

CAJ's submission no. S370

CAJ's submission to the Office of the First Minister and Deputy First Minister on its draft Equality Scheme

December 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.

Submission to the Office of the First Minister and deputy First Minister 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 Office of the First Minister and deputy First Minister's ('OFMDFM') consultation on its draft equality scheme.

CAJ acknowledges OFMDFM's efforts in producing a comprehensive draft equality scheme. However, the extensive delay in releasing the draft equality scheme for consultation suggests that OFMDFM is not sufficiently committed to its equality duties. This is particularly concerning, given OFMDFM's responsibility for equality in the Executive and its stated key objective to promote equality of opportunity (see OFMDFM website). We believe that OFMDFM should be leading by example in its performance of its duties under s75 Northern Ireland Act 1998 ('s75').

We have had the opportunity to engage with OFMDFM at an Equality Coalition event in September 2011, which was very useful. We are encouraged that OFMDFM has adopted the ECNI model scheme as a basis for its draft equality scheme, and expanded on it in parts. In this brief submission we will highlight one divergence from the ECNI model scheme, which could affect the application of the OFMDFM draft scheme. We will also suggest a few additions, beyond the ECNI model scheme, which would strengthen the OFMDFM equality scheme in practice.

First, we note that OFMDFM has not fully replicated the commitment in the ECNI model scheme that consultees who have requested information in an alternative format will 'have equal time to respond' (at para 3.2.3). Instead, the OFMDFM draft scheme allows for such consultees to have 'sufficient time to respond' (at para 3.5). Although this difference could seem minor, its effect is that those consultees with disabilities or from ethnic minorities that require an alternative format would not have an equal opportunity to input to the

consultation process. Given that the very purpose of s75 is to promote equality of opportunity, it would seem important that OFMDFM's equality scheme supports this basic principle. Also, a time period that OFMDFM believes to be 'sufficient' might not be sufficient for the consultee concerned.

Secondly, beyond the model scheme, it would be helpful for consultees to be informed when screening forms are posted on the OFMDFM 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 OFMDFM 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 OFMDFM include a statement that consultees will be informed of screening forms when they are completed or posted on its website.

Thirdly, we acknowledge that OFMDFM has published and consulted upon its audit of inequalities. This is welcomed, as it helps civil society inform OFMDFM of any irregularities or omissions, and also provide a useful frame of reference for the draft action plan. We recommend that OFMDFM continues to commit to publish and consult on its audit of inequalities in the future, by explicitly adding the audit as a document for which OFMDFM will seek input from its stakeholders and consult upon (at para 2.17 OFMDFM draft equality scheme). Please note that, due to a lack of resources, we have not reviewed the OFMDFM audit of inequalities or draft action plan.

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

Finally, CAJ recommends that OFMDFM include statements in its equality scheme to explain the operation of s75, which is often misunderstood. In particular, we recommend that the OFMDFM 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 Authorities¹ ('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'.² 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'.³

As the OFMDFM 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

¹ 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>.

² As above, at page 26.

³ As above, at page 27.

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.¹⁴

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⁴ As above, 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.'