**THE NORTH WEST FORUM OF PEOPLE WITH DISABILITIES RESPONSE TO THE EQUALITY COMMISSION NI CONSULTATION – SECTION 75 STATUTORY EQUALITY AND GOOD RELATIONS DUTIES ACTING ON THE EVIDENCE OF PUBLIC AUTHORITY PRACTICES**

**JANUARY 2018**

**North West Forum of People with Disabilities**

1. The North West Forum of People with Disabilities is an user-led organisation covering all aspects of disability – physical, sensory, learning, mental ill health and hidden. The Forum is a human rights and cross community organisation dedicated to promoting the issues affecting disabled people within the framework of human rights.
2. The North West Forum of People with Disabilities welcomes this opportunity to respond to the Commission’s current Section 75 Statutory Equality and Good Relations Duties Acting on the Evidence of Public Authority Practices of the effectiveness of Section 75. The Forum’s view is informed by following:

* The Concluding Observations from the UNCRPD Committee
* Feedback from the North West Forum membership and client base
* The North West of People with Disabilities fully endorse the findings and conclusions reached in Equal to the Task? Research Report produced by the Equality Coalition November 2017

**3.0 General Observations**

The Forum believes strongly that one of the most significant failures of Section 75 has been the lack of enforcement of the Statutory Duty on Public Authorities by the Equality Commission for Northern Ireland – diluted guidance, lack of resources and lack genuine engagement.

Furthermore, it should be recognised that the Commissions guidance and advices have actively promoted a process driven exercise rather than a legislative instrument dedicated to delivering tangible outcomes for affected groups.

The Commission had a leadership role in this regard but since the introduction of Section 75 the only significant measure that the Commission has undertaken has been to reduce the quality and authority of the Revised Guidance (2010) under which they operate - ie rather than giving concrete guidance to public authorities in the form of ‘must’ imperatives to delivery of equality of opportunity these imperatives have been diluted to ‘should or may’. In a world of reduced budgets, cuts to services and austerity suggesting to public authorities that they ‘should’ address inequalities is like lighting a candle in a hurricane and expecting it to glow - it is pointless!

Nonetheless, it is not our intention to rehash any of the issues highlighted in the Equal to the Task report but focus exclusively on the number of additional matters in respect of the priorities of concern identified by disabled people.

**4.0 Consultation, Engagement and Resources**

The Forum would strongly welcome a greater commitment by the Commission to actively encourage public authorities to effectively engage with disabled people in the various consultation exercises associated with the development of public and social policy:-

* Too much emphasis is given to secondary data (often out of date) eg ECNI Statement of Key Inequalities 2007 rather than proactively gathering anecdotal evidence from disabled people – not simple generic evidence but taking account of individual impairments relevant to the policy procedure and practice being considered.
* Any consultation engagement framework should adequately reflect the importance of engaging directly with disabled people including paying all associated costs attributable to any consultation exercise where face to face contact is involved. Also consider optimal good practices measures such as consultation engagement fees and acknowledging our individual and collective expertise. Public authorities, including the Commission, spend public money on independent research - why not pay us for our involvement?
* The Forum is extremely concerned with the implied justification given within the consultation paper which offers an understanding that public authorities have to work within limited resources because of the culture of austerity brought about by the current economic crisis. However, we would argue that the impact of such austerity measures is likely to have a greater adverse impact on those who are already economically and socially marginalised more than ever before and that public authorities ‘must’ be guided to address equality of opportunity imperatives with even greater urgency. It ‘must’ be the business of the Commission to focus on guidance to public authorities on what they ‘must’ do rather than justify or explain the failure of public authorities to deliver genuine equality of opportunity outcome focussed measures.
* While the Forum acknowledges the traditional practice of engaging with key regional stakeholders in our sector it is important that as many voices of disabled people are heard in the development of public and social policy.
* This recommendation is consistent with the UN Convention on the Rights of Persons with Disabilities (UNCRPD) General Obligations Article 4(3).
* As highlighted in the Equality Coalition’s Equal to the Task? Research paper the enforcement of Section 75 remains a process driven exercise rather than outcome focussed. The Forum is of the view that this challenge is as big today as it was, when almost a decade ago, the Commission gave assurances that this fundamental issue would be addressed.
* In our view there are too many policies, practices and procedures which have been ignored by public authorities with their obligation to screen and equality impact assess potential adverse outcomes. Example:-
  + The options paper presented by the Department of Health (Northern Ireland) on the closure of the Independent Living Fund failed to consider all of the alternative options available to it and further failed to take account of consultee recommendations that the fund be retained allowing new applicants to access the fund as and when places became available. We would suggest that this was a failure resulting from their screening exercise of the proposed policy and lack of a consideration of an equality impact assessment.
  + There was also similar issue with the recent consultation exercise on Personal Independence Payment in regard to the mobility component qualification threshold on disabled people in which consultees were ignored when the government extended the qualification threshold from 50 metres to 20 metres.
  + The Commission is no doubt mindful that the examples above serve to undermine the object and purpose of Section 75 and its relevance to the equality agenda. This adverse impact and conflicting practice against our human rights should have been challenged by the Commission within every public medium at its disposable to highlight the importance of adhering to Section 75 and challenging inhuman social doctrine.
  + The Forum has highlighted before on several occasions to the Commission the need to examine the language and the narrative used within domestic equality legislation challenging, among other issues, the chapter on the justification and failure to make reasonable adjustments set out in the Code of Practice associated with the DDA 1995 (as amended). The issue of language and the narrative associated with Section 75 has become increasingly irrelevant because of the understanding (or lack thereof) that disabled people have of its value in delivering for them equality of opportunity outcomes in the design and delivery of public services.
  + Section 75 like most legislative frameworks has become the hostage of an academic, liberal, elite agenda that does little to engage the minds of those it is trying to promote equality of opportunity for. Why for example are we using Section 75 as the title of a public sector equality duty when we consider most people would have no understanding of its potential value under the auspices of a ‘number’. We would remind the Commission that there is much scope here to review the language used in the Guidance on Section 75 without changing significantly the obligations public authorities have under the equality of opportunity duty.

**5.0** The Forum would like to take this opportunity to remind the Commission of theirresponsibilities under s49a and 49b of the DDA (Disability Duties 2006, as amended) as we strongly believe that this is the very poor relative of the two public sector equality duties.

The Forum is aware that an independent evaluation of the Disability Duties and their effectiveness was published in 2009 to what extent have:-

* public authorities been guided to implement the recommendations in that report.
* have the Commission followed the recommendations in respect of its role as the duties enforcer.
* have there been any improvements in regard to general positive outcomes for disabled people.
* When does the Commission plan to consider an effectiveness review in line with its concerns with Section 75.

**6.0** The North West Forum would like to acknowledge that the issues raised within this consultation exercise are both complex and require genuine consideration. We do not expect an overnight revolution in regard to an effective Section 75 framework however we do expect the key areas identified above to be reflected adequately in any new Guidance associated with Section 75. Additionally and just as important we require tangible evidence that our concerns, at a minimum, are reflected in the advices given to public authorities.