



CAJ

**Committee on the
Administration of Justice**

CAJ's response to the

**Draft Equality Impact Assessment of the Rates Estimates
2009/10 and Capital Programme – Derry City Council**

December 2008

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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 takes no position on the constitutional status of Northern Ireland and is firmly opposed to the use of violence for political ends. Its membership is drawn from across the community.

The Committee seeks to ensure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its responsibilities in international human rights law. The CAJ works closely with other domestic and international human rights groups such as Amnesty International, Human Rights First (formerly the Lawyers Committee for Human Rights) and Human Rights Watch and makes regular submissions to a number of United Nations and European bodies established to protect human rights.

CAJ's activities include - publishing reports, conducting research, holding conferences, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include policing, emergency laws and the criminal justice system, equality and advocacy for a Bill of Rights.

CAJ however would not be in a position to do any of this work, without the financial help of its funders, individual donors and charitable trusts (since CAJ does not take government funding). We would like to take this opportunity to thank Atlantic Philanthropies, Barrow Cadbury Trust, Hilda Mullen Foundation, Joseph Rowntree Charitable Trust, Oak Foundation and UNISON.

The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize.

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Promoting Justice / Protecting Rights

Winner of the Council of Europe Human Rights Prize

Derry City Council
98 Strand Road
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24 December 2008

Dear Valerie Watts,

**DRAFT EQUALITY IMPACT ASSESSMENT OF THE RATES ESTIMATES
2009/10 AND CAPITAL PROGRAMME**

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.

CAJ welcomes this opportunity to comment on this important document. For some time we have been interested in the implementation of the equality aspects of the Northern Ireland Act 1998 and we see this draft EQIA as an important step forward for the Council in terms of applying equality assessments to financial decision-making. This is, to our knowledge, the first document of this kind to have been issued by any Council in Northern Ireland. In this context, Derry City Council should be commended on their willingness to venture where others have hitherto "feared to tread" as it were in relation to the application of Section 75 to the decision-making process.

Notwithstanding our ongoing interest in matters related to Section 75, CAJ is always keen to emphasise that the purpose of an EQIA is to establish the potential equality impacts on those directly affected by the decisions being taken. In this context, we would consistently point out that while organisations like ourselves have a role in the consultation process, the primary focus for any public body should be in seeking to determine the views of those directly affected by the policy in question. We would therefore urge that all actions possible are undertaken to ensure that the views of those people most affected by this policy are taken on board.

Rather than going into a detailed critique of the document, CAJ felt that it might be most useful if we were to focus on what we consider to be some of the key points arising in the draft EQIA. Should the Council wish to meet up with us to discuss further any of these matters we have raised we would be more than happy to do so. CAJ would be keen to engage as constructively as possible in order to ensure that this important issue is taken forward in as effective a manner as is possible. Our key points are attached.

Yours sincerely,

Tim Cunningham
Equality Project Worker

**Submission by the Committee on the Administration of Justice
to the Consultation on:**

**KEY ISSUES ARISING FROM THE DRAFT EQUALITY IMPACT
ASSESSMENT OF THE RATES ESTIMATES 2009/10 AND CAPITAL
PROGRAMME PUBLISHED BY DERRY CITY COUNCIL**

Some Key Points Generally on Equality Impact Assessment In Relation To The
Derry City Council EQIA

1. Adverse Impact and the Promotion of Equality

Statutory Guidance on Section 75, and indeed the Northern Ireland Act itself is very clear that there are two aspects to the legal duty. Firstly, there is the examination of proposals for adverse impact, and secondly there is the duty to outline alternative measures which better promote equality of opportunity. The Statutory Guidance makes this clear stating that:

“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”.¹

What this means in practice for the Council is that the current proposals need to be viewed through the lens of how they can better promote equality of opportunity, and not merely considered in light of the extent to which they create an adverse impact on any particular group.

2. Monitoring of Policies

Another aspect of Section 75 is the requirement that public bodies monitor the impact of their policies with regard to how equality is promoted. There is a very practical and common sense aspect to this requirement. Namely, that it is impossible for **any** organisation to determine the extent to which it is ensuring that equality is being promoted, without some objective procedure for measuring how exactly this might be taking place.

¹ Practical Guidance on Equality Impact Assessment, Equality Commission, p. 29.

The guidance on Section 75 recognises this clearly by stating that:

“A system must be established to monitor the impact of the policy in order to find out its effect on the relevant groups and sub groups within the equality categories. The results of ongoing monitoring must be reviewed on an annual basis....it is therefore essential that monitoring is carried out in a systematic manner and that the results are widely and openly published.”²

Significantly, both the need for alternative measures to better promote equality, and the requirement for effective monitoring are linked in the Section 75 guidance which goes on to state that:

“If the monitoring and analysis results over a two year period show that the policy results in greater adverse impact than predicted, or if opportunities arise which would allow for greater equality of opportunity to be promoted, the public authority must ensure that the policy is revised to achieve better outcomes for the relevant equality groups.”³

In summary therefore, one can conclude that an EQIA at the very minimum requires certain things from a public body.

These could be listed as follows:

- (i) **Examination of the policy in question to determine if either there is any adverse impact across any of the Section 75 groups, or any opportunity for the better promotion of equality of opportunity by alternative policies.**
- (ii) **An effective monitoring system to determine what these impacts are, whether negative (in terms of adverse impact) or positive (in terms of the better promotion of equality).**
- (iii) **An ongoing monitoring process to determine whether the anticipated impacts materialise, or whether other unexpected adverse outcomes or opportunities arise to better promote equality of opportunity.**

The key question for this consultation response therefore is how this EQIA measures up against these general requirements. Certainly, from CAJ’s point of view there are a number of problems with the document as it is currently drafted. This is perhaps unexpected, given that this is very much a learning process for all concerned,

² Practical Guidance on Equality Impact Assessment, Equality Commission, p. 76.

³ Practical Guidance on Equality Impact Assessment, Equality Commission, p. 77.

although it is imperative that these problems are addressed prior to the publication of the final EQIA following the consultation.

Some Key Points on Procedural Approach to EQIA in the Derry City Council Equality Impact Assessment

Looking at the current draft EQIA from Derry City Council there are a number of points which clearly need to be addressed.

1. Exclusive focus in Derry City Council EQIA on Adverse Impact

The EQIA seems to focus almost exclusively on addressing the issue of whether or not various groups will experience adverse impact. Little if any attention is focused on developing alternative policies or options which better promote equality of opportunity.

CAJ **recommends** that in the final EQIA particular attention is paid to ways in which this policy can better promote equality, with particular focus on what benefits can be provided for those in greatest objective need in the city.

2. Failure of Derry City Council to Monitor its Own Policy/Corporate Plan

The comments in the Derry City Council EQIA in relation to monitoring are not in line with the statutory guidance. The DCC EQIA states that:

“It is noted that at a strategic level, the time lag associated with information provided by the Northern Ireland Statistics and Research Agency (NISRA) does not facilitate the effective monitoring of the impact of Council or other initiatives on the equality of opportunity enjoyed by each of the Section 75 groups or in respect of good relations. For example, it is difficult to identify the impact of investment initiatives in the last three years on the levels of deprivation experienced by different Section 75 groups, given that Census details on the breakdown of the population relates to 2001 and Noble Deprivation data relates to 2005.”

Based on the requirements outlined above, it is inadequate for Derry City Council to abrogate its own monitoring responsibilities by referring to the shortcomings of NISRA or Census data. Indeed, it is because of the shortcomings of Census or Noble data that individual public authorities are required to undertake their own monitoring processes. It should also be noted that the monitoring requirements under Section 75 have existed since the passage of the legislation in 1998 and it is somewhat regrettable that so little work appears to have been carried out by the Council in relation to this important issue. Moreover, it is important to point out that it is not the responsibility of NISRA to carry out monitoring on behalf of Derry City Council, although of course such information, where it exists, may be of use to the Council.

The key point here is that monitoring the success of the implementation of Derry City Council Corporate Plan is the responsibility of Derry City Council and all necessary measures for establishment of an effective monitoring system should be put in place.

CAJ **recommends** that Derry City Council establish as a matter of urgency an effective monitoring process to determine the extent to which Council actions such as the Corporate Plan are impacting on equality in the area.

There is also an important point to note that there will never be perfect data in any context – information will always by necessity, be somewhat out of date by the time that it is produced. Government’s and public bodies make decisions regularly on the basis of the “best information available.” Neither should the gathering of information become an exercise for its own sake, which is the danger by seeking to identify “perfect information”. This point becomes all the more apparent when one examines the substantive issues that have arisen in relation to the EQIA.

KEY SUBSTANTIVE ISSUES ARISING FROM THE DRAFT EQUALITY IMPACT ASSESSMENT OF THE RATES ESTIMATES 2009/10 AND CAPITAL PROGRAMME PUBLISHED BY DERRY CITY COUNCIL

One of the problems with examining the principles and procedures around an EQIA is that one can very easily lose sight of the real purpose of the exercise. The point about an EQIA is not to engage in a procedural exercise for its own sake, but rather to identify changes that can be introduced to a policy to try and assist specifically those who are in most need.

The key questions for any EQIA therefore are:

- (a) How do these proposals impact on equality across the Section 75 groups?
- (b) Is there anything we can do to improve the situation for those in most need?

Taking the Derry City Council document there are a number of interesting issues that arise which highlight the potential benefits of carrying out an EQIA.

As the EQIA document rightly points out, this draft policy is key to the Council’s implementation of its Corporate Plan 2006-2009. Without adequate resourcing and/or appropriate targeting of resources the Council will encounter difficulties in achieving its objectives.

As the document also identifies, there are a number of services which as a result of their legislative/regulatory nature allow for only a limited degree of flexibility in relation to the setting of budgets.

The key issue therefore is the 4-40% spend that is partially controllable where there is more managerial flexibility to reallocate/review budgets. In a sense, this 4-40% should be the key focus of the EQIA in terms of determining how this money might be better spent to target the promotion of equality and to address need.

2008/09 Budget Allocations

Looking at the figures for the 2008/09 budget allocations, there are a number of observations that can be made. Firstly, it is clear that a substantial proportion of the budget (almost £4 million) is directed towards the City of Derry Airport. This itself is not necessarily a problem, however it is worth noting that in relation to equality impacts, the document states that

“Regional services/facilities such as the airport, economic development and destination marketing are not envisaged to have a differential impact on people of different religious beliefs but rather serve to enhance the quality of life of everyone in the community”.

One might argue that while it is not envisaged that such activities have a differential impact across any of the Section 75 grounds, in practice, it is not necessarily the case that Derry City Airport would automatically “enhance the quality of life of everyone in the community”. There may well be members of the community who consider that the airport provides little or no benefit to them – particularly those living in areas of greatest deprivation. This is not to suggest that Derry City Council should move to withdraw funding from the airport, (presumably there are contractual issues that would preclude this in any case) but rather to make the point that one cannot assume, without proper evidence in the form of evaluations etc., that a structure like Derry City Airport will benefit everyone in the community. CAJ **recommends** that the Council commission an appraisal or evaluation of the impact of Derry City Airport on the area, looking in particular at the impact of the airport on those in most need.

Capital Programme and Equality Impact

The projects outlined from the Corporate Plan are interesting from an EQIA perspective, particularly given that the document states that

“at present, not all these projects have been costed but it is clear that it will not be possible to finance all of them from the Council’s Capital Fund. The above capital projects need to be prioritized so that funding of some £17 million can be allocated. Once the capital fund has been allocated, for any other capital projects to progress it will be necessary to raise funds through the sale of surplus lands or to finance out of the rates estimates. The latter is extremely unlikely due to the pressures to fund statutory and regulatory increases.”

This is a key point in terms of identifying a focus for the EQIA. In situations in which resources are limited, and there is a range of options to be prioritised, the purpose of an EQIA is to assist in the prioritisation process by identifying the equality impact of the various options and identifying the options that best promote equality. CAJ welcomes the commitment that individual projects will be subject to an EQIA at project level. The key point about this EQIA however is that it provides a framework for assisting in the determination of which projects should be prioritised over others.

One might expect for example the Creggan synthetic pitch refurbishment to have more direct benefit to those in most need than the Guildhall restoration. Equally, one

might expect a skateboard park (depending of course on its location) to be of more direct benefit to young people than the Guidhall restoration. It is worth noting for example that in the messages from children and young people, the lack of good spaces to play, complaints about play parks, and lack of facilities was a general concern. Clearly therefore, in terms of determining the impact of the Capital Programme on children and young people as a group, the Council needs to take account of how each of the projects will impact, and prioritise taking this impact into account.

This does not mean of course that every decision will be taken on the basis of what either children and young people, or indeed any of the other Section 75 groups want – such an exercise would be meaningless if every group effectively, “got what they wanted”. What the Council should do however, is seek to measure how each of the projects in the Capital Programme are likely to “measure up” overall in terms of promoting equality and targeting need, and prioritise taking these views into account – along with other factors such as available resource, existing commitments etc. The Section 75 process, rather than providing all the answers, should instead provide a framework for better decision-making ensuring that sufficient weight is given to the needs of those who are in most deprivation. Bases on the deprivation figures for the city, it would seem that the Council should at the very least be seeking to maximise its impact directly on those parts of the city in greatest deprivation.

CAJ **recommends** that each of the projects in the capital programme be assessed against their likely direct positive benefit for those living in the greatest need in the city and prioritised on that basis. This prioritisation should then be taken into account in relation to the overall decision-making process on which capital projects should be pursued.

There is also however another important point here in relation to the principle that the EQIA should seek to consider alternative actions which might better promote equality of opportunity. It may be that there are people living in the Creggan, or Shantallow for example who have ideas about capital projects for their area that might better promote equality and address need than those listed. If so, these views should be taken on board and factored into the decision-making process of the EQIA.

CAJ **recommends** that in the course of the EQIA consultation, Derry City Council should seek to establish from people living in those areas of greatest need what suggestions they might have about **alternative** capital projects that could be included in the Council’s programme. These could then be prioritised accordingly, in line with the EQIA requirements on consideration of alternative measures which might better promote equality of opportunity.

Indeed, given the somewhat technical nature of EQIA consultations, focusing around alternative measures on how best to spend the capital budget might be the most useful way of ensuring that the Council is able to comply with its need to gather the views of those most affected by this policy. In this context, CAJ **recommends** that the Capital Programme should be the focus of the EQIA consultation in terms of seeking out the views directly of those who are in greatest need in the city.

**SUMMARY OF CAJ RECOMMENDATIONS FOR THE DRAFT EQIA OF
THE THE RATES ESTIMATES 2009/10 AND CAPITAL PROGRAMME
PUBLISHED BY DERRY CITY COUNCIL**

CAJ **recommends** that in the final EQIA particular attention is paid to ways in which this policy can better promote equality, with particular focus on what benefits can be provided for those in greatest objective need in the city.

CAJ **recommends** that Derry City Council establish as a matter of urgency an effective monitoring process to determine the extent to which Council actions such as the Corporate Plan are impacting on equality in the area.

CAJ **recommends** that the Council commission an appraisal or evaluation of the impact of Derry City Airport on the area, looking in particular at the impact of the airport on those in most need.

CAJ **recommends** that each of the projects in the capital programme be assessed against their likely direct positive benefit for those living in the greatest need in the city and prioritised on that basis. Such a process should then feed into the overall decision on which capital projects should be pursued.

CAJ **recommends** that in the course of the EQIA consultation, Derry City Council should seek to establish from people living in those areas of greatest need what suggestions they might have about alternative capital projects that could be included in the Council's programme, and prioritised accordingly.

CAJ **recommends** that the Capital Programme should be focus of the EQIA consultation in terms of seeking out the views directly of those who are in greatest need in the city.