

CAJ's Submission no. S.285

CAJ's response to the Department of Finance and Personnel's consultation on its Draft Budget 2011-15

February 2011

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.

Minister Sammy Wilson MLA

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Cc Bob Collins and Evelyn Collins, Equality Commission NI

16 February 2011

Dear Minister

Budget 2011-15: Inadequate assessment of equality impacts

Thank you for the letter of 7 January 2011, sent by your private secretary, and for further explaining the Department of Finance and Personnel's ('DFP') approach to its equality duties in relation to the budget. Thank you also for sending us a copy of your 'Equality Impact Assessment ('EQIA') and High Level Impact Assessment ('HLIA') on DFP's spending and savings proposals and directing us towards the further information found in DFP's budget 2011-15 consultation document.

However, despite access to these documents, we feel unable to respond in a meaningful way to DFP's budget 2011-15 consultation exercise. DFP's draft budget 2011-15 and its associated 'EQIA and HLIA' do not fulfil the equality duties set out in s75 Northern Ireland Act 1998 ('s75'). Further, they provide insufficient information on the likely equality impacts to scrutinise the proposals contained in DFP's draft budget 2011-15.

Insufficient and untimely s75 impact assessment

We strongly believe that DFP has not discharged its s75 duties. Your private secretary's letter shows your agreement that '*High Level Impact Assessments do not sufficiently discharge section 75 duties*'. However, despite your encouragement to other departments '*to produce detailed impact*

assessments that fulfil the requirements of Section 75, we fear that your own department has not heeded this advice.

The HIA summary annexed to the DFP draft budget 2011-15 consultation document claims in its title to be an '*Equality Impact Assessment and High Level Impact Assessment*'. However, it does not contain all of the seven elements required in an equality impact assessment ('EQIA'), further to the ECNI Procedure for Conduct of Equality Impact Assessments,¹ including the consideration of available data and research. This also runs contrary to the clear statement in DFP's equality scheme that it '*is committed to conducting equality impact assessments in accordance with the procedures set out in Annex 1 of the Equality Commission Guidelines*' (at para 4.9).²

We note also from your letter the reference to the strategic EQIA of the Executive budget, Programme for Government ('PfG') and Investment Strategy for Northern Ireland ('ISNI'), carried out in conjunction with OFMDFM. However, this EQIA was published less than two weeks before the end of the consultation period. This is in direct conflict with the Equality Commission for Northern Ireland ('ECNI') Guidance on s75, which states that '*[w]e recommend that the consultation period lasts for a minimum of twelve weeks*'.³

The late publication of the EQIA limits civil society's ability to consider and respond to the consultations on both the EQIA and the draft budget itself. It is clear that the severe spending cuts imposed on our administration will have many negative impacts across Northern Ireland. Given that s75 groups are more likely to need public services, and experience barriers to access, it is likely that they will be affected disproportionately. Therefore, it is not possible to respond to the budget consultation without understanding in full the equality impacts which may ensue.

Furthermore, the late publication of EQIA suggests that the assessment of equality impacts has only taken place after the draft budget 2011-15 allocations have been decided upon. As we have stated in our previous correspondence with departments, EQIAs must be carried out before policies

¹ ECNI Procedure for Conduct of Equality Impact Assessments, Annex 1 to Guidelines on s75, found at <http://www.equalityni.org/archive/pdf/GuidetoStatutoryDuties0205.pdf>.

² Found at <http://www.dfpni.gov.uk/dfpequal.pdf>.

³ Section 75 of the Northern Ireland Act 1998 A Guide for Public Authorities, April 2010, at page 38, <http://www.equalityni.org/archive/pdf/S75GuideforPublicAuthoritiesApril2010.pdf>.

are settled or consulted upon. Caselaw in GB⁴ has underlined the need for advance consideration of the promotion of equality of opportunity⁵, as opposed to *'rearguard action'*.⁶ The courts have warned that *'it is unlawful to adopt a policy contingent on an assessment'*,⁷ and that such an equality impact assessment would amount to *'policy-based evidence rather than evidence-based policy'*.⁸

Finally, the Programme for Government ('PfG') and Investment Strategy for Northern Ireland ('ISNI') have not yet been published. The Executive's draft budget 2011-15 consultation document stated that an EQIA would be *'produced in accordance with statutory requirements to consider the equality impacts of the PfG, Budget and ISNI'* (at para 5.8). This has clearly not taken place and the later publication of the PfG and ISNI will further exacerbate the incorrect timing of the consultation.

We appreciate the time pressures involved in the budget process, but the necessary review of policies once the PfG and ISNI are published will further delay the adoption of the budget. It is necessary to assess equality impacts, as required by s75, before the draft budget, PfG and ISNI are approved.

We remind you that the purpose of the s75 duty is to consider the impact of proposals on vulnerable people. In a time of recession, people who are already disadvantaged should be given every consideration and there is a duty on officials to mitigate any adverse impact. This correspondence is not merely for the purpose of administrative argument. It is to focus on the process of making crucial decisions over spending for the next four years; decisions which will impact on people who already live in difficult circumstances.

The importance of these impacts is also reflected in international human rights treaties.⁹ Indeed the UN Independent Expert on human rights and extreme poverty stated last month that *[h]uman rights are not dispensable and cannot be disregarded in times of economic uncertainty.. before designing and*

⁴ In relation to s71 Race Relations Act 1976, which requires public authorities to have due regard for the need to promote the equality of opportunity in relation to race.

⁵ R (Elias) v Secretary of State for Defence [2006] WLR 321, [2006] EWCA Civ 1293.

⁶ R (BAPI and Another) v Sec of State for the Home Department and for Health, supra.

⁷ R (Kaur and Shah) v London Borough of Ealing [2008] EWHC 2062, at para 36.

⁸ Ibid, at para 37.

⁹ Such as the International Covenant on Economic, Social and Cultural Rights, ratified by the UK in 1976.

*implementing any policy measures aimed at the recovery, policy makers must assess the impact of the measures on the most vulnerable groups of society, assess the appropriateness of the measures, and examine alternative policy options that would protect vulnerable sectors of society as a matter of priority.*¹⁰

Insufficient information

Unfortunately, we have received insufficient information to comment on DFP's draft budget 2011-15, as the potential equality impacts are unclear. In order to engage in meaningful consultation, consultees must be provided with sufficient information to understand, scrutinise and comment on the policies proposed. In the BERR Code of Practice on Consultation,¹¹ *Criterion 3* (entitled *Clarity of scope and impact*) states that '[c]onsultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals'.¹²

The above is referred to in the Equality Commission for Northern Ireland's ('ECNI') Guidance on s75 which recommends '*that information is made available to ensure meaningful consultation, including detailed information on the policy proposal being consulted upon and any relevant quantitative and qualitative data.*'¹³ Also, in common law, the need for sufficient information in any consultation process is set out in the "Sedley Requirements"¹⁴, which state that:

- i. it must be undertaken when proposals are still at a formative stage;
- ii. it must give sufficient reasons to permit the consultee to make a meaningful response;
- iii. it must allow adequate time for consideration; and
- iv. the results of the consultation must be conscientiously taken into account in finalising any proposals.

¹⁰ Statement of Magdalena Sepúlveda, UN Independent Expert on human rights and extreme poverty, following a recent mission to Ireland. Full text can be found at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10658&LangID=E>.

¹¹ Department for Business, Enterprise and Regulatory Reform, July 2008, found at <http://www.berr.gov.uk/files/file47158.pdf>.

¹² *Ibid* at page 9.

¹³ Section 75 of the Northern Ireland Act 1998 A Guide for Public Authorities, April 2010, at page 39, found at <http://www.equalityni.org/archive/pdf/S75GuideforPublicAuthoritiesApril2010.pdf>.

¹⁴ *R v London Borough of Barnet, ex parte B* [1994] ELR 357, 372G.

We believe that these minimum requirements for meaningful consultation have not been fulfilled in relation to equality impacts. In the HLIA received, scarce information is provided on the equality impacts, or the underlying evidence on which conclusions were reached. Indeed, every single HLIA form has exactly the same results, even though they relate to five different policies. Each HLIA found neutral equality impacts and did not consider any adjustments which could potentially increase equality of opportunity. Each of these conclusions was reached without reference to any evidence base.

Given that each of the saving measures forms address very different policies, it is surprising that identical results have been found for each assessment. We would remind you that merely ticking boxes is not sufficient to discharge the s75 duty. The courts have found that an *'equality impact assessment should be an integral part of the formation of a proposed policy, not justification for its adoption... a record will not aid those authorities guilty of treating advance assessment as a mere exercise in the formulaic machinery. The process of assessment is not satisfied by ticking boxes.'*¹⁵

Furthermore, only the savings proposals, and not the spending proposals, listed in the DFP draft budget 2011-15 consultation document have been included in the more detailed tables requiring a summary of the assessment of potential equality impact (pages 34-53 of consultation document). Therefore, we do not know how DFP found the neutral or positive impacts of spending proposals listed in the 'EQIA and HLIA'.

Those policies that were included in those tables are not related to any evidence base or data that explains why DFP found neutral impacts. Some of these policies could likely have equality impacts, including procurement and funding to arms' length bodies.¹⁶ Indeed, ECNI Guidance states that *'[i]t is crucially important that equality is considered at all stages in the process of planning procurement'* (at para 2.20).¹⁷ It is also within the areas highlighted in DFP's equality scheme as having potential equality impacts.¹⁸ Ultimately, we

¹⁵ R (Kaur and Shah) v London Borough of Ealing [2008] EWHC 2062, at paras 24 and 25.

¹⁶ Such as Local Government reform bid (Annex H), general grant to District Councils (Annex O), reduction in road safety grants (Annex U) and reduction in planned recruitment (Annex V).

¹⁷ ECNI Equality of Opportunity and Sustainable Development in Public Sector Procurement, found at <http://www.equalityni.org/archive/pdf/ECNIPublicSector0508.pdf>.

¹⁸ <http://www.dfpni.gov.uk/dfpequal.pdf>, at Annex E2.

cannot know if there are equality impacts, and what these may be, without further information.

Therefore, we are not confident that all of the proposals in DFP's draft budget have neutral or positive equality impacts, as stated in the 'EQIA and HLIA'. Without further details or an evidence base, the 'EQIA and HLIA' does not provide sufficient information to respond to DFP's budget consultation in a meaningful way.

Given the points above, we repeat our request that DFP carry out thorough, evidence-based impact assessments in relation to the promotion of equality of opportunity, as required by s75, before consulting upon or approving its draft budget 2011-15.

We also request that any future consultation run for at least the 12 week period recommended in OFMDFM,¹⁹ BERR²⁰ and ECNI²¹ Guidance.

We look forward to hearing from you.

Yours sincerely



Mike Ritchie

Director

¹⁹ OFMDFM (2003) „A practical guide to policy making in Northern Ireland“, at section 8.5, found at: <http://www.ofmdfmi.gov.uk/practical-guide-policy-making.pdf>.

²⁰ Department for Business, Enterprise and Regulatory Reform, July 2008, *supra*. Criterion 2 states that ‘*Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.*’

²¹ Section 75 of the Northern Ireland Act 1998 A Guide for Public Authorities, April 2010, *supra*.