

Participation and the Practice of Rights (PPR) response to NIHE Consultation on the Equality Impact Assessment for Proposed Changes to the Housing Selection Scheme

The Participation and the Practice of Rights (PPR) organisation provide tools and support to marginalised groups actively asserting their right to participate in economic and social decisions which affect their lives. Since 2006 we have worked to support social housing residents in the North Belfast area, for whom, given the high levels of need and increasing inequality, changes in housing policy are felt most acutely. It is on the basis of this work that we are contributing to this consultation.

At the outset we wish to note the concerns we have raised previously in relation to this issue, both in previous consultations on the Housing Selection Scheme in July 2011 and most recently in January 2013. We would further note the issues we raised in relation to wider housing policy relevant to this issue, for example to the Department for Social Development's 'Facing the Future' Housing Strategy document in December 2012. It is disappointing that despite this engagement through various consultation processes, little change to the NIHE (and DSD) plans has occurred. Aspirations for effective engagement are frustrated when views and evidence already supplied is not engaged with meaningfully. Accordingly, PPR wish to repeat previous concerns already recorded by the NIHE of relevance to the current consultation.

Prior to commenting on the Equality Impact Assessment process as outlined in this document, PPR wish to register the following concerns;

- (1) Nowhere in the stated aims of the policy changes to the Housing Selection Scheme (p.6-7) is there an acknowledgment of the need for equality of opportunity to be better promoted amongst the named groups, nor is there a reference (other than an acknowledgment that this is important to consultees) to ensuring that objective need is better targeted. This is despite the legislative obligation that the NIHE is under in both these regards. Rather the stated aim is to;

*"...ensure the most effective operation of the Housing Selection Scheme in light of proposed changes to Housing Benefit regulations as part of the Government welfare reform programme."*¹

PPR also wish to register concern around the inclusion of ambiguous phrasing such as the following;

*"Furthermore, our policies should support, as far as possible, the creation of sustainable tenancies and balanced communities.."*²

'Balanced communities' has significant religious/political undertones in a Northern Ireland context and is especially relevant to the Good Relations agenda pursued by the Northern Ireland Executive. As such, it should be clearly understood by the NIHE that their policies are subject to the obligation to pay due regard to the promotion of equality and then, 'without prejudice' to this obligation, there is an additional obligation to pay

¹ page 6

² Page 6

regard to the promotion of good relations as stated in Section 75 of the Northern Ireland Act 1998;

“(1) A public authority shall in carrying out its functions relating to Northern Ireland have due regard to the need to promote equality of opportunity-
(a) between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
(b) between men and women generally;
(c) between persons with a disability and persons without; and
(d) between persons with dependants and persons without.

(2) Without prejudice to its obligations under subsection (1), a public authority shall in carrying out its functions relating to Northern Ireland have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.”³

It is inappropriate therefore to emphasise the lesser duty contained within Section 75(2) over the primary duty in Section 75(1). **PPR recommend this be explicitly stated in the revised policy which will follow this EQIA and the removal of any potentially ambiguous phrasing.**

- (2) PPR note a worrying misunderstanding by the NIHE of what the requirement to consider relevant data regarding the impact of the proposals on Section 75 named groups entails. The document contains 7 data tables referred to as “Equality Monitoring Tables”. PPR are concerned in the first instance that the data does not cover all Section 75 groups, and in particular with the failure to reference age and disability where this policy will have significant impacts. Moreover these tables are included at the end of the document and not sufficiently engaged with throughout in any meaningful way to assess impact.

It is deeply concerning that the following statement has also been included in this document since it identifies a failure by the NIHE to appropriately identify opportunities to engage with the effected groups. The document states;

“Where we cannot rely on specific data, the EQIA team has considered the assessment of impacts in terms of their knowledge and experience of the Waiting list and existing tenants.. We have used this experience and our understanding of equality principles to make comments on the potential impacts of each change to the Housing Selection Scheme in relation to the Section 75 groups.”

PPR would in the first instance refer the NIHE to Equality Commission Guidance which states that Equality Impact Assessments are intended to

“...increase participation and inclusion, to change the culture of public decision making, and to place a more proactive approach to the promotion of equality at the heart of public policy”⁴

This is particularly important in terms of vulnerable and marginalised groups. PPR have, since 2006, worked directly to support such groups in aligning their knowledge and

³ Section 75 of the Northern Ireland Act 1998

⁴ ECNI (2005) Practical Guidance on Equality Impact Assessments for Public Authorities, p.3

experience with international human rights law to create change, work which was recently highlighted by the United Nations as international best practice⁵. In this regard, the expertise in terms of experience of the waiting list resides with these people, and not with Housing Executive staff since it is with these people that lived experience of the situation resides. Residents in North Belfast, for example have consistently articulated their experience of the waiting list⁶ and there is an obligation on the NIHE in their assessment of available data to fill gaps by directly engaging with these residents and others and not to merely rely on the experience of staff.

With regards to many of the more substantive aspects of the Equality Impact Assessment, PPR wish to make the following points regarding the assessment of proposals.

Minimum Bedroom Requirements for allocation – age criteria for children sharing bedrooms

In our response to the consultation which preceded this EQIA, PPR identified that young children will be considerably disadvantaged by this proposal which will raise the age up to which children of different genders will be expected to share a room, from 7 years old to ten years old. In this submission we highlighted the NIHE's obligations not least under Section 75(1) in respect of the promotion of equality as regards 'age'; but also under international human rights law, specifically the United Nations Convention on the Rights of the Child and national legislation such as the Children (NI) Order 1995. It is the direction of the latter two instruments especially that the best interests of the child must be of paramount consideration in all decision making. It is apparent from the current EQIA that despite a recognition that evidence presented in the previous consultation, from PPR and other consultees that this proposal would disadvantage children particularly in terms of their differing stages of development, the NIHE position has been unaltered. The document states;

*"We recognise concerns already expressed through consultation about the appropriateness of two children of different gender sharing until the age of 10 and the difficulty of applying a threshold, given that age does not always reflect the stage of development of a child. However the new age thresholds are defined in UK government policy, aimed at maximising the occupancy of limited social housing."*⁷

Elsewhere in the document it states that *"this change would bring our thresholds in line with official government standards."*⁸ It is of serious concern that policy objectives are being aligned with a desire to match UK government policies rather than to meet international human rights law, national law with respect to the interests of the child and crucially the national legal obligation to promote equality of opportunity with regards age.

The document states that;

⁵ Please see <http://www.ohchr.org/EN/NewsEvents/Pages/IndicatoressentialtoolsinrealizationofHR.aspx>

⁶ Please see for example newspaper clippings of the stories of young women in North Belfast on the social housing waiting list here <http://www.pprproject.org/content/housing-authorities-and-dsd-deny-problems-ground>

⁷ p.11

⁸ p.10

“..the Housing Selection Scheme will retain sufficient flexibility to take account of specific households circumstances when determining minimum bedroom requirements.”⁹

however, this is insufficient.

The experience of PPR has been that one way in which the NIHE exercise such flexibility is through managerial discretion in the case of housing allocation. Our work with the Seven Towers Residents Group has shown that this is often exercised in an inconsistent manner.. It is our view that this could leave any families affected by this policy in a situation where the procedure is unclear and could lead to an uneven and unaccountable process of decision making in the exercise of such ‘flexibility’.

PPR has previously requested that the NIHE make available the evidence base and data upon which the current policy changes were being considered, yet this was never supplied. In light of this it is especially concerning that in the assessment of impact section of the EQIA, the NIHE infer that they do not hold data relevant to this. The document states;

“Of the households with children on the Waiting list, we cannot readily determine how many currently have children aged 8 or 9 and whether these children would still be affected by the time that they would be offered a property.”¹⁰

It is difficult to appreciate how the NIHE are not able to access this data since the current housing selection scheme requires an assessment of the applicant and their family’s needs which would entail an assessment of relative age of children etc. Furthermore, the lack of available data does not mean that there is no impact.

In light of this, PPR would urge the NIHE to revise their conclusion that they;

“...do not anticipate that particular section 75 sub-groups will be significantly adversely affected.”¹¹

and instead conduct a meaningful assessment of potential adverse impact by an assessment of relevant data or in consultation with families on the waiting list since the section 75 groups most impacted in this regard are those with dependents and children.

This section focuses on the potential impact on those on the waiting list, but does not consider the potential impacts on families who have already been allocated a larger property based on the age and gender of their children. This will be especially relevant to families with children of differing genders who met the minimum threshold of 7 years old previously but yet will not meet the revised higher threshold of ten years old with the change in policy. It must be made clear in the revised policy whether these families will face an under occupancy charge. If this is the case, then the NIHE should address the fact that there has been no meaningful assessment of impact on these families through this EQIA?

It is particularly in light of these comments that the final assessment of this section is of grave concern. The document states;

⁹ p.11

¹⁰ p.11

¹¹ p.12

“Any differential impacts are necessary to fulfil the objectives of this policy change and are not sufficiently adverse to warrant mitigating actions.”¹²

PPR would for the reasons identified above, dispute that the potential impacts here are “not sufficiently adverse” and would highlight to the NIHE that the purpose of conducting an EQIA is to identify based on evidence inequality and then take action to positively improve the situation; not to identify impact and then dismiss it in favour of other policy aims.

Children with disabilities

In the previous consultation, PPR highlighted what it regarded as an especially concerning proposal relevant to the proposals regarding minimum age. The previous proposal stated that;

“Disabled children who because of their age would be expected to share with siblings, will not be entitled to a separate bedroom.”¹³

In our response PPR highlighted the fact that disabled children are not a homogenous group; rather there are often differing and complex needs which ought to be given individual consideration. For example, it may very well be the case that in a family with two children under the age of ten, and of the same gender, that one child may have a disability which requires a special level of support. For this support to be provided without disrupting the sleep and/or development of their sibling, separate bedrooms may be necessary. Furthermore, the Children (NI) Order 1995 is very clear in its articulation that disabled children should be viewed as children in the first instance, children with particular needs which must be cared for.

It is on this basis that PPR view this proposal to potentially be incompatible with equality standards which require due regard to be given to people of different disability status, and as such particularly relevant to any Equality Impact Assessment. It is therefore not clear why this proposal is not considered or even mentioned in this document. **PPR request, in the interest of transparency, that the NIHE clarify if this proposal has been dropped from their plans or if the NIHE still plan to progress it. If the latter is the case, PPR call on the NIHE to revise this EQIA and include this proposal for assessment.**

Minimum bedroom requirements for allocations – Parents with access to children who do not permanently reside with them

In our previous consultation response, PPR highlighted the contradiction between the NIHE’s allocation policy, which would make provision for the type of accommodation offered to a parent in these circumstances, and the current plans to charge an under occupancy fee for the same. Furthermore, PPR identified that the only proposed action by the NIHE to mitigate against this would be to make the tenant aware that they would face this charge. PPR identified that this would lead to parents on housing benefit whose children do not permanently reside with them being placed in an impossible situation.

¹² p.12

¹³ NIHE Consultation on changes to the Housing Selection Scheme (January 2013) p.11

It is therefore disappointing that the NIHE intend to pursue these proposals with no further mitigation. The document states;

“It is proposed that we continue with the policy of allocating an additional bedroom when determining minimum bedroom requirements. Again, when properties in excess of bedroom requirements are offered, tenants would be advised that if they are claiming or intend to claim Housing Benefit, it is their responsibility to meet any shortfall between Housing Benefit and rent that is the result of under-occupying the property.”¹⁴

It is especially concerning that the NIHE do not appear to understand the experience of parents on low incomes in receipt of housing benefit whose children do not permanently reside with them. Indeed the NIHE analysis here infers that people in this situation will be able to access the resources to meet this new cost. This is very far removed from the reality for many. The document states;

“We feel that it is better still to give a parent the option to take an extra bedroom but make them aware that Housing Benefit will not cover all of the rent, rather than to take away the option of the bedroom altogether.”¹⁵

In the assessment of impact section of the EQIA for this proposal it is frustrating to observe that once again the NIHE maintain that they do not have available data to consider. The document states;

“This policy relates specifically to persons with dependent children who are on the waiting list or are prospective applicants for social housing. However, we cannot determine the number/further breakdown of families on the Waiting List whose Minimum Bedroom Requirements have been determined on the basis of needing a bedroom for a child who does not permanently reside with them.”¹⁶

The document does suggest that;

“Anecdotally...there would be equality issues relating to the effect on men compared to women, as men are less likely to be the resident parent following household breakdown.”¹⁷

Again this is insufficient. Since the NIHE make allocation decisions based upon the fact that applicants have children who do not presently reside with them then it is reasonable to expect information on the gender breakdown of these individuals is recorded. This is especially true since the Section 75 obligations require the NIHE to have due regard to the promotion of equality (across grounds such as age, marital status, gender and with/without dependents) across all of their functions, of which the allocation of homes is one.

This section concludes by abdicating responsibility for putting mitigating measures in place by stating;

¹⁴ p.14

¹⁵ p.15

¹⁶ p.15

¹⁷ p.15

“Potential financial impacts on persons with dependents are arising from the change to the Housing Benefit Policy, not our housing policy.”¹⁸

. The purpose of this EQIA should be to assess the current policy in light of the proposed changes to Housing Benefit, identify impact and then take action to promote equality. Furthermore, this section has identified potential adverse impact (although not sufficiently analysed the data) but failed then to act to clarify or mitigate the situation, in favour of transferring responsibility to the person who will experience disadvantage.

Minimum bedroom requirements for allocations – flexibility to make allocations one bedroom in excess of minimum requirements

PPR, in a previous consultation response on this issue highlighted issues around accountability and the transparency of decision making in terms of this ‘flexibility’. We identified an additional concern that this could also lead to a system whereby allocations were not based on an evidence based objective assessment of greatest need. PPR repeat these concerns.

Furthermore, the proposal identifies that flexibility should be retained to allocate properties which are one bedroom in excess of need for ‘*good housing management reasons*’, such as;

“Allocations where a property has special features/adaptations which would particularly meet the needs of the applicant or their household.”¹⁹

The NIHE acknowledge that this could result *“in persons with disabilities being under-occupied”²⁰*. The NIHE go on to state that the principle of the policy is to give *“the flexibility to help applicants by allocating properties which most meet their needs”²¹*.

Despite this increasing flexibility for housing management it could potentially lead to a situation whereby an applicant is awarded a larger than necessary home because a smaller home which is for example, wheelchair accessible and thus appropriate to the applicants needs, is not available. This applicant will then be liable for under occupancy charge. The responsibility is on the NIHE to manage housing stock and run the Social Housing Development Programme to meet needs, and in the event where appropriately sized and adaptable housing stock is not available, the applicant should not be required to face a financial burden because of a failure to appropriately discharge this responsibility. The appropriate course of action in this regard would be an assessment of the relevant information and/or data such as the current and future profile of housing stock which is, for example, wheelchair accessible and the current and projected needs of wheelchair users to identify the size of the potential impact this will have. The intention to carry out any such assessment is absent from this EQIA.

PPR view this as a significant failure to discharge the NIHE’s obligations in relation to equality for people with disabilities and recommend an urgent assessment of the relevant data to assess impact and develop alternative measures to promote equality in this regard. PPR are further concerned about this issue since the Department for Social Development’s

¹⁸ p.14

¹⁹ p.17

²⁰ p.18

²¹ p.18

'Facing the Future' Housing Strategy consultation document has already acknowledged that despite an increasing need for wheelchair adaptable homes, sufficient funding will not be available. Facing the Future states;

*"Given financial constraints, it is unlikely that funding will be available to meet all future needs by creating additional adaptations and wheelchair standard accommodation."*²²

In light of this acknowledgment that less adaptable homes will be available, it is ever more important that housing allocations policy mitigate against this rather than further entrench inequalities.

It is of significant concern, also, that of the seven tables of "equality monitoring data" included with this report, no data is presented in relation to disability.

Overcrowding rules

The Housing Selection Scheme contains rules which determine whether a household is classified as being overcrowded. The proposal to change the age up to which children are expected to share bedrooms will have an impact in the assessments of overcrowding. The document states, with regards an assessment of impact that

*"This proposed change is purely for consistency with the sharing ages for Minimum Bedroom Requirements already discussed and there will be no significant impact in terms of equality."*²³

It is concerning that the NIHE do not recognise the impact here on children aged 8 and 9 and families with children aged 8 and 9 who may previously have qualified for extra points because of overcrowding will now not meet this requirement. **Rather declaring that no significant impact will occur, PPR request that the NIHE assess the relevant data and ascertain the extent to which the aligning of the overcrowding rules to the minimum age requirements will serve to exacerbate any inequality created by the change to the latter.**

In light of the concerns identified above, PPR call for the current EQIA to be reviewed to allow for the inclusion of a stronger assessment of impact from relevant data. Where no data exists, PPR request that the NIHE are mindful of their obligations to consult with relevant affected groups rather than record that there is no impact. PPR strongly call for any changes to the Housing Selection Scheme to be made in line with the NIHE's obligation to target and allocate homes on the basis of objective need.

28th June 2013

²² DSD (2012) Facing the Future; A Housing Strategy for Northern Ireland 2012-2017 p.27

²³ p.19