

## **CAJ's submission no. S341**

# **CAJ's submission to the Department of Justice's consultation on the draft Equality Schemes**

**June 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 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, Joseph Rowntree Charitable Trust and the Oak Foundation.

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

## **Submission to the Department of Justice's Consultation on its draft Equality Scheme**

**Committee on the Administration of Justice**  
**June 2011**

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. CAJ is co-convenor of the Equality Coalition. We welcome the opportunity to comment on the Department of Justice's ('DOJ') consultation on its new equality scheme.

CAJ acknowledges DOJ's efforts in producing a comprehensive draft equality scheme. We are encouraged to see that DOJ has in the main followed the ECNI model scheme<sup>1</sup>, but we are also concerned by some amendments that have been made. We have had the advantage of discussing some of these concerns with DOJ representatives at an Equality Coalition event on 8 June 2011. In this submission we will query some instances where DOJ diverged from the ECNI model scheme and also suggest a few additions, which would strengthen the DOJ equality scheme.

### **Consultation arrangements**

We note that DOJ's draft equality scheme diverges from the ECNI model scheme in relation to consultation, which we believe could affect the application of s75 in practice.

First, DOJ has removed the list, in para 3.2.1 of the ECNI model scheme, of the types of persons to be included in a consultation. These are important categories of persons who should be consulted on equality impacts, and all of whom may not be included at Appendix 3 (list of consultees). We recommend

---

<sup>1</sup> ECNI model equality scheme, found at [http://www.equalityni.org/sections/default.asp?secid=8&cms=Publications\\_Statutory+duty&msid=7\\_43&id=43](http://www.equalityni.org/sections/default.asp?secid=8&cms=Publications_Statutory+duty&msid=7_43&id=43).

that the ECNI model scheme be used as a minimum threshold for the DOJ draft equality scheme, and that content not be removed without good reason. Similarly, DOJ has not included all of the example consultation methods (para 3.2.2 ECNI model scheme), which could be helpful to staff. It is not clear why this change has been made and we suggest that these passages are included in the DOJ equality scheme.

Secondly, DOJ has removed the commitment, at para 3.2.1 ECNI model scheme, to notify all consultees, as a matter of course, of the matter/policy being consulted upon to ensure they are aware of all consultations. While we understand the rationale behind targeted consultation, we believe that all consultees should be made aware of consultations, as the wider civil society may have valuable input for a matter that DOJ perceives as being outside of their remit. Further, the full list of consultees at Appendix 3 would be redundant if not used in practice. We would therefore recommend that DOJ include the relevant passage from para 3.2.1 ECNI model scheme in its own equality scheme.

Thirdly, it is unclear why DOJ has changed the consultation time offered to those requiring information in alternative formats to 'sufficient' time (para 3.7 DOJ draft scheme), instead of 'equal time' (para 3.2.3 ECNI model scheme). A time period that DOJ believes to be 'sufficient', may not be sufficient for consultees. Indeed, it is not clear by what which measure 'sufficient' would be judged. Given that s75 is in place to help promote equality of opportunity, it is essential that DOJ's application of s75, through its consultations, attains equality of opportunity for people with disabilities requiring information in alternative formats.

Further, given that the time period within which DOJ will provide alternative formats is 20 working days (para 3.7 DOJ draft scheme), and given that DOJ's consultation period would last 12 weeks (para 3.9 DOJ draft scheme), people with disabilities requiring alternative formats could potentially lose one third of the consultation period open to other consultees. This does not promote equality of opportunity, and we strongly recommend that DOJ amend para 3.7 of its equality scheme to allow people requiring alternative formats to have an 'equal time' within which to respond to consultations.

Finally, we note that DOJ has removed the reference to some criteria that could make meetings more accessible, including 'how the meeting is to be

conducted, the use of appropriate language, whether a signer and/or interpreter is necessary, and whether the provision of childcare and support for other carers is required' (see para 3.2.8 ECNI model scheme). Given that these criteria could help ensure accessibility, and that DOJ staff may need to be reminded of their importance, we recommend that they are included in its equality scheme.

Indeed, given that these criteria would help ensure access for categories of persons are included in s75 itself, it is particularly important that DOJ commits to promoting their equality of opportunity in taking part in consultations. Also, their input to the impact of policies on other people in their equality groups could be invaluable. We therefore request that DOJ insert these passages in its own equality scheme to help ensure accessibility when DOJ carries out its consultations.

### Screening of Policies

In relation to the screening of policies, it would be helpful for consultees to be informed when screening forms are posted on the DOJ website. We are concerned that, if screening reports are sent to consultees on a quarterly basis, it is possible that civil society may not be aware of a specific policy's screening for a long period of time. By this time, the policy may be implemented or further developed, so that alternative measures would be more difficult to apply. It would therefore be important for civil society to be informed sooner of policies for which 'no' or 'minor' impact was found, but for which they may have specialist knowledge of otherwise unforeseen equality impacts.

We appreciate that DOJ will make the screening forms available on its website and on request (para 4.13). However, given that there are over 200 designated public authorities in Northern Ireland, it is impossible to review each of those websites daily, or even weekly, to check if screening forms have been posted. We would therefore recommend that DOJ include a statement, at para 4.13, that consultees will be informed of screening forms when they are completed or posted on its website.

### Consideration of Data

We note that DOJ has not consulted upon its audit of inequalities. The ECNI has made clear that the consultation on the audit of inequalities is implicit in the request for consultation on the draft action plan. As explained to DOJ representatives at the Equality Coalition event, the publication or consultation of audit of inequalities would help civil society inform DOJ of any irregularities or omissions arising, which are more difficult to identify within the action plan. Commentary would also be more constructive, given that the audit is not constrained by resources and strategic plans, as is likely the case for the draft action plan. We therefore recommend that DOJ publish and/or consult on its draft audit of inequalities.

Further, we recommend that DOJ commits to publish and consult on its audit of inequalities and action plan in the future, by explicitly adding them as documents for which DOJ will seek input from its stakeholders and consult upon (currently only the draft action plan is included at para 2.18 DOJ draft equality scheme). Please note that, as the audit of inequalities has not been published, we have not reviewed the DOJ draft action plan. We will forward our comments on both documents once the DOJ audit of inequalities has been published.

We would like to remind DOJ that, in addition to the s75 action-based plan, s75 continues to apply to all DOJ policies in relation to all nine equality groups. Although we recognise the positive impacts that the action-based plan could have on addressing inequalities, we are also aware that it could have a limiting influence on the operation of s75 outside the specific priorities identified within it. Also, newly emerging inequalities may not be captured in the original audit of inequalities. We therefore hope that any data gaps identified in the audit of inequalities will be addressed, and that the audit will provide a useful tool for policy-makers when applying s75 beyond the scope of the action-based plan.

The way in which DOJ uses its data and monitoring information is vital to promoting equality of opportunity. We are therefore concerned that in the DOJ draft scheme, where monitoring has found that a policy results in greater adverse impact than expected, DOJ has qualified the action that it would be prepared to take. In the ECNI model scheme, public authorities should 'revise' the policy to achieve better outcomes for relevant equality groups (para 4.30).

By contrast, the DOJ draft equality scheme only commits that a policy would be 'revisited, where appropriate' (see para 4.31).

We appreciate that the language may have been tempered to allow for those situations where it is not easy to change the policy, but we believe that any procedures in place to identify and monitor equality impacts would be almost redundant if DOJ were not to put the information found into practice. It would seem counter-intuitive to discover adverse impacts and yet not alter policy to lessen this effect. We therefore recommend that DOJ change the language at para 4.31 of its draft equality scheme from 'revisit' to 'revise'.

### Complaints Procedure

We note, with concern, that DOJ has added a major qualification to the ECNI recommendations with which it will comply post-investigation. In the ECNI model scheme, para 8.8 states that the relevant public authority 'will make all efforts to implement promptly and in full any recommendations arising out of any Commission investigation.'<sup>2</sup> By contrast, in the DOJ draft equality scheme, this is limited to a commitment to 'cooperate fully and give full consideration' to any such recommendations arising (at para 8.8).

We strongly believe that this limitation is both inappropriate and unnecessary. Schedule 9 Northern Ireland Act 1998 charges the ECNI with making recommendations on the correct application of s75 Northern Ireland Act 1998 ('s75'). It would be wholly inappropriate for a public authority to usurp the ECNI's role, by adopting a veto to these recommendations. This incursion into the ECNI's powers is also unnecessary, as the para 8.8 obligation to comply with ECNI recommendations is already qualified by the term 'make all efforts'. We therefore request that the DOJ draft equality scheme, at para 8.8, is amended to reflect the ECNI model scheme.

### Staff understanding of s75

CAJ recommends that DOJ include statements in its equality scheme to explain the operation of s75, which is often misunderstood. In particular, the DOJ equality scheme DOJs not explain the relationship between the equality duty (s75(1)) and the good relations duty (s75(2)). The ECNI Guide for Public

---

<sup>2</sup> Ibid, at para 8.8.

Authorities<sup>3</sup> ('the ECNI Guide') clearly states that 'good relations cannot be based on inequality' and confirms that 'the term due regard was intended to be, and is, stronger than regard'.<sup>4</sup> It also clarifies that 'the discharge of the good relations duty cannot be an alternative to or cannot set aside the equality of opportunity duty'.<sup>5</sup>

As the DOJ equality scheme will be used as a point of reference for its staff's application of s75 and any training provided, it is crucial that the equality scheme itself contains clear statements on the relationship and difference between the two s75 duties. Similarly, the ECNI Guide provides useful statements on positive action and multiple identities. We believe that the inclusion of these statements, or similar, would help staff to understand s75. For example, it is a common misunderstanding that 'universal application' implies a neutral impact on equality groups, when it can, of course, exacerbate inequalities.

The useful passages in the ECNI Guide are as follows: 'The promotion of equality of opportunity entails more than the elimination of discrimination. It requires proactive measures to be taken to facilitate the promotion of equality of opportunity between the categories identified in Section 75 (1). The equality duty should not deter a public authority from taking action to address disadvantage among particular sections of society – indeed such action may be an appropriate response to addressing inequalities. There is no conflict between the Section 75 statutory duties and other affirmative action measures or positive action measures which a public authority may undertake under anti-discrimination laws.'<sup>6</sup>

If you would like any further information, please do not hesitate to contact CAJ at the details listed below.

---

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

<sup>4</sup> Ibid at page 26.

<sup>5</sup> Ibid, at page 27.

<sup>6</sup> Ibid, at page 25. At the same page, the ECNI Guide also states: 'Individuals do not neatly fit into one Section 75 category or another, individuals will invariably be members of a number of Section 75 categories. Thus Section 75 enables multiple identity issues to be considered as well as issues regarding particular categories of people.'