

CAJ's Submission no. s. 291

CAJ's response to the
Department of Culture,
Arts and Leisure'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 Nelson McCausland MLA

Department of Culture, Arts and Leisure
Interpoint
20 – 24 York Street
Belfast
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Northern Ireland

cc: Bob Collins and Evelyn Collins, Equality Commission NI

17 February 2011

Dear Minister

Budget 2011-15: Inadequate assessment of equality impacts

We feel unable to respond in a meaningful way to the Department of Culture, Arts and Leisure's ('DCAL') budget 2011-15 consultation exercise, as we do not believe that DCAL has fulfilled its obligations in relation to s75 Northern Ireland Act 1998 ('s75').

The consultation document's summary of impacts does not correspond to the more detailed saving plans and high level impact assessment ('HLIA'), which were released too late to allow full consideration. They both provided insufficient information on the likely equality impacts to scrutinise the proposals in full.

Insufficient impact assessment

We acknowledge the work undertaken in DCAL's savings delivery plans and HLIA. In particular, we commend DCAL's efforts in considering some relevant evidence, recognising adverse impacts and attempting to mitigate these. However, certain irregularities have arisen in relation to the approach taken and conclusions reached. Fundamentally, as we have stated in previous correspondence, HLIA's are not sufficient to discharge s75 duties, as confirmed by the Equality Commission for Northern Ireland ('ECNI').

First, in many savings delivery plans documents, it is concluded that the proposals will result in negative equality impacts. These include the closure, reduced hours and limited stock of libraries and the reduction in funding for museums and Arts Council grants. However, despite some consideration of data, there is limited information on the extent and nature of these impacts or the evidence used. We recommend that DCAL use the screening and equality impact assessment ('EQIA') procedure, as set out in DCAL's equality scheme¹ and ECNI Guidance.²

Secondly, where negative impacts are recognised, it is not entirely clear what action DCAL will take to mitigate or avoid these impacts. DCAL is under an obligation to consider measures to mitigate adverse impacts or alternative policies to better promote the equality of opportunity between s75 groups (para 9(1) Schedule 9 Northern Ireland Act 1998). Although DCAL has made efforts to mitigate adverse impacts found in its savings plans, it only seems to advocate current policies and programmes, rather than suggesting any new initiatives. Also, it seems that DCAL does not intend to carry out an EQIA, as would be expected from its equality scheme and ECNI Guidance.

Thirdly, the HLIA does not correspond wholly to the spending plans documents. Although most savings delivery plans showed some negative impact on equality, the HLIA shows mostly neutral impact. In particular, it is surprising that neutral impacts were found for people with a disability and those with dependents. Indeed, the negative impacts on persons with disabilities are clearly listed in the spending plans documents relating to library closures³, library stock reduction⁴ and other proposals.

Finally, the comparative detail of the spending delivery plans and HLIA shows that the DCAL draft budget 2011-15 consultation document is misleading in its conclusions relating to impacts. Despite the negative impacts found in the savings delivery plans and HLIA, the main consultation document states that the equality assessment revealed '*neutral or some positive impact in relation to Section 75*' (at page 8). Similarly, we question how some policies, such as the reduction of funding at Sport NI⁵ and reduced library opening hours,⁶

¹ DCAL's equality scheme can be found at http://www.dcalni.gov.uk/equality_scheme_file.pdf.

² Section 75 of the Northern Ireland Act 1998 A Guide for Public Authorities, April 2010, found at <http://www.equalityni.org/archive/pdf/S75GuideforPublicAuthoritiesApril2010.pdf>.

³ DCAL Savings delivery Plans, at page 58.

⁴ Ibid, at page 67.

⁵ Ibid, at page 25.

showed no equality impacts at all in the savings delivery plans. Therefore, we must question the soundness of the conclusions reached in the HLIA and consultation document, and request that DCAL carry out further impact assessment, as required by s75.

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.⁷ 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 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.*⁸

Insufficient and untimely information

DCAL's main consultation document currently contains insufficient information to comment fully on its draft budget 2011-15, as the potential equality impacts are unclear. Also, the more detailed savings delivery plans and HLIA were released too late to allow full consideration within the consultation period.

DCAL's draft budget 2011-15 consultation document contains scarce and misleading information on the proposals or the equality impacts. Despite our Freedom of Information request of 21 December 2011 for '*DCAL's high level impact assessment on its own spending proposals and savings measures*

⁶ Ibid, at page 61.

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

⁸ 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>.

relating to equality, good relations, poverty/social inclusion and sustainable development, as referred to in your private secretary's letter of 19 October 2010, we have only received a holding response from your private secretary. As you are no doubt aware, the DCAL is under a duty to comply no later than 20 working days after receipt of the request.⁹ Even taking out the Christmas and New Year break, DCAL has had over 30 working days to respond. DCAL is therefore in breach of the Freedom of Information Act 1998.

On 14 February 2011, we discovered DCAL's more detailed savings delivery plans and the high-level impact assessment ('HLIA') on its website (which must have been posted after our follow-up call on 4 February 2011). This leaves less than two weeks to consider the more detailed summary of DCAL's savings proposals and their equality impacts. As you must be aware, public consultations should run for a minimum of 12 weeks, as recommended in the OFMDFM,¹⁰ BERR¹¹ and ECNI¹² Guidance.

The late publication of the savings delivery plans and HLIA not only restricts civil society's ability to take part in the consultation exercise, but also suggests that DCAL assessed the equality impacts of its policies after having submitted its proposals. This is reinforced by the conflicting conclusions reached in relation to equality impacts in the main consultation document as compared to the savings delivery plans and HLIA. The late assessment of equality impacts limits the usefulness of both the impact assessment and the consultation process. It also runs contrary to the impact assessment process, as set out in DCAL's equality scheme, ECNI Guidance and jurisprudence.

As we have stated in our previous correspondence, caselaw in GB¹³ has underlined the need for advance consideration of the promotion of equality of opportunity¹⁴, as opposed to 'rearguard action'.¹⁵ The courts have warned that

⁹ S10 Freedom of Information Act 1998.

¹⁰ 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>.

¹¹ Department for Business, Enterprise and Regulatory Reform, July 2008, *supra*. Criterion 2 states that '[c]onsultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.'

¹² 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'.

¹³ 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.

¹⁴ R (Elias) v Secretary of State for Defence [2006] WLR 321, [2006] EWCA Civ 1293.

¹⁵ R (BAPI and Another) v Sec of State for the Home Department and for Health, *supra*.

'it is unlawful to adopt a policy contingent on an assessment,'¹⁶ and that such an equality impact assessment would amount to 'policy-based evidence rather than evidence-based policy.'¹⁷

Accordingly, DCAL should have carried out equality impact assessments in advance of the draft budget consultation period. This was in fact necessary to allow compliance with its own equality scheme, which states that *'[i]n making any decision on a current or proposed policy, the Department will take into account any relevant equality impact assessment and the outcome of associated consultation. This is a statutory requirement under paragraph 9(2) of Schedule 9 to the Northern Ireland Act 1998.'*¹⁸

Further, advance impact assessment allows consultation responses to take account of any equality impacts found, with reference to more thorough underlying evidence. 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,¹⁹ *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.'*²⁰

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.'*²¹ Also, in common law, the need for sufficient information in any consultation process is set out in the "Sedley Requirements"²², which state that:

- i. it must be undertaken when proposals are still at a formative stage;

¹⁶ R (Kaur and Shah) v London Borough of Ealing [2008] EWHC 2062, at para 36.

¹⁷ Ibid, at para 37.

¹⁸ DCAL equality scheme, supra; at para 8.3, page 15.

¹⁹ Department for Business, Enterprise and Regulatory Reform, July 2008, found at <http://www.berr.gov.uk/files/file47158.pdf>.

²⁰ Ibid at page 9.

²¹ 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>.

²² R v London Borough of Barnet, ex parte B [1994] ELR 357, 372G.

- 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.

We believe that DCAL's consultation on its draft budget 2011—15 has not fulfilled these minimum requirements in relations to equality impacts.

Given the points above, we repeat our request that DCAL 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.

Yours sincerely



Mike Ritchie

Director