

**CAJ's submission no. S354**

**CAJ's submission to the  
Strategic Investment Board's consultation  
on its draft Equality Scheme**

**September 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 Strategic Investment Board on its Consultation on its draft Equality Scheme**

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 Strategic Investment Board's (SIB) consultation on its draft equality scheme.

CAJ acknowledges SIB's efforts in producing a comprehensive draft equality scheme. We are encouraged that SIB has adopted the ECNI model scheme as a basis for its draft equality scheme, and expanded on it in parts. In particular, we welcome SIB's commitment to post each screening template on its website, and inform consultees when each template is complete. This will help civil society to input to the screening process in a timely manner. In this brief submission, we will query some divergences from the ECNI model scheme and also suggest a few additions, which would strengthen the SIB equality scheme.

### Consultation

In relation to consultation, we note a few seemingly minor ways in which the SIB draft scheme differs from the ECNI model scheme, but which could affect the way in which it operates in practice. First, it is not clear why SIB has not included, in its list of those with whom it shall consult, 'those directly affected by the matter/policy' and 'such other groups who have a legitimate interest in the matter, whether or not they have a direct economic or personal interest' (see para 3.2.1 ECNI model scheme, and compared to para 3.4 SIB draft scheme).

Although we note that SIB has allowed for additional consultees to be added to the list at Appendix 4 of its draft scheme, we believe that it is important for staff to be aware that other persons, who are not listed in Appendix 4, could potentially have a legitimate interest in each particular consultation exercise.

We therefore recommend that the relevant phrases are included in the SIB equality scheme.

Secondly, the SIB draft equality scheme does not include the important commitment that in ‘making any decision with respect to a policy adopted or proposed to be adopted, we take into account any assessment and consultation carried out in relation to the policy’ (ECNI para 3.2.10). Although this action might seem implicit, the inclusion of the relevant passage confirms that any consultation exercise will affect the process of policy development. It is also a statutory requirement, further to para 9(2) Schedule 9 Northern Ireland Act 1998. We therefore request that SIB include the relevant passage in its equality scheme.

Finally, we note various aspects of the SIB draft scheme which could be strengthened in relation to the accessibility of the consultation exercises. These are discussed in the next section.

### Accessibility

First, in relation to the accessibility of consultation exercises, SIB has replaced the commitment to consider vulnerable groups’ ‘preferred consultation methods’ with ‘how best to consult or engage with them’ (at para 3.6 SIB draft scheme). Although the above difference may seem minor, the methods which SIB perceives to be the ‘best’ might not, in effect, be successful in reaching those vulnerable consultees. We therefore recommend that SIB refer to ‘preferred consultation methods’ (as per para 3.2.2 ECNI model scheme) in order to help ensure accessibility to its consultation exercises.

Also, we note that SIB has limited the application of specific consideration, in terms of accessibility, to young people, ethnic minorities and those with ‘learning disabilities’ (para 3.6 SIB draft scheme). By contrast, para 3.2.3 ECNI model scheme allows for specific consideration on how best to communicate with the above categories and also those with any disability. This more expansive approach is important, as ‘learning disabilities’ does not include, for example, those with sight or hearing impairments. We therefore recommend that SIB include special consideration for ‘people with disabilities’ in its equality scheme.

Further, we recommend that SIB include a commitment to 'take account of existing and developing good practice, including the Equality Commission's guidance *Let's Talk Let's Listen – Guidance for public authorities on consulting and involving children and young people (2008)*', as is the case at 3.2.2 ECNI model scheme. Although we note SIB's commitment to provide alternative formats in a timely manner, and allow such consultees equal time to respond, we recommend that SIB specify a time period within which such alternative formats will be provided (at para 3.6 SIB draft scheme). This would comply with the ECNI model scheme, and also help ensure clarity and transparency for all consultees.

Secondly, in relation to general accessibility requirements, we note that SIB has not included a commitment to liaise 'with representatives of young people and disability and minority ethnic organisations and take account of existing and developing good practice' (see para 6.3 ECNI model scheme). We believe that such action is critical to understanding how to make SIB's information and services accessible.

Furthermore, SIB has not included the general commitment to 'ensuring that all of [its] services are fully accessible to everyone in the community across the Section 75 categories' (para 6.6 ECNI model scheme). Although we understand that 'SIB does not provide services directly to the public' (para 6.9 SIB draft scheme), its staff and clients could also include individuals from within the s75 categories. As a result, the commitment to their access is still important and we recommend that the general commitment be included.

#### Audit of Inequalities and Action Plan

We note that SIB 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. The publication or consultation of audit of inequalities would help civil society inform SIB 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 SIB publish and/or consult on its draft audit of inequalities.

Further, we recommend that SIB commits to publish and consult on its audit of inequalities and action plan in the future, by explicitly adding them as documents for which SIB will seek input from its stakeholders and consult upon (currently only changes to the draft action plan are referred to, at para 2.12 SIB draft equality scheme). Please note that, due to a lack of resources, we have not reviewed the SIB draft action plan.

However, we note that, at para 2.5 of its draft scheme, SIB states that it will only integrate objectives and targets related to its s75 duties into its corporate and annual business plans ‘as appropriate’, as has been the case ‘in the past.’ We would like to underline that the action measures are different, and in addition, to previous s75 commitments. Therefore, their inclusion in the corporate and business plans could not have taken place in the past.

Also, it is intended that all such action measures will be appropriate for inclusion in such plans, as their action measures should be ‘specific, measurable, linked to achievable outcomes, realistic and time bound’ and to include ‘performance indicators and timescales for their achievement.’ However, these two requirements have not been included in the SIB model scheme (see para 2.13 ECNI model scheme). We recommend that SIB commit in its equality scheme to making its action measures ‘SMART’ and to incorporating them in its corporate and business plans.

We would like to remind SIB that, in addition to the s75 action-based plan, s75 continues to apply to all SIB 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.

### Staff Understanding of s75

CAJ recommends that SIB include statements in its equality scheme to explain the operation of s75, which is often misunderstood. In particular, we recommend that the SIB equality scheme include an explanation of the

relationship between the equality duty (s75(1)) and the good relations duty (s75(2)). The ECNI Guide for Public Authorities<sup>1</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>2</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>3</sup>

As the SIB 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>4</sup>

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

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

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<sup>1</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>2</sup> Ibid at page 26.

<sup>3</sup> Ibid, at page 27.

<sup>4</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.'