

CAJ's submission no. S.288

CAJ's response to the  
Department of Justice'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 David Ford 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**

We are unable to respond in a meaningful way to the Department of Justice's ('DOJ') draft budget 2011-15 consultation exercise, as DOJ has not fulfilled the equality duties set out in s75 Northern Ireland Act 1998 ('s75'). Further, your consultation documents provide insufficient information on the likely equality impacts to scrutinise the proposals.

#### Insufficient s75 impact assessment

We strongly believe that DOJ has not discharged its s75 duties in relation to the draft budget 2011-15. The overall equality assessment at Annex C of the consultation document states that high level impact assessments ('HLIA') or equality screening to ascertain impacts were conducted on all spending and saving proposals. However, as these documents have not been released (despite a Freedom of Information request), we believe that DOJ has not fully assessed and consulted on the likely impact of its budget policies, as required by para 4(2)(b) Schedule 9 Northern Ireland Act 1998.

We note your assurances in your letter of 13 October 2010 that you would '*be taking forward an equality impact assessment on the Department's spending plans.. later this year.*' However, such an equality impact assessment ('EQIA')

has not been completed, despite a new year beginning. In this regard, the reference in the overall equality assessment to an ‘EQIA of spending plans for the Budget 2010 period’ (title of section 3) could not suffice, as that summary 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,<sup>1</sup> including the consideration of available data and research.

It is essential for DOJ to assess equality impacts, as required by s75, before the draft budget is approved. Furthermore, we cannot respond fully to the consultation process without access to this information and its underlying evidence. As we have stated in our previous correspondence, caselaw in GB<sup>2</sup> has underlined the need for advance consideration of the promotion of equality of opportunity<sup>3</sup>, as opposed to ‘rearguard action’.<sup>4</sup> The courts have warned that ‘it is unlawful to adopt a policy contingent on an assessment,’<sup>5</sup> and that such an equality impact assessment would amount to ‘policy-based evidence rather than evidence-based policy.’<sup>6</sup>

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.<sup>7</sup> 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 implementing any policy measures aimed at the recovery, policy makers must

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

<sup>2</sup> 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.

<sup>3</sup> R (Elias) v Secretary of State for Defence [2006] WLR 321, [2006] EWCA Civ 1293.

<sup>4</sup> R (BAPI and Another) v Sec of State for the Home Department and for Health, supra.

<sup>5</sup> R (Kaur and Shah) v London Borough of Ealing [2008] EWHC 2062, at para 36.

<sup>6</sup> Ibid, at para 37.

<sup>7</sup> Such as the International Covenant on Economic, Social and Cultural Rights, ratified by the UK in 1976.

*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.*<sup>8</sup>

### Insufficient information

Unfortunately, we have received insufficient information to comment on DOJ'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,<sup>9</sup> *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'.<sup>10</sup>

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.*'<sup>11</sup> Also, in common law, the need for sufficient information in any consultation process is set out in the "Sedley Requirements"<sup>12</sup>, 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.

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<sup>8</sup> 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>.

<sup>9</sup> Department for Business, Enterprise and Regulatory Reform, July 2008, found at <http://www.berr.gov.uk/files/file47158.pdf>.

<sup>10</sup> *Ibid* at page 9.

<sup>11</sup> 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>.

<sup>12</sup> *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. Despite my Freedom of Information request of 21 December 2011 for '*DOJ's high level impact assessment on its own spending proposals and savings measures relating to equality, good relations, poverty/social inclusion and sustainable development, as referred to in DFP's Guidance*', we have only received a holding response from your private secretary.

As you are no doubt aware, the DOJ is under a duty to comply no later than 20 working days after receipt of the request.<sup>13</sup> Even taking out the Christmas and New Year break, DOJ has had over 30 working days to respond. As such, DOJ is in breach of the Freedom of Information Act 1998.

Further, the HLIA referred to in the draft budget 2011-15 consultation document is not available to the public, unless it is the same as the 'overall equality assessment' ('OEA'), at Annex C.

In the OEA, scarce information is provided on the equality impacts, or the underlying evidence on which conclusions were reached. It is also not clear which of the policies involved neutral, positive or other impacts. For example, capital spending proposals have 'some positive impacts' for persons with or without a disability and savings proposals have a 'largely neutral impact' between men and women generally.

It is also surprising that the OEA found almost all policies to have a neutral impact, particularly given the extent of spending cuts suffered and the range of policies involved. Several policies, including staff changes and legal aid reform could likely have a negative equality impact.

We 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.*'<sup>14</sup> The courts have stated that

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<sup>13</sup> S10 Freedom of Information Act 1998.

<sup>14</sup> R (Kaur and Shah) v London Borough of Ealing [2008] EWHC 2062, at paras 24 and 25.

*'the duty must be exercised in substance, with rigour and with an open mind.'*<sup>15</sup>

Therefore, we are not confident that all of the proposals in DOJ's draft budget have neutral (or even positive) equality impacts, as stated in the OEA. Without further details or an evidence base, there is insufficient information to respond to DOJ's budget consultation in a meaningful way.

Given the points above, we repeat our request that DOJ 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,<sup>16</sup> BERR<sup>17</sup> and ECNI<sup>18</sup> Guidance.

We look forward to hearing from you.

Yours sincerely



Mike Ritchie

Director

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<sup>15</sup> Brown v SOS for Defence [2006] IRLR 934, at para 92.

<sup>16</sup> 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>.

<sup>17</sup> 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.'*

<sup>18</sup> Section 75 of the Northern Ireland Act 1998 A Guide for Public Authorities, April 2010, *supra*. At page 38, it states *'[w]e recommend that the consultation period lasts for a minimum of twelve weeks'*.