

Draft Statutory Guidance for the Operation of Community Planning, Local Government Act (Northern Ireland) 2014

1.1. The Participation and the Practice of Rights (PPR) organisation provides tools and support to marginalised groups actively asserting their right to participate in economic and social decisions which affect their lives. PPR currently works to support a range of groups affected by issues with, for example, social housing, mental health service delivery and long term unemployment and welfare support. More recently this work has expanded further to support groups affected by difficulties in accessing education as well as those affected by domestic violence.

1.2. PPR's main interest in this consultation is to ensure that the statutory guidance issued has the effect of ensuring the meaningful involvement of groups affected by planning proposals, especially those experiencing inequality and thereby realising improved outcomes for all.

The Draft Statutory Guidance for the Operation of Community Planning

2.1. The Local Government Act (Northern Ireland) 2014 makes provision for the new duty of community planning on councils and their community planning partners. The purpose of the guidance being consulted upon is to provide councils and their community planning partners with further detail on the implementation of the legislation and to explain the terms of the new duty.

2.2 PPR is contributing to the Department's consultation to raise concerns primarily around the issues of equality, participation and accountability.

Equality

3.1. The statutory equality duties to have due regard to the promotion of equality of opportunity (Section 75(1) of the Northern Ireland Act 1998) and to have regard to the promotion of good relations (Section 75(2)), are noted amongst the 'key issues to be addressed' by the Local Government Act (NI) 2014. Despite this, however, the draft guidance states in relation to the duties and the screening exercise carried out by the Department that;

"...the Department carried out screening for equality impact and is satisfied that the proposed legislation will not lead to discriminatory or negative differential impact on any of the section 75 groups" (p.7)

3.2. This implies an incorrect interpretation of the Section 75 duties. As the current Equality Commission guidance clearly identifies, the statutory duties require more than the avoidance of discrimination, rather they extend a positive obligation on the Department (and councils) to show due regard to the promotion of equality and regard to the promotion of good relations. Equality Commission guidance issued in 2010 states;

“The Section 75 statutory duties require more than the avoidance of discrimination. Public authorities should actively seek ways to encourage greater equality of opportunity and good relations through their policy development.”¹

3.3. PPR note that in line with this misinterpretation of the statutory duties, the Department has conducted an equality screening exercise² and ‘screened out’ the draft guidance stating that no negative impact can be identified as *“all Section 75 groups will benefit from this policy”*. However no supporting evidence has been offered to substantiate this statement, nor is there recognition of the different needs and experiences within these groups and thus the differing measures required to positively promote equality for these groups.

3.4. PPR recommends that the Department revisit this screening exercise and as necessary conduct a full Equality Impact Assessment.

3.5. PPR also note that the guidance contains further ambiguity regarding the interaction of the Section 75 duties in community planning. The guidance states;

*“Equality of opportunity and social inclusion should be embedded into all stages of the process along with the desirability of promoting good relations. **The partners should consider how the promotion of good relations can be applied to all section 75 groups as community planning should reflect and respect diversity in a particular area.**[original emphasis]”*

This language differs from the text of the legislation which states that *“the reference to improving the social well-being of the district includes promoting equality of opportunity in accordance with section 75 of the Northern Ireland Act 1998 and, without prejudice to this, having regard to the desirability of promoting good relations.”³*

PPR recommend that the Department ensure the guidance is clear in the obligations required in Section 75(1) and Section 75 (2) of the Northern Ireland Act 1998 and that any conflation of the duties is expressly avoided.

3.6. PPR view meaningful assessment of the needs and experiences of section 75 groups as not only fundamental to the screening of equality impacts and thus the implementation of the statutory duties, but also critical to the delivery of the key objectives of local government reform. The objective of local government reform, of which this guidance is a part of, is referred to in this guidance as;

“bringing decision making closer to communities and citizens, creating a stronger and more effective local democracy, and improving service delivery by influencing place shaping and facilitating greater integration.” (p.2)

¹ (2010) Equality Commission NI, *“Section 75 of the Northern Ireland Act 1998, A Guide for Public Authorities”*, p.9

² Equality Screening document available at http://www.doeni.gov.uk/doe_section_75_equality_screening_form_-_draft_community_planning_statutory_guidance.pdf

³ Section 66 3(a) with reference to Section 66 (2)(a), *Local Government Act (NI) 2014*

3.7. PPR also wish to emphasise the importance of the proposed baseline exercise intended to be carried out at the outset of the community planning process and which seeks to provide “*a solid reliable evidence base that community planning partners and the council can agree upon will assist with reaching consensus on the vision and outcomes for the area*”.(p19)

3.8. It is essential that an audit of existing inequalities is meaningfully integrated into this baseline exercise and that the planning process is then judged against whether the outcomes realised have made any meaningful impact targeting inequalities in line with the statutory duty. PPR is aware that many Councils will already have prepared and submitted to the Equality Commission an audit of inequalities as part of their action plan and Equality Scheme. Councils should ensure that all available data, from NISRA and elsewhere, including data pertaining to inequalities such as those highlighted at the United Nations level which include religious inequality in the provision of social housing in north Belfast, are included.⁴

3.9. PPR also note that despite the explicit reference in the legislation to the aims of community planning including “*tackling poverty, social exclusion and patterns of deprivation*” the St Andrews Agreement obligation to target objective need appears confined in the guidance to the collection of information regarding a baseline. The Department should ensure that both obligations to target objective need and tackle inequality are at the heart of the community planning process and that all decision making is based upon this obligation. The guidance should reflect this position in order to ensure real outcomes for those in the most deprived areas in Northern Ireland.

Participation

4.1. PPR acknowledge the statutory requirement on councils that communities are involved in the planning process and the stated intention that the community planning process be inclusive of Section 75 groups “*who should have opportunity to participate at an early stage*” (p.16) and that the guidance makes clear the obligation to ensure practical considerations such as venue accessibility, timing etc are considered (p.17). Further, PPR recognise the recommendation that NICCY’s proposal for a model of engagement for children and young people be included. However, significant concerns about community involvement and participation remain,

4.2. For example, PPR are concerned that the guidance contains information which could have the effect of making it more difficult for meaningful community involvement in planning to be realised.

4.3. Despite recognising that the community and voluntary sector have particular skills in reaching ‘hard to reach’ groups, the Department should take care to ensure that the responsibility for involving communities is not inadvertently transferred to the community and voluntary sector. The statutory responsibility for involving communities lies with the councils, not the community and voluntary sector.

⁴ Please see <http://pprproject.org/un-rapporteur-report-calls-for-north-belfast-housing-inequality-to-be-tackled>

4.4. The legislation expressly provides that representatives of relevant voluntary bodies (Article 73 (2)(c)) “*whose activities directly or indirectly benefit the whole or any part of the district*” (Article 73(3)) are included within the definition of persons to be included, in addition to other persons including those who live in the district. As such it is not sufficient for councils to simply involve representatives of voluntary bodies without further seeking to involve the communities themselves. Hard to reach groups are by definition hard to reach-councils must be proactive in involving these communities, particularly given they are often not involved in community and voluntary organisations.

4.5. The Department should also give thought to how once communities have become involved in the community planning process, what additional steps can be taken to ensure that their participation is meaningful and not tokenistic. PPR’s work with vulnerable groups in participation processes to claim their rights was recently cited as an example of good practice by the United Nations Office of the High Commissioner for Human Rights⁵. The work of the Belfast Mental Health Rights Group in using human rights standards to set reasonable and practical standards around their participation in public sector decision making regarding mental health could be a useful starting point for the Department in encouraging councils to make real communities right to participate in planning.⁶

4.6. Similarly, meaningful participation requires more than just involvement in a predetermined process, but an opportunity to set the agenda. If the community planning process is to serve as a tool to make services responsive to community needs, communities must be included in the setting of the agenda. PPR notes the statement below and would suggest that Councils also consider whether capacity building is required at both Community and Council level in order to create the right conditions for this to occur:

“However it is important to be realistic and honest with the community in that the community plan is not a tool to address all of the community’s local issues. This will assist in keeping expectations about the process realistic and provides ongoing capacity building at the community level”

4.7. PPR note that the guidance advises Community Planning Partnerships prepare an engagement strategy and that “*existing mechanisms, developed by the council and its community planning partners that have already been proved to be effective can be a starting point*” (p.17). However, councils should take care to ensure that the new community planning process does not simply replicate the existing models of consultation which involve only a small part of the wider community. It would preferential for councils to examine which sections of the community do not typically participate in the current structures and following this audit, work with these communities to make constructive efforts to remove any barriers to their involvement, especially for communities perceived as hard to reach and who already experience inequalities. PPR also encourage the Department to take cognisance of the Community Planning Manifesto developed by Community Places which calls for the

⁵ For further, please see

<http://www.ohchr.org/EN/NewsEvents/Pages/IndicatorsestablishmentofHR.aspx>

⁶ Further information on the BMHRG’s participation indicators is available here

<http://pprproject.org/sites/default/files/Final%20Participation%20Progress%20Report%20May%202012%20compressed.pdf>

guidance to include “*proactive approaches to engaging and reaching out to the ‘harder to reach’ e.g. low income, LGBT or rural communities*”.⁷

4.6. Additionally, PPR note the reference to community needs and aspirations in the stated aim of community engagement which is; “*to improve the planning and delivery of services by making them more responsive to the needs and aspirations of communities*”. The Department should also consider the importance of explicitly referencing rights here.

Accountability

5.1. With the transfer of powers and responsibility it is imperative that there are clear lines of accountability. This is acknowledged to an extent in the guidance but with the statutory duty on councils to involve communities, the guidance should include clear and unequivocal detail on appropriate systems of redress when community involvement does not happen as the legislation intended. At a global level, this has been recognised as an important issue by the United Nations Special Rapporteur on the Right to Adequate Housing Leilani Farha in her most recent report to the UN General Assembly. Ms Farha’s report states;

*“Transfers of responsibility for housing or other programmes from one level of government to another should be accompanied by a clarification of concomitant human rights obligations including requirements of monitoring and accountability.” (VIII, 76e)*⁸

5.2. Despite the draft guidance stating that the Community Planning Partnership “*should operate in an open, democratic and accountable manner*” (p.16) PPR are concerned that there is no clear mechanism by which members of the community can seek redress if they feel they have not been involved. The draft guidance further states that;

“Transparency in decision making will be assisted by feedback from the partnership after consultations, reassuring the community that they have been listened to and their views taken into account.” (p.16)

5.3. PPR’s experience working with communities who do not feel involved in decisions made about their lives has provided evidence that for many, their participation in traditional consultative forums is not meaningful. Whilst transparency in decision making is critical, communities require more than ‘reassurance’ that they ‘have been listened to and their views taken into account’. Rather, communities require evidence that their participation has impacted on the decision making process to the extent that there has been a significant change in outcomes which leads to improvements in their lives. When this is not the case, communities require appropriate and effective mechanisms to challenge this decision making. PPR recommend that such information be included in the guidance so that it can be available to communities or if no such mechanism exists, consideration is given to ones development.

5.4. Similarly, the guidance does not reference any sanction for councils who do not carry out their statutory duty to involve communities. From the text of the 2014 Act it is clear that

⁷ (2013) Community Places, Community Planning Manifesto, available at

<http://www.communityplaces.info/sites/default/files/CommunityPlanningManifesto-Dec2013.pdf>

⁸ (2014) UN General Assembly, “*Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context*” A/HRC/28/62

the Department (and indeed in some cases any Northern Ireland Department) has specific powers of direction under Article 100 to intervene in areas where it is deemed that the council is failing in its duties. If Departments have these specific powers in relation to failure to involve communities, this should be included in the guidance along with information as to if/how communities can make requests for these powers to be utilised.

5.5. Accountability mechanisms are also important in the monitoring of outcomes. Part 12 of the Local Government Act (NI) 2014 requires the council to make arrangements to secure continuous improvement in carrying out its functions. The guidance recognises the clear link between the community planning process and council's performance improvement plan in that the intended outcome of the former is the realisation of better outcomes for citizens accessing services.

5.6. Despite this, the information provided in the guidance on the improvement plan lacks specificity. For example, the requirement that long term outcomes (10-15 years) be measured against the baseline evidence, will necessitate that key milestones be identified in the short and medium term so that annual/ bi-annual reports can demonstrate that councils are achieving what they set out to. The Department should consider strengthening this guidance to provide advice as to the setting of these milestones are SMART targets.

5.7. Under international human rights law, specific responsibilities on states to ensure continuous improvement in the realisation of socio-economic rights (referred to as 'progressive realisation') includes an obligation on states to demonstrate that this is achieved by taking steps which are "*deliberate concrete and targeted*"⁹. The Department should consider adopting a similar rights based framework in this regard.

5.8. Furthermore, the Department should consider making it a requirement that council improvement plans specifically target existing inequalities identified in the evidence baseline and ensure that as well as using government statistics e.g. NISRA statistics on deprivation, those communities impacted are actually involved in the monitoring for performance improvement.

5.9. Lastly, PPR note that the 2014 Act also includes provision for any Northern Ireland Department to intervene in council's actions when a proposed action is incompatible with international obligations or when an action capable of being taken is required to give effect to international obligations. This power, similar to the power designated to the Secretary of State for Northern Ireland under Section 26 of the Northern Ireland Act 1998, is not noted in the guidance. PPR request that this power, along with any additional information about its use, be included in the guidance to ensure communities have full information about all the accountability mechanisms available. PPR note this power has particular relevance given its inclusion of international human rights obligations such as those pertaining to economic and social rights such as housing, health etc which will be impacted by the transfer of powers to councils.

For further information on this response, please contact Kate Ward, Policy and Research Support Officer by email on kate@pprproject.org

⁹ (1990) United Nations Committee on Economic, Social and Cultural Rights, General Comment 3, *The Nature of the State's obligations*, para 2.

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