

CAJ's submission no. S. 273

CAJ's response on Section 75 Equality Impact Assessment of the Proposals on Reform of Legal Representation provided by way of Criminal legal Aid at the Crown Court

November 2010

What is the CAJ?

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.

**Consultation on Section 75 Equality Impact Assessment of the
Proposals on Reform of Legal Representation provided by way of
Criminal Legal Aid at the Crown Court**

**Response of the Committee on the Administration of Justice
November 2010**

1. Introduction

The Committee on the Administration of Justice ('CAJ') is an independent human rights organisation with cross community membership in Northern Ireland and beyond. It was established in 1981 and lobbies and campaigns on a broad range of human rights issues. CAJ seeks to secure the highest standards in the administration of justice in Northern Ireland by ensuring that the Government complies with its obligations in international human rights law. For some time CAJ has been involved in the process of furthering the mainstreaming of equality in Northern Ireland and we welcome the opportunity to forward our views on equality related documents.

CAJ welcomes Northern Ireland Courts and Tribunals Service's ('NICTS') decision to conduct a full equality impact assessment ('EQIA') on its proposals on reform of legal representation provided by way of criminal legal aid at the Crown Court ('the Proposals'). However, we have concerns that insufficient data has been presented. Also, where data has been provided, and found an impact on young males, NICTS has not taken action to assess how this may impact on the promotion of equality of opportunity. We recommend that NICTS address the need for more data and analysis of the impacts on s75 groups.

2. Data collection

We commend NICS for carrying out an EQIA on the Proposals, but we are concerned that the EQIA will not wholly achieve its purpose, due to the lack of data on the various groups listed in s75 Northern Ireland Act 1998 ('s75').

In relation to Crown Court defendants, the only data that we have been provided with is age and gender of defendants. While we understand the sensitivities in relation to collecting various data, we believe that the NICTS should address gaps in the data and deal with sensitivities to ensure that all

information has been taken into account when assessing the impacts on s75 groups.

In the Equality Commission for Northern Ireland's ('ECNI') Practical Guidance on EQIAs¹, it is clear that public authorities, including NICTS, have a responsibility to '*[i]dentify gaps in available information for equality categories and where more detailed data are needed take steps in order to have the optimum information on which to consult and base subsequent decisions; [and] if necessary, commission new data (qualitative or quantitative)*' (at page 11). Please could you confirm what steps are being taken to satisfy these requirements.

In relation to legal representatives, NICTS' EQIA on the Proposals does not provide any data on any s75 categories, explaining that '*as the Bar is not a public body there is no requirement on it to maintain Section 75 data*' (para 6.1). We remind you that it is incumbent on NICTS, not the Bar, to collect such data for the application of s75. We would therefore recommend that NICTS consider how such data may be collected in the future. For example, a 2009 NICTS survey on Crown Court users, covering most s75 grounds, has been used for another current NICTS EQIA.²

The use of data allows for the assessment of impacts to be embedded in a solid evidence base, as opposed to conjecture. For example, we are concerned by NICTS' statement that, in the absence of other data, there is '*nothing to suggest*' that there would be an impact upon any other s75 category (at para 6.4) and '*young males who are defendants may be affected more than any other s75 group*' (at para 6.3). Without recourse to data, it is impossible to know what impact the Proposals may have on other s75 groups. Also, given that the only two categories for which NICTS has data *do* show disproportionate impacts, the probability is that similar results may be found in other categories.

3. Impact on young males

The evidence provided by the NICTS demonstrates that young males are impacted upon by the Proposals more than women or older men. However,

¹ Found at <http://www.equalityni.org/archive/pdf/PracticalGuidanceEQIA0205.pdf>.

² NICTS' EQIA on proposals on new rules on remuneration of defence representation in the Crown Court.

NICTS has not considered how these impacts may be mitigated, or any alternative policies that could be employed, as required by paras 9(1)(a) and (b) of Schedule 9 Northern Ireland Act 1998.

The Equality Commission's Practical Guidance on Equality Impact Assessment states that *'[t]he consideration of mitigating measures and alternative policies is at the heart of the EQIA process. Different options must be developed which reflect different ways of delivering the policy aims... Ways of delivering 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'* (at page 29).

However, despite the clear NICTS evidence of the Proposals greater impact on young males, NICTS has not considered mitigating measures or alternative policies which might better achieve the promotion of equality of opportunity. This is perhaps due to the fact that NICTS believes *'the impact will only be on defendants – not on young males as a group'* (para 6.3). However, this reasoning is not consistent with the aims or operation of s75.

The very purpose of s75 is to consider the need for the promotion of equality of opportunity within the context of specific policies. If impacts were disregarded where they only apply to persons affected by those specific policies, then the entire process would become obsolete. For example, a policy relating to a maternity unit would have a greater impact on women. It would be contrary to common sense – and s75 - not to address those impacts only because they do not impact upon all women, but only women having babies.

NICTS has found that the Proposals affect defendants before the Crown court and counsel. Therefore, any impact found on any s75 category within those groups should be considered in full, as required by Schedule 9, ECNI Guidance and NICTS' equality scheme.

As noted above, an impact was found on young males. Therefore, we request that NICTS consider whether young males will be disadvantaged by the Proposals. In particular, where a case is not found by a court to involve substantial, novel or complex issues of law or fact, and yet the prosecution has chosen to engage two counsel. In such a case, it would be open to the prosecution, but not the defence, to engage a second counsel (junior or

senior). Such a consideration is also relevant in terms of equality of arms and access to justice.

4. Conclusion

CAJ acknowledges NICTS' efforts in carrying out a full EQIA on its Proposals. However, we have concerns that insufficient data has been presented. While we appreciate the sensitivities arising when collecting data, we request confirmation that NICTS will take measures to address gaps in data. We also remind NICTS of its obligation under para 4(2)(b) Schedule 9 Northern Ireland Act 1998 to monitor any adverse impact of policies adopted.

CAJ notes that the Proposals will impact disproportionately on young males. Although this was clear from NICTS evidence, the EQIA does not assess how this may impact on the promotion of equality of opportunity. We recommend that NICTS completes a full analysis of the impacts of the Proposals on s75 groups, including mitigating measures or alternative policies to promote better the equality of opportunity.