC Decision: April 2018		

Complaint 4	ECNI Assessment	SDIC Decision
<p>Summary of Complaint: Complaint was made by ICTU against DoF regarding the NI “Budgetary Outlook 2018-2020”.</p> <p>Date of submission: Unclear</p> <p>Date of SDIC Decision: April 2018</p>	<p>The assessment makes a determination that the Commission did not consider the Budgetary Outlook to be a policy, so therefore the PA did not breach their scheme. The assessment also added that an investigation was not recommended due to the fact that “the 2018-19 Budget for Northern Ireland has now been set, in exceptional circumstances, though legislation introduced by the Secretary of State; and the Commission has intervened directly with DoF to advise on the application of Equality Scheme arrangements to the relevant functions for the development and implementation of a Budget for Northern Ireland.”</p>	<p>The complaint was not investigated.</p>

Complaint 5	ECNI Assessment	SDIC Decision
<p>Summary of Complaint: Complaint was made by CAJ against the Department for Communities in relation to Equality Schemes compliance and the ‘two child rule’ in social security provision.</p> <p>Date of submission: December 2017</p> <p>Date of SDIC Decision: May 2018</p>	<p>The assessment recommends no investigation, for the following reasons: “the legislation was introduced by the UK Government; The limitations on what could arguably be achieved by DfC due to no functioning executive; Some equality scrutiny already having been effected under the Equality Act 2010; The fact that there is to be analysis by DfC of impacts to include s75 matters where possible which will be considered through the ‘composite evaluation framework.’”</p>	<p>The complaint was not investigated.</p>

Complaint 6	ECNI Assessment	SDIC Decision
<p>Summary of Complaint: Complaint was made by (2 complainants) against Causeway Coast and Glens Council regarding funding for the Ballymena Social Centre.</p> <p>Date of submission: t The screening in question was dated September 2017, however it is unclear when the complaint was submitted.</p> <p>Date of SDIC Decision: June 2018</p>	<p>The assessment highlights that the council only screened their final decision (after the decision was made), this was determined by the assessment to not comply with the requirement to screen at the earliest stage. However, the assessment recommended no investigation, because: “The Equality Commission has recently finalised another investigation which involved similar issues.” And “The public authority has recently taken steps to improve its understanding of the equality screening process.”</p>	<p>The complaint was not investigated.</p>

Complaint 7	ECNI Assessment	SDIC Decision
<p>Summary of Complaint: Complaint was made against Mid and East Antrim Borough Council regarding the Leisure Centre pricing policy.</p> <p>Date of submission: Complaint was submitted on 9 April 2018.</p> <p>Date of SDIC Decision: November 2018</p>	<p>Assessment recommends an investigation into part of the complaint, because “the Public Authority did not consider conducting an EQIA even through it identified a major negative impact on a small group of people; There is no evidence that it has considered mitigating action for that small group.”</p>	<p>The complaint was investigated and the investigation report published November 2019.</p>

Complaint 8	ECNI Assessment	SDIC Decision
<p>Summary of Complaint: Complaint was made against Education Authority regarding Residential and Outdoor Learning Provision – Moving Forward 2017.</p> <p>Date of submission: Unclear when the complaint was submitted.</p> <p>Date of SDIC Decision: November 2018</p>	<p>The assessment determines that the Education Authority completed three screenings and held engagement meetings, so therefore the complainant’s claim of failure to be consulted, and the claim of being denied the right to influence the policy through an EQIA should not be investigated.</p>	<p>The complaint was not investigated.</p>

2019: 4 complaints considered

Complaint 1	ECNI Assessment	SDIC Decision
<p>Summary of Complaint: Complaint was made against DAERA regarding the decision to stop the Areas of Natural Constraint Scheme (which provided income support to severely disadvantaged areas) after one year. The complaint alleged that this disadvantaged Catholic farmers.</p>	<p>The assessment states that the complaint was submitted outside of the statutory time limit of “12 months starting with the day on which the complainant first knew of the matters alleged.” It is unclear from the assessment received under FoI how this was determined (i.e. what the date was when the complainant ‘first knew of the matters alleged’).</p>	<p>The complaint was not investigated.</p>
<p>Date of submission: Complaint was submitted on 16 October 2018</p>		
<p>Date of SDIC Decision: February 2019</p>		

Complaint 2	ECNI Assessment	SDIC Decision
<p>Summary of Complaint: Complaint was made against DfI regarding the Experimental Traffic Control Scheme. The complainant was supported by CAJ.</p>	<p>The assessment acknowledges that the issue of whether the scheme is a ‘policy’ is at the heart of the complaint. The assessment recommends an investigation for the following reasons: “to ensure appropriate policy recognition and timing of screening; and as the Scheme could be implemented in the future and the outcome of an investigation of this complaint could affect the public authority’s practices in carrying out its functions on these matters.”</p>	<p>An investigation was authorised, and completed in November 2019. The investigation determined that the scheme was a policy under the terms of the equality scheme because it was a (time-bound) change to the status quo.</p>
<p>Date of submission: Complaint was submitted in June 2018.</p>		
<p>Date of SDIC Decision: February 2019</p>		

Complaint 3	ECNI Assessment	SDIC Decision
Summary of Complaint: Complaint was made against the Northern Ireland Housing Executive – Keeping in Touch Scheme	The assessment states that the public authority essentially rectified the failure to screen which the complaint was based on, so it recommended no investigation.	The complaint was not investigated.
Date of submission: Complaint was submitted on 16 September 2019		
Date of SDIC Decision: November 2019		

Complaint 4	ECNI Assessment	SDIC Decision
Summary of Complaint: Complaint was made by CAJ against the DfC regarding the review of Welfare Mitigation Schemes.	The assessment acknowledges that the subject of an investigation would focus on whether the “Options for the continuation of Current Mitigation Schemes” is a policy under the equality scheme. The assessment recommends no investigation based on the following determination: “While the options, or some of them, from the Review report may go forward as proposed policies, they may not. The Department has stated that there will be action to equality screen proposed policies, in accordance with its Equality Scheme.”	The complaint was not investigated.
Date of submission: September 2019		
Date of SDIC Decision: November 2019		

2020: 7 complaints considered (post new investigations and complaints procedures)

Complaint 1	ECNI Assessment	SDIC Decision
Summary of Complaint: Complaint made against PSNI regarding the online application process for firearms.	The assessment recommends no investigation based on factors including the “significant degree of similarity in subject matter between this complaint and the one previously considered by the SDIC in 2017 which was not investigated.”	The complaint was not investigated.
Date of submission: Unclear when the complaint was submitted		
Date of SDIC Decision: February 2020		

Complaint 2	ECNI Assessment	SDIC Decision
Summary of Complaint: Complaint was made by CAJ and PPR against the Department for Communities for failing to properly screen the proposed change to the definition of affordable housing.	The assessment states that the complaint did not meet the statutory criteria of first having notified the Department of an equality scheme complaint. ⁹⁶	The complaint was not investigated.
Date of submission: Complaint was submitted on December 2019		
Date of SDIC Decision: April 2020		

⁹⁶ In this case, CAJ and PPR had notified the Department of the equality scheme breaches in their screening and requested that the Department review the screening. The Department did review the screening but did not rectify the identified breaches. Rather than submit a new and factually identical complaint to the Department, the complainants proceeded directly to ECNI requesting a paragraph 10 investigation. The SDIC declined to investigate.

Complaint 3	ECNI Assessment	SDIC Decision
<p>Summary of Complaint: Complaint was made by an affected individual with CAJ's support against Translink regarding the policy of allowing law enforcement to stop and board buses for the purpose of irregular immigration checks</p> <p>Date of submission: October 2019</p> <p>Date of SDIC Decision: July 2020</p>	<p>The assessment states the primary issue is the complainant and Translink have different views on whether Translink has a policy in this matter which is subject to the equality scheme. The assessment states, "The Commission has sought legal advice on this complaint...The advice is that the matters alleged... constitute practices for Translink and therefore should be considered by Translink to be a policy (or policies). The assessment recommends an investigation.. *It is worth noting that the complainant was never provided with this assessment.</p> <p>The second assessment states that the (new) legal advice says that Translink does not have a policy in this matter, that requests for immigration checks are "presumptively lawful, and they are made when Translink is performing a function of a transient contractual relationship nature." Based on this legal advice, the Commission recommends no investigation</p>	<p>At the SDIC meeting of June 2020, they requested a second legal opinion.⁹⁷</p> <p>In July 2020, the SDIC took a decision not to investigate this complaint was not investigated. On behalf of the affected individual, CAJ lodged a request for a review which was denied.</p>

⁹⁷ ECNI stated in relation to this that "The Committee requested that they receive further information and Counsel's advice in order for a decision to be made."

Complaint 4	ECNI Assessment	SDIC Decision
<p>Summary of Complaint: Complaint was made against the Education Authority regarding SEN assessments.</p> <p>Date of submission: Unclear when the complaint was submitted, however the assessment does state that “key information for the assessment of the complaint [was] only... provided in February 2020.”</p> <p>Date of SDIC Decision: September 2020</p>	<p>The assessment does not recommend an investigation because the Complainant’s first knowledge of the matters alleged are from 2018; the “practical outcome already achieved by the Complainant”; the articulation of the complaint, with key information from the complainant only being provided in February 2020, and acknowledgement by EA that they failed to comply with their equality scheme, and committed to retrospectively screening the complaint.</p>	<p>The complaint was not investigated.</p>

Complaint 5	ECNI Assessment	SDIC Decision
<p>Summary of Complaint: Complaint was made against Lisburn City and Castlereagh Council regarding the Development of a Community Hub facility.</p> <p>Date of submission: It is unclear when the complaint was submitted, but possibly 23 February 2020.</p> <p>Date of SDIC Decision: September 2020</p>	<p>This complaint relates primarily to the planning application and development of a community hub at Carryduff. The assessment recommends no investigation, based on assessing that the complainant is more concerned about the planning decision rather than the equality implications of the planning decision; the lack of specificity in the complaint is likely to make the investigation difficult; an investigation would not necessarily change the planning decision; and the likely resources required for an investigation are not considered commensurate with the benefits to be gained.</p>	<p>The complaint was not investigated.</p>

Complaint 6	ECNI Assessment	SDIC Decision
Summary of Complaint: Complaint was made against the Northern Ireland Office, regarding the policy establishing the scope of the 'dedicated mechanisms'.	The assessment recommended no investigation because 'the complaint has now been overtaken by events' and the degree of resource required to investigate is not commensurate with the resource expenditure.	The complaint was not investigated.
Date of submission: Submitted March 2020		
Date of SDIC Decision: November 2020		

Complaint 7	ECNI Assessment	SDIC Decision
Summary of Complaint: Complaint against the Northern Ireland Office, regarding the Legacy Bill.	We do not have the assessment of this complaint.	The SDIC decided to investigate the complaint. In December 2020, NIO lodged a request for a review, the request was denied on February 2021. An investigation proceeded, has been completed and was published in September 2021.
Date of submission: September 2020		
Date of SDIC Decision: November 2020		

February 2021: I complaint considered

Complaint I	ECNI Assessment	SDIC Decision
<p>Summary of Complaint: Complaint against Ulster University in relation to deficiencies in the equality screening over a policy decision relating to bilingual signage. Submitted August 2020, decision February 2021.</p> <p>Date of submission: Complaint was submitted August 2020.</p> <p>Date of SDIC Decision: February 2021</p>	<p>The assessment recommends no investigation based on a determination that UU had not breached its equality scheme by progressing a screening to an EQIA on a finding of adverse good relations impacts. The assessment states:</p> <p>“UU has stated that the decision to EQIA did not equate to a rejection of the policy but a recognition that the process itself would provide opportunity to explore the issues and address them. This process is ongoing and UU should further consider the evidence and information the complainants allege that UU did not consider appropriately at the screening stage.”</p>	<p>The complaint was not investigated.</p>

Equality Coalition, c/o CAJ, 1st Floor, Community House, Citylink Business Park, 6A Albert Street, Belfast, BT12 4HQ

Tel: 028 9031 6000

Email equalitycoalition@caj.org.uk

Website: www.equalitycoalition.net

Twitter: @EqualityCoal

The Equality Coalition is co-convened by the Committee of the Administration of Justice (CAJ) and UNISON.

**The Baring
Foundation**

