

An account of South Dublin County Council's Equality Review and Action Plan, in respect of non-Irish nationals' (EEA nationals and non-EEA nationals) access to social housing services within SDCC's functional area



Published by the Irish Human Rights and Equality Commission.

Copyright © Irish Human Rights and Equality Commission 2022

The Irish Human Rights and Equality Commission was established under statute on 1 November 2014 to protect and promote human rights and equality in Ireland, to promote a culture of respect for human rights, equality and intercultural understanding, to promote understanding and awareness of the importance of human rights and equality, and to work towards the elimination of human rights abuses and discrimination.

An account of South Dublin
County Council's Equality
Review and Action Plan, in
respect of non-Irish
nationals' (EEA nationals and
non-EEA nationals) access to
social housing services within
SDCC's functional area



Contents

List of acronyms	2
1. Introduction	3
2. Outline Framework of the South Dublin County Council Equality Review	4
3. Summary of the South Dublin County Council Equality Review	6
4. Outline Framework of the South Dublin County Council Equality Action Plan	8
5. Summary of the South Dublin County Council Equality Action Plan	10
6. Conclusion	12
7. SDCC Update July 2021	14

List of acronyms

DHPLG Department of Housing, Planning & Local Government

DRHE Dublin Region Homeless Executive

EEA European Economic Area

ESA Equal Status Acts 2000-2018

HAP Housing Assistance Payment

IHREC Irish Human Rights and Equality Commission (the "Commission")

SDCC South Dublin County Council

1. Introduction

The Commission invited South Dublin County Council under s. 32(1) of the IHREC Act 2014 to carry out an Equality Review and Equality Action Plan to ensure that non-Irish nationals (EEA and non-EEA nationals) are not treated less favourably on grounds of race in respect of access to social housing services within its functional area and to promote the equality of opportunity for EEA and non-EEA nationals in respect of access to social housing, as well as to homeless services within SDCC's functional area.

SDCC submitted the Equality Review on the 26th September 2018 and the Equality Action Plan on the 27th June 2019.

This account provides a summary description of that Equality Review and Equality Action Plan undertaken by SDCC.

2. Outline Framework of the South Dublin County Council Equality Review

The Commission asked that, in conducting the Equality Review, SDCC would carry out the following:

- An audit of the level of equality of opportunity regarding s.10 of the Housing Act 1988¹ and s.19 of the Housing (Miscellaneous Provisions) Act 2009² of the 2009 Act services provided to non-Irish nationals (EEA and non-EEA) in SDCC's functional area having regard to SDCC's obligations under the ESA; and
- An examination of the practices of, and procedures in, and other relevant factors material to, the provision of accommodation services to non-Irish nationals (EEA and non-EEA) to determine whether those practices, procedures or other relevant factors are conducive to the promotion of equality of opportunity in the provision of accommodation services to non-Irish nationals (EEA and non-EEA) having regard to SDCC's obligations under the ESA.

Specifically, the Commission asked that SDCC address and report on the following:

- (a) The stated practice of referring non-Irish nationals, or particular groups of non-Irish nationals to the New Communities Unit of the Department of Social Protection as it appeared on the website of the DRHE in April 2018. The Commission stated that it was unclear why non-Irish nationals (either EEA, non-EEA or both) would be referred to another statutory agency, when it is the responsibility of SDCC to provide both section 10 and section 19 services;
- (b) The reported practice that, in addition to the statutory criteria, SDCC also required applicants to be residing at a permanent address in its administrative area for a minimum of one year prior to becoming homeless in order to qualify for

1 S.10 provides for additional provisions regarding accommodation for homeless persons.

2 S.19 provides for the provision of social housing support.

accommodation services. Again, the Commission stated that there is no apparent legislative basis for this requirement. It is not included in the allocation scheme;

- (c) The level and extent of training provided to all relevant staff in relation to the ESA, and the relevant aspects of EU law (with regard to EEA members and their families);
- (d) Any other areas (of either best practice, or improvements) so identified when carrying out this review; and
- (e) Any recommendations and/or findings arising from the review.

3. Summary of the South Dublin County Council Equality Review

The methodology adopted by SDCC in conducting the Equality Review included a desk-based study with a focus on the legislative framework.

1. The SDCC Equality Review reported that the Access to social housing supports for non- Irish nationals Circular 41/2012 ("the Circular") offers guidance only to officials, however it acknowledged that there may be a possibility of some confusion arising at paragraph 5 of the Circular. The Equality Review reported that if the Circular was used to impose additional requirements on EU/EEA nationals for social housing, who were otherwise regulation compliant, this would be a breach of the Free Movement of Persons Regulations 2011 and 2015. The SDCC Equality Review reported that the Circular could have the potential to impose a 52 week residency requirement for social housing on an EU national or family dependent who has otherwise complied with the Free Movement of Persons Regulations 2015.
2. The SDCC Equality Review noted that an immediate correction was required to the Circular, which should state that the Regulations of 2006 have been replaced by SI 548/2015, governing the free movement of EU nationals. The Equality Review noted that these regulations materially change the parameters for those who may be considered to be family members of an EU citizen entering the State and how their dependency, if any, is to be assessed, particularly where they are non-EU citizens.
3. The SDCC Equality Review noted that a problem arises where non-national homeless persons are considered on a night-by-night basis, as they would appear to be excluded from longer-term resources. The Equality Review noted that this practice could be vulnerable to a challenge to vindicate the right to bodily integrity under Article 40 of the Constitution.
4. The SDCC Equality Review noted that the staff of SDCC are well informed on the need to provide equal treatment to applicants for housing, including emergency

accommodation. It stated that managers receive in-house training on housing policy, though not specifically related to the legal matters that may arise.

5. The SDCC Equality Review stated that the guidance provided to officers operating housing policy is based on Circular 41/2012 issued to the Director of Service (Housing) by the then Department of Environment, Community and Local Government.

SDCC confirmed that it had ceased the following practices on completion of the Equality Review:

- (a) The practice of referring non-Irish nationals to the New Communities Unit has now ceased; and
- (b) SDCC reported that it is not the practice of SDCC to require an applicant to be residing at a permanent address in its administrative area for a minimum period of one year prior to becoming homeless in order to qualify for accommodation services.
- (c) SDCC reports that applicants for emergency accommodation are assessed regardless of nationality.

4. Outline Framework of the South Dublin County Council Equality Action Plan

The Commission asked that in conducting the Equality Action Plan, SDCC address the following:

- (a) How will SDCC ensure, in the immediate term, firstly, that there is no conflation of eligibility criteria as between the two services (of homeless and social housing support) and secondly, that one-night-only accommodation ceases for non-Irish nationals who have been deemed ineligible on the grounds that they did not meet the criteria under the Circular and/or the 2011 Regulations?
 - a. Could this be achieved through written guidance for staff and service users setting out and distinguishing between the eligibility for the two distinct services? Any such guidance should expressly state that the Circular and the 2011 Regulations are not applicable to the assessment of eligibility for homeless services.
- (b) How will SDCC ensure, in the immediate term, that non-Irish nationals applying for social housing support are not unlawfully refused?
 - a. Could this be achieved through written guidance for staff and service users setting out the correct eligibility for social housing and the proofs necessary? Any such guidance should expressly state that the Circular should no longer inform assessment for social housing support.
- (c) How will SDCC ensure long-term clarity regarding access to social housing for non-Irish nationals?
 - a. Would it be prudent to engage with the DHPLG in order to raise the concerns identified herein, and request that the Circular be withdrawn and new guidance introduced?

- (d) How will SDCC ensure that non-Irish nationals can access homeless services and social housing supports in a meaningful way and that the service provided is one that resonates with all communities?
- a. How will SDCC address barriers faced by non-Irish nationals when accessing these services because of language barriers including for example – the adequacy of interpreting services, the availability of information in languages other than English, the phone-in service, the self-accommodating option, and the application process?
 - b. Would it be prudent to carry out equality impact assessments (that focused on the race ground) on both the provision of homeless and social housing services, and that includes consultation with relevant staff, private service providers, service users and civil society groups?
- (e) How will SDCC ensure that private service providers are aware of their equality law obligation when providing homeless services?
- a. Could this be achieved through inserting an equality clause into service level agreements that require an express commitment to equality compliance and that requires the development and implementation of equality policies and training?
- (f) What are the arrangements for monitoring and review of the Equality Action Plan and who will be the named individual(s) (and their associated job titles) responsible for same?
- (g) How will SDCC measure if the objectives of the Equality Action Plan have been achieved and when?

5. Summary of the South Dublin County Council Equality Action Plan

SDCC submitted 'A More Inclusive County - South Dublin County Council's Integration Strategy' (the "Integration Strategy") as their Equality Action Plan.

The Integration Strategy identified the following actions to be taken by SDCC to reduce the barriers faced by non-nationals in accessing SDCC services:

1. Compile an accredited list of interpretation and translation services available within SDCC to make sure information is accessible to migrants;
2. Continue to support and engage with the South Dublin Migrant Integration Forum and develop an annual programme of works;
3. Record and collate data on ethnicity and nationality of social housing applications including unsuccessful applications and those presenting as homeless;
4. Diversity Awareness training for all SDCC staff;
5. Continue to develop an organisation-wide "Plain English Approach";
6. Further develop the project identifying language skills of SDCC staff. Compile a list of staff available to deal with non-English speaking customers;
7. Explore the use of translation bots for website. Indicators of success would be research undertaken and translation bots available if feasible;
8. Investigate a migrant integration-proofing tool across SDCC services through consultation with the Immigrant Council of Ireland;
9. Form a co-ordination group among the four Dublin local authorities;
10. Make sure the reports of racist complaints are dealt with in line with SDCC's existing customer charter; and
11. Establish a monitoring group made up of relevant SDCC officials to update the progress on the strategy's actions.

The Integration Strategy identified the following actions to be taken by SDCC to address the organisational equality infrastructure:

1. Diversity Awareness training to be provided to SDCC staff; and
2. SDCC should implement the Public Sector Duty as required under the IHREC Act 2014.

6. Conclusion

The Commission remains concerned in respect of the application by SDCC of the Circular on Access to Social Housing Supports for non-Irish Nationals.

The Commission remains concerned in respect of the potential application by SDCC of the Circular to non-Irish nationals accessing the homeless services.

The Commission remains concerned that SDCC has not addressed the concerns raised regarding the potential conflation of the eligibility criteria of access to homeless services and social housing support within its Equality Action Plan. It remains unclear what if any eligibility criteria are applied by SDCC to non-Irish nationals seeking to access homeless services.

The Commission welcomes SDCC's identification of the following specific actions to be taken to reduce the barriers faced by non-nationals in accessing SDCC services:

1. Compile an accredited list of interpretation and translation services available within SDCC to make sure information is accessible to migrants;
2. Continue to support and engage with the South Dublin Migrant Integration Forum and develop an annual programme of works;
3. Record and collate data on ethnicity and nationality of social housing applications including unsuccessful applications and those presenting as homeless;
4. Diversity Awareness training for all SDCC staff;
5. Continue to develop an organisation-wide "Plain English Approach";
6. Further develop the project identifying language skills of SDCC staff. Compile a list of staff available to deal with non-English speaking customers;
7. Explore the use of translation bots for website. Indicators of success would be research undertaken and translation bots available if feasible;

8. Investigate a migrant integration-proofing tool across SDCC services through consultation with the Immigrant Council of Ireland;
9. Form a co-ordination group among the four Dublin local authorities;
10. Make sure the reports of racist complaints are dealt with in line with SDCC's existing customer charter; and
11. Establish a monitoring group made up of relevant SDCC officials to update the progress on the strategy's actions.

The Commission welcomes SDCC's identification of the following specific actions to be taken to address organisational equality infrastructure:

1. Diversity Awareness training to all SDCC staff; and
2. SDCC to implement the Public Sector Duty as required under the IHREC Act 2014.

7. SDCC Update July 2021

In June 2021, the Commission provided a draft copy of this account to SDCC. SDCC provided the following information by way of update:

- SDCC does not use Circular 41/2012 as the basis for assessment for social housing supports for non-Irish nationals. SDCC state that all applicants for social housing support, regardless of nationality, must meet criteria in accordance with the Social Housing Assessment (Amendment) Regulations 2021;
- SDCC does not use Circular 41/2012 in relation to non-Irish nationals accessing homeless services;
- SDCC use the services of Bridge Interpreting Limited on request as and when required in ensuring information is accessible;
- SDCC records and collates data on nationality of social housing applicants. SDCC does not record data on ethnicity; and
- SDCC has contracted an external facilitator with a high level of expertise in equality and human rights to assist the working group in delivering its programme of work to identify, address and report on equality and human rights issues.



Coimisiún na hÉireann um Chearta
an Duine agus Comhionannas
Irish Human Rights and Equality Commission

The Irish Human Rights and
Equality Commission
**16 – 22 Sráid na Faiche,
Baile Átha Cliath, D07 CR20**
16 – 22 Green Street,
Dublin, D07 CR20

Íosghlao/Lo-Call 1890 245 245
Guthán/Phone + 353 (0) 1 858 3000
Ríomhphost/Email info@ihrec.ie
Idirlíon/Web www.ihrec.ie
🐦 @_ihrec