

Response from the Committee on the Administration of Justice to the Draft Equality Impact Assessment of the Crumlin Road Gaol and Girdwood Park Draft Masterplan

January 2009

The Committee on the Administration of Justice (CAJ) was established in 1981 and is an independent non-governmental organisation affiliated to the International Federation of Human Rights. CAJ works on a broad range of human rights issues and its membership is drawn from across the community. CAJ's activities include - publishing reports, conducting research, holding conferences, monitoring, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include policing, emergency laws, criminal justice, equality and the protection of rights. The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize. Together with UNISON, we co-convene the Equality Coalition.

For some time CAJ has been involved in the process of furthering the mainstreaming of equality within Northern Ireland and we are keen to contribute our views on as many equality related consultations as possible. This is particularly the case where the documents concerned evidently have important implications for those in greatest need.

Some twelve months ago (January 2008) CAJ made a submission to the consultation on the Draft Masterplan in the course of which we outlined our concerns about the lack of equality assessment of the proposals that had taken place at that point. We therefore very much welcomed the commencement of this EQIA later in 2009 which we viewed as not only a positive development in relation to the overall outcome of the project, but also as a positive move in terms of adherence to statutory equality obligations. We remain of the view however that the EQIA would have been much more useful had it taken place alongside the development of the Draft Masterplan.

Notwithstanding our concerns about the previous sequence of events and the way the process evolved, we very much wish to contribute as constructively as possible to this important document. Our own view is that this project represents an unprecedented opportunity to have a significant, positive impact on the

promotion of equality across all the Section 75 dimensions. The key issue for the EQIA therefore is ensuring that this potential is realised.

Looking at the draft EQIA as it is currently formulated, there are a number of observations we would wish make. Firstly, we would broadly welcome the section of the document which pertains to the socio-economic profile of the area. Clearly this is an important aspect of 'relevant data' which the EQIA should include. We would question however the presentation of data by ward area or parliamentary constituency. The more accurate measure for deprivation by area used by NISRA relates to 'super output area' which takes account of the fact that within politically determined boundaries there can be quite a variation in socio-economic status. This is more than merely a technical point, as the NISRA geographical measurements are designed for the specific purpose of this kind of work. We would recommend therefore that in the interests of accuracy and consistency the EQIA should use the 'super output area' geographic measure.

Looking at the 'assessment of impacts' section of the EQIA, the approach adopted by the DSD in this regard seems somewhat more problematic. One might summarise the approach here as involving an examination of each of the areas of the policy in question, followed by a brief explanation of the benefits each will provide. The document then takes each of these proposals and by and large concludes that there will not be a differential impact on any group.

Such an approach is problematic for a number of reasons. Firstly, determination of adverse impact is a necessary, but incomplete exercise in relation to conducting an EQIA. The other key element of an EQIA is the consideration of alternative measures which would better promote equality. In this context, we would refer the DSD to the "Practical Guidance on Equality Impact Assessment" (Practical Guidance) issued by the Equality Commission, and which, according to this document, the Department used to compile this draft EQIA.

The Practical Guidance is quite clear and is worth exploring in relation to the requirements that are set out in Step 4 of an EQIA which requires:

"Consideration of

***Measures which might mitigate any adverse impact; and
Alternative policies which might better achieve the promotion of
equality of opportunity***

***The consideration of mitigating measures and alternative
policies is at the heart of the EQIA process. Different options
must be delivered which reflect different ways of delivering the
policy aims. The consideration of mitigation of adverse impacts
is intertwined with the consideration of alternative policies.***

Mitigation can take the form of lessening the severity of the adverse impact.

Ways of delivering the policy aims which have a less adverse effect on the relevant equality category, or which better promote equality of opportunity for the relevant equality category, must in particular be considered. Consideration must be given to whether separate implementation strategies are necessary for the policy to be effective for the relevant group. The following must be considered:

How does each option further or hinder equality of opportunity?

How does each option reinforce or challenge stereotypes which constitute or influence equality of opportunity?

What are the consequences for the group concerned and for the public authority of not adopting an option more favourable to equality of opportunity?

How will the relevant representative groups be advised of the new or changed policy or service?

If an economic appraisal is necessary – What are the costs of implementing each option? Will the social and economic benefits to the relevant group of implementing the option outweigh the costs to the public authority or other groups?

Does the public authority have international obligations which would be breached by, or could be furthered by, each of the options?

Clear evidence of the consideration of the impacts of alternatives must be apparent in the relevant consultation document.”

There are a number of observations that can be made here in relation to the requirements for an EQIA. Firstly, the focus is very much on an examination of alternative ways of doing things which would better promote equality of opportunity. Secondly, it is clear that some level of detail is required in terms of outlining the alternative measures – hence the reference to whether an economic appraisal may be necessary for example.

Comparing this draft EQIA with the requirements outlined above however, one can identify a number of shortcomings. The main problem with the draft EQIA as currently formulated is that rather than outlining a series of

alternatives and options, the document appears to be more of an ex post facto justification of the existing proposals. There is for example, between pages 31 and 51 of the draft EQIA a plethora of instances in which the Department concludes that there will be “no adverse impact” on a given group in relation to a given aspect of the proposals.

The problem however is that there is very little beyond this in terms of outlining specific alternative options within the EQIA which might better promote equality of opportunity. Notwithstanding a failure therefore to comply with the procedural requirements of Section 75, it is difficult to see how the DSD are giving effect to the primary duty of Section 75, namely to have “due regard to the need to promote to promote equality of opportunity” in carrying out its functions relating to Northern Ireland.

It is worth noting that in relation to the key aspect of economic development for example, the document states that:

“In overall terms the redevelopment of the site in itself provides an opportunity for the creation of employment. Focus group participants said that apprenticeships must be provided during the development of the site and an on-site training facility could assist in skills development. Indeed the Masterplan proposes this. As the development of the site will take a number of years to roll out, the level of sustained activity will create the opportunity for a site based training facility”.

Merely reiterating a reference to site-based training contained in the original document is not in our view compliant with the requirements set out above in relation to the development of different options that would better promote equality of opportunity. Moreover, the approach becomes more problematic when one considers the following section looking at persons of different religious belief vis a vis economic development. This concludes that:

“The Department considers that redevelopment of the Gaol with an emphasis on tourism as part of the draft Crumlin Road Gaol/Girdwood Park Masterplan and the associated benefits would not have a differential impact on either of the two main communities in North Belfast, or on any other minority community. Both communities are likely to benefit from the attraction of tourists into North Belfast, helping to promote equality and addressing need through the creation of employment opportunities.

Equality of opportunity through economic development and skills training is applicable to all communities, particularly those neighbouring the site.”

Again, merely asserting that everyone will benefit from tourism or training is somewhat meaningless. There are particular employment problems in the local areas for example, with individuals having particular difficulties in terms of accessing labour markets. It is crucial therefore that detailed plans as to how the existing barriers can be overcome are set out.

A similar problem is highlighted in relation to leisure for example, with the draft EQIA stating that:

“both communities will experience positive impacts through the creation of job opportunities and the potential for people’s well being to be improved by using the leisure facilities.”

If merely asserting that ‘leisure is a benefit’ and that leisure facilities are a positive development is the extent of the impact of an EQIA then one would seriously question the value of such an approach in the first place. Admittedly the document does go on to state that

“The Department will consider incorporating employment targets to assist and encourage people from the local communities to apply for work in the new leisure facility”.

Again, this is hardly a particularly innovative approach, and certainly, in our view, a long way from specific options that would better promote equality of opportunity. Moreover, merely considering the incorporation of targets to encourage people to apply for work falls well short of the kind of labour market interventions that are necessary to address the inequalities that currently exist in the areas concerned. This section is also followed by an assertion that

“It must also be recognised that all communities should have equality in terms of access to all facilities and services available through leisure provision in the area”.

This statement is indeed accurate, given that access to leisure services would be covered by the Fair Employment and Treatment (Northern Ireland) Order 1998. Indeed, if one were to take the requirements that currently exist in relation to existing non-discrimination statutes (eg FETO, Race Relations (Northern Ireland) Order, Disability Discrimination Act, etc) along with the provisions in the original Draft Masterplan, there is very little, if anything proposed in the Draft EQIA above and beyond that which already was in place. This is also obvious in relation to the housing section of the document which identifies a 632 housing unit shortfall, but makes no attempt to outline how exactly, in numerical terms, this inequality will be addressed.

It is clear that Section 75 does indeed provide an added requirement upon the public sector, above and beyond the requirements of other equality legislation and confers a primary duty to ensure the promotion of equality of opportunity. It is equally clear that the EQIA is a procedural tool for helping to ensure that the primary duty to promote equality of opportunity is given effect to.

If an EQIA was merely about reiterating existing policies or measures that have already been considered, then its purpose would be somewhat questionable. It is the view of CAJ however that Section 75, through the EQIA process, requires that not only are alternative measures considered – but that some level of detail is fleshed out in relation to outlining these alternative measures. Merely considering *“incorporating employment targets to assist and encourage people from the local communities to apply for work in the new leisure facility”* for example is not adequate to comply with the procedures necessary for conducting an EQIA.

CAJ would be of the view that in order to comply with its procedural requirements vis a vis conducting an EQIA, and indeed, the primary duty to promote equality of opportunity, the DSD should go back to the drawing board and in particular focus on developing the kind of detailed alternative options that are envisaged in the Practical Guidance. Only then will the DSD be in compliance with their Section 75 obligations vis a vis this project.