

## **CAJ's submission no. S355**

### **CAJ's submission to the Probation Board for Northern Ireland'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 Probation Board for Northern Ireland 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 Probation Board for Northern Ireland's (PBNI) consultation on its draft equality scheme.

CAJ acknowledges PBNI's efforts in producing a comprehensive draft equality scheme and in beginning its consultation period in good time to allow for submission to the Equality Commission for Northern Ireland ('ECNI') on 1 November 2011. We are encouraged to see that PBNI has adopted the ECNI model scheme as a basis for its draft equality scheme, and expanded on it in parts. However, we are concerned by some divergences from the ECNI model scheme, which could affect the application of the PBNI equality scheme in practice. In this submission, we will query the divergences from the ECNI model scheme and also suggest a few additions, which would strengthen the PBNI equality scheme.

### Screening Reports

First, we note that PBNI does not intend to include two critical aspects of the screening process in its screening reports. Para 4.20 ECNI model scheme provides for, among other items, the following to be detailed in screening reports:

- Consideration given to measures which might mitigate any adverse impact; and
- Consideration given to alternative policies which might better achieve the promotion of equality of opportunity.

By contrast, the same paragraph of the PBNI draft scheme does not include these items, despite their clear importance under para 9(1) Schedule 9 Northern Ireland Act 1998.

Unless the above information is included in the screening report, civil society cannot know if those actions were undertaken in each PBNI screening, and so the effect they have had on the policy development. This would seriously inhibit the extent to which consultees could input to the screening process. It also appears to contradict with PBNI's intention that 'consultees can see clearly how PBNI have considered the equality issues' in the screening process (see para 4.20 PBNI draft scheme).

Therefore, in the interests of transparency and accountability, we request that PBNI include the relevant passages in its equality scheme in order to ensure that its screening reports contain all relevant information on any consideration given to measures which might mitigate adverse impact or alternative policies which might better achieve the promotion of equality of opportunity.

Secondly, we are unclear how often PBNI intends to publish its screening reports. At para 4.15 PBNI draft scheme, it states that 'screening reports are published regularly'. By contrast, at para 4.20 PBNI draft scheme, under the heading of 'screening reports', it states that these 'are published quarterly'. Similarly, at para 4.25 PBNI draft scheme, it states that screening reports are 'sent directly to all consultees on a quarterly basis'. We recommend that PBNI publish the screening reports over a specific time period instead of 'regularly'. If a specific time line is not set, it is possible that screening reports might not be published for a long period of time, which could preclude consultee input until the relevant policies have already been concretised or implemented.

Although we note that completed screening reports and templates will be posted on the PBNI website (at para 4.24 PBNI draft scheme), it would be helpful for consultees to be informed when such postings have been made. We are concerned that, if screening reports are only sent to consultees on a quarterly or 'regular' basis, it is possible that civil society may not be aware of a specific policy's screening for a long period of time. The policy may be implemented or further developed by the time civil society is aware of its screening, by which time their input would be difficult to act upon and alternative measures more difficult to apply.

It is therefore important for civil society to be informed as soon as possible of policies for which 'no' or 'minor' impact was found, but for which they may have specialist knowledge of otherwise unforeseen equality impacts. 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 PBNI include a statement, at para 4.21 of its equality scheme, that consultees will be informed of screening reports and templates when they are completed or posted on its website.

### Consultation Methods

In relation to consultation techniques, we note that PBNI has removed an important paragraph from its draft scheme, as compared to the ECNI model scheme. At para 3.2.7 ECNI model scheme it states that '[i]f a consultation exercise is to take place over a period when consultees are less able to respond, for example, over the summer or Christmas break, or if the policy under consideration is particularly complex, we will give consideration to the feasibility of allowing a longer period for the consultation.' This has not been included in the PBNI draft scheme.

We are concerned that, by not allowing for extended consultation periods over holiday periods, or when a policy is particularly complex, PBNI will exclude meaningful input from important stakeholders in civil society. Indeed, criterion 2 of the BIS Code of Practice on Consultations states that '[i]f a consultation exercise is to take place over a period when consultees are less able to respond, e.g. over the summer or Christmas break, or if the policy under consideration is particularly complex, consideration should be given to the feasibility of allowing a longer period for the consultation.'<sup>1</sup> In the interests of meaningful consultation, we request that the relevant paragraph is included in the PBNI equality scheme.

Also, it is not clear why PBNI has removed the commitment, at para 3.14, to make available for consultees 'detailed information on the policy proposal being consulted upon and any relevant quantitative and qualitative data'. It is acknowledged that this information might be implicitly included in the commitment to make available 'all relevant information' (para 3.14 PBNI draft scheme). However, it is not clear that this is the intention or effect. Indeed, the removal of the relevant phrase (found in 3.2.9 ECNI model scheme) suggests that PBNI does not intend to make such information available. As a result, we recommend that PBNI include the relevant passage in its equality scheme.

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<sup>1</sup> <http://www.berr.gov.uk/files/file47158.pdf>.

Finally, it is not clear why PBNI has qualified para 3.2.4 ECNI model scheme, so that it will only offer ‘support’ instead of ‘training’ to its staff, in order to ensure that those facilitating consultations have the effective skills to communicate effectively with stakeholders (para 3.9 PBNI draft scheme). Although we recognise that ‘support’ does demonstrate an intention that staff be able to communicate effectively with consultees, it does not ensure committed action on behalf of PBNI to ensure that its staff are given all the necessary information and skills. Particularly given that staff training is included as a necessary requirement in all equality schemes (see para 4(2)(e) Schedule 9 Northern Ireland Act 1998), we recommend that ‘training’ is added to ‘support’ in para 3.9 PBNI equality scheme.

### Accessibility

We note that PBNI has qualified the extent to which it will consider accessibility arrangements for consultation exercises. At para 3.2.2 ECNI model scheme, it states that ‘[w]e will engage with affected individuals and representative groups to identify how best to consult or engage with them. We will ask our consultees what their preferred consultation methods are and will give consideration to these.’ By contrast, the PBNI draft scheme states only that ‘[w]e will identify the most effective methods of consultation and give consideration to these’ (at para 3.5).

Although the above difference may seem minor, the effect could be to exclude disadvantaged groups from PBNI consultations. Without engagement with the affected groups and their representatives, PBNI might not know the ‘most effective’ forms of consultation. Furthermore, the ‘most effective’ method for PBNI might not be the preferred method for consultees. As a result, methods which PBNI perceive to be the ‘most effective’ might not, in effect, be successful in reaching the consultees on whom the relevant policy might impact the most. We therefore recommend that PBNI include the language used in the ECNI model scheme, as identified above, within its own equality scheme, in order to help ensure accessibility to its consultation exercises.

Also in relation to accessibility, we note that PBNI has not included various aspects of the ECNI model scheme that help to ensure accessibility for vulnerable groups. For example, at para 6.4 of its draft scheme, PBNI has not included disability organisations within those with which it will work to develop best practice (despite its inclusion at para 6.3 ECNI model scheme). Similarly,

it has not included any arrangements for consulting with people with disabilities, children and young people or ethnic minorities, and only commits to consult with young offenders 'from time to time', 'where appropriate' (see para 6.5 PBNI draft scheme).

It is clear that special arrangements might be required to consult with or provide information or services to people with disabilities, children and young people and ethnic minorities. As a result, it is crucial that PBNI has these arrangements in place for all categories outlined, and not only young offenders. We remind you that people with disabilities, children and young people and ethnic minorities are all included within the s75 categories, and so their involvement in the application of s75 to policies is particularly important. We therefore request that arrangements are put in place, and included in the PBNI equality scheme, for each of these categories.

#### Collection of Data

In relation to data collection, we note some small changes to the PBNI draft scheme, as compared to the ECNI model scheme, which could affect the application of PBNI's equality scheme in practice. First, PBNI has again removed the references to 'qualitative and quantitative data' (see para 4.29 PBNI draft scheme). Without such a clear reference to the types of data that should be used when applying s75, staff could take a restrictive approach. We therefore recommend that the clear indication of the inclusion of both quantitative and qualitative data be included.

Secondly, PBNI has removed the paragraph from the ECNI model scheme that commits to an 'audit of existing information systems within one year of approval of this equality scheme, to identify the extent of current monitoring and take action to address any gaps in order to have the necessary information on which to base decisions' (see para 4.29 ECNI model scheme). If PBNI does not monitor its information systems and address any gaps arising, it cannot know the full extent of inequalities in our society, and so the way in which its proposed policies could impact upon them.

It is therefore crucial that such monitoring and gap analysis is undertaken, and we recommend that the relevant paragraph be included in the PBNI equality scheme. We also recommend that all equality monitoring information is reviewed on a timed basis, such as yearly (as is the case for EQIA monitoring

information), instead of 'on an on-going basis' (as is currently the case, see para 4.31 PBNI draft scheme).

Also in relation to the collection of data, we note that PBNI 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 PBNI 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 PBNI publish and/or consult on its draft audit of inequalities.

Further, we recommend that PBNI commits to publish and consult on its audit of inequalities and action plan in the future, by explicitly adding them as documents for which PBNI will seek input from its stakeholders and consult upon (currently only the draft action plan is referred to, and as a completed event at para 2.16 PBNI draft equality scheme). Please note that, due to a lack of resources, we have not reviewed the PBNI draft action plan.

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

As noted above, staff training is essential to ensure the full understanding and so application of s75. Although we acknowledge PBNI's chapter on staff training within its equality scheme, it is not clear why PBNI has removed the commitment, at para 5.5, to 'share resources and expertise and, where possible, work closely with other bodies and agencies in the development and delivery of training.' We expect that this approach could help provide

efficiencies in practice, and so would appreciate clarification regarding its lack of inclusion in the PBNI draft scheme.

Finally, CAJ recommends that PBNI include statements in its equality scheme to explain the operation of s75, which is often misunderstood. In particular, the PBNI equality scheme does not explain the relationship between the equality duty (s75(1)) and the good relations duty (s75(2)). The ECNI Guide for Public Authorities<sup>2</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>3</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>4</sup>

As the PBNI's 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>5</sup>

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<sup>2</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>3</sup> Ibid at page 26.

<sup>4</sup> Ibid, at page 27.

<sup>5</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

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Section 75 categories. Thus Section 75 enables multiple identity issues to be considered as well as issues regarding particular categories of people.'