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**Submission to the Department for Social
Development's Consultation on *Facing the Future:*
*Housing Strategy for Northern Ireland 2012-17***

December 2012

1. Introduction

The Northern Ireland Council for Ethnic Minorities (NICEM) is an independent non-governmental organisation working to promote a society free from all forms of racism and discrimination and where equality and human rights are guaranteed. As an umbrella organisation¹ we represent the views and interests of black and minority ethnic (BME) communities.²

Our vision is of a society in which equality and diversity are respected, valued and embraced, that is free from all forms of racism, sectarianism, discrimination and social exclusion, and where human rights are guaranteed.

Our mission is to work to bring about social change through partnership and alliance building, and to achieve equality of outcome and full participation in society.

This submission will firstly set out the human rights and equality context in relation to housing. It will then comment broadly on each of the relevant themes and answer the proposed questions directly where appropriate. The submission has been informed primarily by the experiences of BME communities who seek assistance and advice from the Belfast Migrant Centre.

2. Equality and Human Rights Context

Mainstreaming equality and human rights into all policies must remain a key priority for all government departments. In this section, some of the key provisions in relation to equality and human rights, in terms of advancing race equality and respecting the rights of BME communities, will be set out.

According to the Equality Commission's Revised Guidance (2005):

“the main aim of section 75 is to ensure that equality opportunity is ‘mainstreamed’ by public authorities in their policy making, policy implementation and policy review.”³

The Commission's 2012 Outline Guide highlights that:

“the Section 75 statutory duties aim to encourage public authorities to address inequalities and demonstrate measureable positive impacts on the

¹ Currently we have 27 affiliated BME groups as full members. This composition is representative of the majority of BME communities in Northern Ireland. Many of these organisations operate on an entirely voluntary basis.

² In this document “Black and Minority Ethnic Communities” or “Minority Ethnic Groups” or “Ethnic Minority” has an inclusive meaning to unite all minority communities. It refers to settled ethnic minorities (including Travellers, Roma and Gypsy), settled religious minorities, migrants (EU and non-EU), asylum seekers and refugees and people of other immigration status.

³ See Chapter 1 of the Revised Guidance for discussion on mainstreaming equality, at page 1.

lives of people experiencing inequalities. Its effective implementation should improve the quality of life for all of the people of Northern Ireland.”⁴

The Outline Guide goes on to consider the meaning of ‘due regard’ in the section 75 duty. According to the Guide, having ‘due regard’ and ‘regard’ means that the weight given to the need to promote equality of opportunity and good relations is proportionate to the relevance of a particular duty, to any function of a public authority. Therefore, having ‘due regard’ and ‘regard’ entails taking a proportionate approach in determining the relevance of equality opportunity and/or good relations to a particular function or policy.”⁵ It is also noted that the second limb of the section 75 duty, i.e. the good relations, is also particularly relevant in the context of housing policy.

In this submission reference will be made to any potential adverse impacts on the race group as protected under section 75. NICEM would also like to draw the Department’s attention to the fact that persons affected by this strategy may have multiple identities and fall within two or more section 75 categories and may therefore be susceptible to multiple discrimination.

In the Ministerial foreword to the strategy, housing is recognised as a “fundamental human need”. However, NICEM would like to point out that the right to housing is recognised as a human right in a number of international human rights instruments, notably Article 11(1) of the United Nations International Covenant on Economic, Social and Cultural Rights (ICESCR)⁶. As a socio-economic right, NICEM is aware that due to resource restrictions, it may not be possible to realise this right immediately, however, under international human rights law, the Government is under an obligation to progressively realise the right to housing for all persons and is prohibited from taking retrogressive measures⁷.

In addition, the principles of equality and non-discrimination underpin human rights instruments as well as the EU legal order. Therefore, it is worthwhile to also sketch out the relevant equality requirements under international human rights and EU law in relation to the right to housing⁸.

⁴Section 75 of the Northern Ireland Act 1998: A Guide for Public Authorities - An Outline Guide, 2002, Equality Commission for Northern Ireland, available at:

http://www.equalityni.org/archive/pdf/S75_Public_Authorities_Outline_Guide.pdf

⁵ *Ibid.*

⁶ For more information see the Committee on Economic, Social and Cultural Rights General Comment No. 4, available at:

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/469f4d91a9378221c12563ed0053547e?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/469f4d91a9378221c12563ed0053547e?Opendocument)

⁷ For more information see the Committee on Economic, Social and Cultural Rights General Comment No. 3, available at:

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/94bdbaf59b43a424c12563ed0052b664?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/94bdbaf59b43a424c12563ed0052b664?Opendocument)

⁸ For further information on non-discrimination in the implementation of socio-economic rights see Committee on Economic, Social and Cultural Rights General Comment No. 20, available at: <http://www2.ohchr.org/english/bodies/cescr/comments.htm>.

Moreover, Article 1 of Protocol 1 of the European Convention on Human Rights (ECHR) (which has been incorporated into domestic law by the Human Rights Act 1998) recognises a right to property, which includes social security.⁹ Again, the concept of non-discrimination is enshrined in Article 14 of the Convention in terms of the enjoyment of other Convention rights. Moreover, case law has demonstrated that Article 3 of the Convention prohibits the creation of an environment, which would lead to state-enforced destitution.¹⁰

Article 34(3) of the EU Charter of Fundamental Rights recognises the right to social and housing assistance. The general principle of non-discrimination is enshrined in Article 21. While the Charter only has legal effect when implementing EU law, it is highly relevant for EU migrant workers because they are exercising their EU Treaty right to free movement and therefore the Charter comes into effect.

Moreover, the Racial Equality Directive 2000/43 prohibits discrimination on the grounds of racial or ethnic origin in the provision of social protection, including social security, social advantages and access to the supply of public housing¹¹. The concept of discrimination as defined in the Directive includes direct and indirect discrimination as well as harassment.

According to Article 5 of the United Nations Convention on the Elimination of Racial Discrimination (CERD):

States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

...

(e) Economic, social and cultural rights, in particular:

...

(iii) The right to housing;

3. Principles of the strategy: General comments

Firstly, NICEM finds principle 1: “citizen first” to be problematic. Many people living in Northern Ireland are not British or Irish citizens and therefore, this title would exclude many migrants who are living in Northern Ireland and are indeed “taxpayers”.

NICEM recommends deleting the word ‘citizen’ and using more inclusive language such as ‘person/people’.

⁹ *Stec v. United Kingdom* (2005) 41 E.H.R.R. SE18.

¹⁰ *Regina v. Secretary of State for the Home Department (Appellant) ex parte Limbuela (FC)*, [2005] UKHL 66.

¹¹ Articles 2 and 3(e)(f) Directive 2000/43/EC.

Secondly, principle 3 seeks to “target the most vulnerable”, however, NICEM notes that “the most vulnerable” have not been identified in the draft strategy. NICEM would like to seek clarification on whether this is intended to include people at risk of homelessness and/or specific groups facing particular issues in relation to access to housing, such as section 75 groups. This issue will be further explored in relation to theme 2 below.

NICEM calls on the Department to include an indicative list in the strategy of who it considers to be the “most vulnerable”.

4. Theme 1 – Ensuring access to decent, affordable, sustainable homes across all tenures

In general terms, access to housing is an issue affecting most of the BME communities in Northern Ireland. NICEM welcomes all efforts by the Department to improve accessibility. From NICEM’s perspective, this would involve ensuring that all frontline staff are appropriately trained in the application of appropriate laws and policies as well as equality and anti-discrimination training. This would also include ensuring that individuals are aware of their rights and information is available in a understandable format.

5. Theme 2 – Meeting housing needs and supporting the most vulnerable

As already mentioned above, the Department has not indicated who it considers to be “the most vulnerable” in the consultation document. At this point, NICEM would like to remind the Department of its obligations under section 75 to promote equality of opportunity, and the other equality and human rights standards as outlined in section 2 above. Indeed, it must be recognised that BME communities are the most vulnerable in our society.

Firstly, NICEM notes that in the Department’s audit of inequalities some section 75 groups are not mentioned at all and ‘racial group’ is only mentioned in the context of good relations, and more specifically the shared housing programme, and not the promotion of equality of opportunity. Travellers are also specifically mentioned but there is no mention of travellers in the draft strategy. Indeed, there is no mention of Roma in either the Department’s audit of inequalities or the draft strategy.

Therefore, NICEM submits that the Department needs to revisit the housing section of its audit of inequalities and carry out a more in-depth audit, which identifies the inequalities in access to housing and the specific housing needs each section 75 group. This should clearly identify the factors that need to be taken into consideration in the review of social housing allocations policy.

In addition, NICEM would like to reiterate that the “racial group” is not one homogenous group. Indeed, the black and ethnic minority communities living in Northern Ireland have different legal status and therefore, there are different issues in terms of accessing housing. For example, the housing issues experienced by EU/EEA nationals are quite different to those experienced by non-EU/EEA nationals (so-called ‘third country nationals’). This is due to the fact that third country nationals are not entitled to housing benefit. In addition, in the Belfast Migrant Centre’s experience, EEA migrants coming to Northern Ireland to seek a job often experience unnecessary administrative delays, often due to incorrect first instance decision-making, and as a result they take out loans and fall into debt, despite the fact that they have explicit rights under EU law.

Therefore, NICEM recommends that the Department ensures that frontline staff in the Department or its next step agencies, are appropriately trained in the rights and entitlements of EU/EEA nationals in accessing housing in Northern Ireland.

Secondly, there is a focus on homelessness but that is only in the context of “helping people stay in their own homes”. The Department must recognise that most migrants live in private rented accommodation and if a migrant loses his/her job and is unable to pay the rent, he/she will be at a greater risk of falling into destitution and becoming homeless. This is due to the fact that a migrant living in Northern Ireland does not have the same level of social capital as a British or Irish citizen, i.e. they do not have the same family and friends support structures to fall back on.

Moreover, NICEM calls upon the Department to change the policy that hostels will only accommodate persons who have been referred by the Housing Executive. A number of clients presenting to the Belfast Migrant Centre were unable to secure a referral from the Housing Executive and therefore it was impossible to secure accommodation for clients in a hostel. In addition, in the Migrant Centre’s experience hostels are unable to meet the demand on their services due to the increase in the homelessness. While the Centre has limited capacity to administer crisis funding, it is in the compromised position where it cannot provide assistance to all who need it. There is a need to provide bespoke services for members of BME communities who are homeless and have no recourse to public funds in order to ensure that the Government will be capable of meeting its target of ending homelessness by 2020.

NICEM recommends that the focus on homelessness is widened to take account of all people living in Northern Ireland who are homeless or at risk of homelessness and this should include asylum seekers who have exhausted their rights of appeal in relation to their claim for refugee status.

6. Theme 3 – Housing and Welfare Reform

NICEM submits that the impact of reductions in Housing Benefit will cause further hardship to migrant population. Traditionally, migrant workers are employed in low-skilled labour, even despite having relevant qualifications as often those qualifications are not recognised in Northern Ireland. Migrants may also have language barriers and reforms to the current system needs to be communicated effectively as well as ensuring that interpreters are provided during all assessments as well as at Tribunal stage, if necessary. Migrants may also experience increased travel, childcare and other costs due to the lack of family support structures living with them in Northern Ireland.

In its submission to the Ad Hoc Committee on Equality Requirements, Welfare Reform Bill, NICEM outlined that the Department had only partially completed its Equality Impact Assessment because the Department had failed to consider the adverse impact of welfare reform on BME communities¹². The Department stated in its EQIA that it does not hold any monitoring data on the rate of uptake of benefits by BME communities. NICEM would like to encourage the Department to seek alternative methods of seeking such data since welfare claimants must declare their nationality when applying for benefits.

NICEM recommends that the Department revisit its EQIA on the Welfare Reform Bill and look specifically at the impact of changes to housing benefit on all section 75 groups, including BME communities and EEA migrants.

7. Theme 4 – Driving regeneration and sustaining communities through housing

Element 1 of theme 4 states that the Department will take a “housing-led approach” to regenerate communities and create employment. It is submitted that this is quite a nebulous concept and therefore, NICEM suggests that a “rights-based approach” which would include the right to housing and would be underpinned by non-discrimination and equality.

Anti-social behaviour is mentioned specifically under the first element of this theme. NICEM would like to raise concerns that currently the motivation of such behaviour is not recorded. In terms of monitoring and addressing tensions within communities, it is necessary to record whether anti-social behaviour has been racially motivated and recorded as such.

¹² For further information see NICEM’s submission, available at: http://nicem.org.uk/uploads/publications/NICEM_Written_Submission_Ad_Hoc_Committee_Equality_Welfare_Reform_Dec12.pdf. See also NICEM’s submission to the Committee for Social Development (which includes details of case studies which highlight issues of accessibility of social security system), available at: http://nicem.org.uk/uploads/publications/NICEM_Submission_to_DSD_Welfare_Reform_Bill_2012-1.pdf.

NICEM recommends that the motivation behind anti-social behaviour is recorded and staff are trained to recognise racially motivated incidents.

Element 2 of the theme relates to shared communities which was specifically mentioned in the Department's audit of inequalities in relation to racial group as mentioned above. In NICEM's experience, the positive impact of the Shared Neighbourhood Programme has been limited in terms of supporting BME communities. The below case study illustrates the detrimental impact racist violence can have on families living in Northern Ireland.

After we were put out of our house in a racist arson attack, our landlord phoned the police and they said that there was no home for us to go to. It had been suggested by the police that my husband stay in the house and that they would find accommodation for the children and me. I felt traumatized and I didn't want to be separated from my husband. The police asked us to go to the police station the next day to get a letter from them to give to the Housing Executive. Our landlord vacuumed our car out and covered over the back window. We stayed in our car that night and we hardly slept. The next morning we went to the police station and after about an hour they gave us a letter to give to the Housing Executive.

We went straight from the Housing Executive to the police station and they said that they had a house for us but that it would not be ready for us until later that day. We then went to Craigavon Area hospital. [The children] were both struggling with their breathing and we were all coughing. Since everything happened [my daughter] has been very clingy and upset. We are all still very traumatised by what happened and my husband has not worked since. He is afraid to leave me alone in the house. My husband and I lived in England before living in Northern Ireland and we moved to Northern Ireland because we felt tensions rising towards Moslems in England after September 11th. All we want to do is settle somewhere and have some peace and quiet.¹³

NICEM recommends that the Shared Community Programme should include anti-racism training as this is essential in order to ensure the effective promotion of 'good neighbours'.

8. Theme 5 – Getting the structures right

In terms of taking forward the recommendations of the review of the NIHE, NICEM would like to ask the Department for clarification on whether both elements of the new Housing Executive will retain it's public authority status, as designated by the Equality Commission. If not, NICEM would strongly urge the Department to seek advice from the Equality Commission in that regard in order to ensure that section 75 is fully complied with.

¹³ NICEM, *The Next Stephen Lawrence? Racist Violence and Criminal Justice in Northern Ireland*, p.32, available at: http://nicem.org.uk/uploads/publications/the_next_Stephen_report.pdf.

In addition, in the experience of the Belfast Migrant Centre, it is essential that structures are designed to cater for all clients needs, for example ensuring that language barriers can be dealt with appropriately as a matter of course by providing interpreters. For example, in the context of homeless services, it is essential that all needs of clients are catered for, in particular the recognition that the experience of homelessness may have a detrimental impact on a person's mental health.

Lastly, it is essential that more regulations are put in place in the private rented sector, particularly in relation to the implementation of HMO regulations. In that regard, there needs to be effective complaint and dispute resolution mechanisms in place.

9. Further Information

For further information in relation to this consultation response please contact:

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