

Equality Commission to investigate Community Halls and Líofo Funding Decisions

CAJ has welcomed a decision by the Equality Commission to use its enforcement powers under the statutory equality duty to investigate the Funding Decisions by the Department of Communities (DfC) on the Líofo bursaries and Community Halls schemes. Just News provided some details of these schemes back in February. Since that time CAJ obtained further information and made a detailed submission to the Commission identifying 19 breaches of the Halls scheme alone and requesting a formal investigation. The decisions were a significant factor in the collapse of devolved government in Northern Ireland.

The commitment in the Good Friday Agreement for a statutory equality duty was legislated for under Section 75 of the Northern Ireland Act 1998. Designated public authorities have to adopt statutory Equality Schemes which, among other provisions, contain binding arrangements to equality test new or revised policies in relation to their impacts on equality. This is usually undertaken by a two stage methodology of first Equality Screening and, where required, a more detailed Equality Impact Assessment (EQIA).

Where policies are likely to be discriminatory ('an adverse impact') on any of the nine equality grounds, a full EQIA is normally triggered as is a duty to consider 'alternative policies' or changes to the policy ('mitigating measures'). This and other breaches of Equality Schemes can be investigated by the Equality Commission who can issue remedial recommendations to the public authority – if a public authority does not comply within a reasonable time they can be referred to the Secretary of State who has further powers. Remarkably, equality testing was bypassed in its entirety in both the Líofo and Community Halls decisions. Neither policy was initially subject to equality screening.

The decisions were taken under the mandate of Minister Paul Givan MLA of the DUP at a time when the Equality Commission had just signed off on a previous investigation into the department for similar failings in relation to equality proofing of strategic housing policy under a previous DUP Minister Nelson McCausland. Whilst there have been issues of Section 75 compliance in other departments and with other Ministers, the actions undertaken under these Ministers in this particular department have been particularly worrying.

It is also difficult to divorce them from the context of the DUP's opposition to key tenants of the equality agenda, and indeed the GFA. A further layer of complexity is now added in the context of the Secretary of State being the ultimate enforcer of the duties at a time when the Conservatives are entering into an arrangement in Westminster with the DUP. The Líofo bursaries decision related to a modest scheme to assist young persons from low income families from across the community to attend Irish language summer courses in the Donegal Gaeltacht. The cost of the scheme was around £55k. Just before the 2016 Christmas holidays the Minister announced the scheme would be cut in its entirety.

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The cited reason was the need to make ‘efficiency savings’. No equality screening had been conducted. The Department subsequently argued that screening was not required. A Freedom of Information request on the decision was not responded to until a complaint was lodged with the Information Commissioner. The Minister then invoked a ‘public interest’ exemption that allowed the department to withhold all documents about how the decision was taken. We appealed this decision, and it was overturned (after the minister had left office).

The documents released revealed that the scheme had been evaluated as having ‘many’ positive benefits and highlighted the detriment any cuts to the scheme would have. Despite this advice the Minister however instructed that ‘no scheme’ continue. As part of the request the Department undertook a “detailed search” of all its information “(electronic records, paper files, e-mails)” and confirmed it did not hold any information whatsoever about efficiency savings being considered in December 2016 at the time the Liofa decision was taken. It was also notable that during the same time the Department managed to source an additional £1.5 million ‘slippage’ for the Community Halls scheme. Given this a focus of the Commission’s investigation must surely be as to the real reason the decision was taken. If there is contextual evidence it was taken on the basis of sectarian bias, this surely would constitute a substantive breach of the equality duties, and should be a significant line of inquiry.

There were even more twists and turns in the Community Halls saga. The fund was set up very quickly after the Minister took office in May 2016, at the request of community stakeholders (the department has no records as to who they were). The Scheme was budgeted initially as a £200k fund but then increased to £500k when the application process was opened in October 2016, and to £1.9m by the time grants were distributed in January 2017. To date the Department will not confirm where the additional £1.5m was taken from, beyond that it was slippage from other areas of the budget. Initially no Equality Screening was undertaken by the Department due to an ‘oversight’ by officials. No records were kept as regards how the criteria for the fund were devised. Some of the criteria seem difficult to justify and are likely to have benefited particular groups. The Fund was launched by the Minister in an Orange Hall, and garnered a perception that it was targeted largely at such halls.

When CAJ requested the Screening Template from DfC and it was not provided we issued an equality schemes breach complaint. Subsequently the DfC undertook a screening exercise but it was deeply flawed providing no analysis of impact on any specific Section 75 categories at all. Rather the standard template was merged into one box for ‘all categories’ and stated that no differentials had been identified. Given this, we triggered a process under the equality scheme for a review of the screening. A second screening exercise was then produced demonstrating significant differences on grounds such as gender, religious belief and political opinion. This showed a significant differential in favour of male-led Protestant organisations as applicants and grantees, with Orange Halls alone constituting 38% of awardees. Overall 64% of awardee organisations were identified as Protestant; 10% Catholic and 26% as cross community; the contrast was even starker in relation to gender, albeit the statistics provided were unclear. The Screening however did not categorise this as an ‘adverse impact’. Rather it argued that the differential was justified by ‘unmet need’, citing as a sole piece of belated supporting evidence the contention that Protestant faith-based organisations do not apply for Lottery funding. However this latter assertion was contradicted then by figures from the Lottery which reported 40 Orange Halls had shared more than £350k in grants in the last two years; and that Protestant churches had received over £1 million from the Heritage Lottery fund. Given this an EQIA should have been conducted and changes to the policy instigated to prevent the identified adverse impacts in the allocation of resources.

All this ignores civilised norms of political behaviour in policy making where due process in relation to equality law is paid lip service or set aside. There is much talk about the need to re-establish the devolved institutions. However, it is difficult to see their sustainability if practices like the above simply continued. Hopefully an effective investigation by the Commission will provide remedy to the issues raised above. In general however we would be better served by Stormont if the full range of safeguards on the exercise of power provided for in the Agreements, not least the Bill of Rights, were now implemented.

Defence Committee Report calls for a ‘Statute of Limitations’ on Prosecutions of British soldiers

On 26 April 2017, the House of Commons Defence Committee published a report on its investigation into fatalities in Northern Ireland involving British military personnel. This report controversially called on the incoming Government to enact a ‘statute of limitations covering all Troubles-related incidents, up to the signing of the 1998 Belfast Agreement, which involved former members of the Armed Forces’. The Committee further encouraged the Government to extend this protection to former members of the Royal Ulster Constabulary and other former security personnel. It did not take a position on whether these proposals should extend to former paramilitaries; instead, it said that it left that for the next Government to decide, after appropriate consultations.

On its face, this proposal seems to be intended to prevent criminal investigations and prosecutions, but not truth recovery. Indeed, the report states that the ‘statute of limitations’ should be ‘coupled with the continuation and development of a truth recovery mechanism which would provide the best possible prospect of bereaved families finding out the facts, once no-one needed to fear being prosecuted.’ The report sets out three reasons why the Committee is recommending what is in effect an amnesty for state forces.

Firstly, it stated that there is a disproportionate focus on former service personnel from the Police Service of Northern Ireland (PSNI) investigations of legacy offences. To support this argument, the report reproduces data that the Committee received from the PSNI. The Committee argued that the data shows there are ‘a disproportionately high number of investigations [of security forces] (30% of investigations) when compared to the total level of killings attributed to the Army (10%)’. However, the 30% figure relates only to remaining caseload, rather the total number of cases reviewed by the PSNI.

If the total number of cases is considered then only 12% of the cases reviewed relate to the security forces. This smaller figure corresponds closely to the proportion of conflict-related deaths for which the state has acknowledged responsibility. Given this data, the argument that a statute of limitations is necessary to redress a disproportionate focus on state forces is unpersuasive.

Secondly, the report argued that it is necessary to enact a ‘statute of limitations’ to protect British service personnel in order to avoid another ‘IHAT debacle’. This relates to the Iraq Historic Allegations Team (IHAT), which was set up as ‘part of the UK’s obligation to conduct investigations into these allegations that are compliant with the European Court of Human Rights (ECHR) and the requirements of the International Criminal Court.’ IHAT was closed down following revelations that the majority of complaints brought to it were false. The solicitor responsible for bringing the fraudulent claims has been struck off for misconduct. The subject matter of the IHAT investigations and the reasons for its failings are unrelated to historical allegations of offences by British soldiers in Northern Ireland. Therefore, once again it is a stretch to justify a statute of limitations for legacy offences on the basis of preventing a repetition of the problems of IHAT.

Thirdly, the Committee emphasized that the UK government has a ‘moral responsibility’ to current and former British armed forces personnel as well as a commitment in the Armed Forces Covenant. It argued that ‘it is morally indefensible for former service personnel to be caught in limbo, with the threat of investigation hanging over them.’ While the UK government undeniably owes obligations to those who serve in the armed forces, it also has legal and moral obligations to victims and survivors, some of whom have been waiting almost fifty years to have their cases investigated. These legal obligations include the duty of the state under Article 2 of the European Convention on Human Rights to conduct independent, transparent, effective and prompt investigations into conflict-related deaths.

The Defence Committee conducted this investigation during March and April 2017, when Northern Ireland's political parties were involved in negotiations to implement the legacy proposals contained in the Stormont House Agreement (SHA). These negotiations were put on hold during the General Election campaign but they are expected to resume in late June 2017.

Among its proposals on the past, the SHA calls for the creation of a Historical Investigations Unit (HIU) to conduct criminal investigations conflict-related deaths and, if sufficient evidence is available, refer cases for prosecution. The Agreement stipulates that the HIU, together with the other bodies proposed in the SHA, must operate in manner that is balanced, proportionate, and human rights compliant. The Defence Committee did not attempt to ensure that its recommendations complemented the commitments of the British and Irish governments and the main Northern Irish political parties under the SHA. Instead, although the Defence Committee called for 'a truth recovery mechanism', its recommendations would fundamentally undermine the purpose of the HIU. In doing so, they would unpick the commitments that have been made in the Stormont House Agreement.

As the report was published in the midst of an election campaign, there has not yet been a formal response from government. In its manifesto, the Conservative Party restated its commitment to the Stormont House Agreement, but it also expressed its resistance to prosecutions of current and former members of the armed forces.

In particular, it states that 'British troops will in future be subject to the Law of Armed Conflict, which includes the Geneva Convention and UK Service Law, not the European Court of Human Rights'. It further commits the party to 'strengthen legal services regulation and restrict legal aid for unscrupulous law firms that issue vexatious legal claims against the armed forces.'

These commitments are deeply troubling from a human rights perspective and if they are applied retrospectively to legacy offences they would undermine the ability of victims and survivors to ensure that any proposed truth recovery mechanism operates in an effective manner.

Prof. Louise Mallinder



CAJ shortlisted for Ulster University Impact Excellence Awards

In common with all universities, Ulster University is putting increasing emphasis on the social impact of the research carried out by its academics.

This year, Ulster University brought together various ways of recognising the role of civil society in collaborating with academics in the Impact Excellence Awards. CAJ was shortlisted for an award for its collaborative work in particular with the Transitional Justice Institute.

While we did not win the award we were pleased to be shortlisted and for the recognition given to human rights work. The application of high level academic knowledge and insight to real problems that people face is our motivation for collaboration and we will continue it on a range of issues.

Opposing the two child tax credit cap and 'rape clause'

The Women's Policy Group prepared a paper to provide expert analysis of the key equality and human rights impacts of the implementation of the two child rule that will be applied to new applicants for child tax credit and Universal Credit, and its exemptions including the awful so-called 'rape clause'.

The significant cuts to Tax Credits and Universal Credit (UC) including the 'Two child rule', were first announced in the Summer Budget of 2015 by the UK Chancellor George Osborne. The Welfare Reform and Work Bill was introduced into Westminster on 9 July 2015 and became law in March 2016. It introduced the 2 child rule for child tax credits across the UK with a commencement date of 6 April 2017 and introduced the 2 child rule for universal credit in GB only. Despite being outside the terms of the 'Fresh Start' Agreement in late 2016, Westminster also legislated to introduce the two child rule into UC here. Given Northern Ireland has a staggered roll out of UC it will take some time to take effect. None of these affects Child Benefit payments.

Essentially changes have been made whereby only the first two children (born after 6th April 2017) will be eligible for support under child tax credits or UC. After two children, parents (or guardians) will only be able to claim for other children under certain 'exceptional circumstances'.

Among these circumstances is where a woman can prove to a third party assessor that her 3rd+ child has been conceived as a result of 'non-consensual conception'.

Appalled by the implications of this policy, the Women's Policy Group has worked to draft a briefing to outline some of the equality and human rights implications of the proposals. The briefing paper covers general issues such as domestic violence, sexual coercion and control of victims.

It also covers equality issues such as the need for a proper section 75 equality screening of the child tax credit policy and then mitigations to address the adverse impacts on women, children and religious belief. Also socio economic impacts should be looked at in the context of equality of opportunity.

The paper also covers Human Rights obligations such as a woman's right to privacy and family life, the right to be free from inhumane or degrading treatment and the positive obligation the UK Government have to protect women from domestic violence as established by the ECHR.

Children's issues are also covered as the changes will put women in an unconscionable position of choosing between poverty and stigmatising their child as a 'rape child'. Women who rely on child tax credits to put food in their children's mouths will be faced with a Sophie's Choice of either re-living their trauma and stigmatising their child. The changes also affect Child poverty - this policy will detrimentally impact children in larger and poorer families. Children are being made the 'collateral damage' in a policy that appears to be seeking to punish people into keeping their family sizes smaller. It is fundamentally at odds with the requirement under international human rights law to prioritise the best interests of the child laid out in the UNCRC. 24% of children in NI are living in poverty, this is set to rise with the main driver being changes to tax and benefit changes.

There are also Northern Ireland-specific issues that have not been taken into consideration with regards to the application of this policy. This includes the issue of abortion. Abortion is not available in most circumstances in Northern Ireland. Northern Irish women will be more severely impacted by the policy than women in England, Wales or Scotland. The CEDAW Committee has already highlighted the UK's failure to protect the reproductive rights of women in Northern Ireland in its last examination – the 2 child cap is yet another demonstration of how the gap in Northern Ireland's human rights protections are victimising women.

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Women who rely on tax credits are unlikely to be able to afford to travel to England to obtain a legal abortion, which can cost up to £2000 including fees, flights and hotels.

Women are more likely to access medical abortion pills, the taking of which carries a sentence of up to life imprisonment under the Offences Against The Person Act 1861. Women in Northern Ireland are therefore being placed in a situation where they must choose between poverty and criminalisation.

Section 5(1) of the Criminal Law (Northern Ireland) Act mandates that all serious crimes must be reported to the police and therefore the implementation of this policy has significantly different consequences for women in Northern Ireland compared to the rest of the UK. Any woman who applied for this exemption should expect to have the case reported to the police. This aspect of the law could put women in an extremely dangerous position where they could face additional violence from their abuser. It will also put benefits assessors in a very difficult position whereby they must report the disclosure of rape to police or risk being charged with a crime themselves. Many women do not want to engage with the criminal justice system, or report someone that they are in a relationship with to police. They should not be forced to do so to access welfare.

Northern Ireland is the UK region with the highest percentage of households with children (34%), compared to a UK average of 28%. As well as having more families with children, the region also has a higher proportion of larger families (with four or more children). This policy will disproportionately affect Northern Ireland for this reason.

This is taking place in the wider context that the NI executive is still currently failing in its legal duty to adopt a strategy setting out how it will tackle poverty, social exclusion and patterns of deprivation based on objective need, as provided for in section 28(e) of the NI act 1998.

The Women's Policy Group have written to the Equality Commission for Northern Ireland, the Northern Ireland Human Rights Commission, Northern Ireland Commissioner for Children and Young People and the Northern Ireland Office to seek clarification on any work they are doing in order to mitigate against the impacts of these tax credit changes in Northern Ireland.

CAJ granted three year funding for Equality Enforcement Project from the Baring Foundation



**Baring
Foundation**

CAJ is delighted to announce that it has received three year funding from the Baring Foundation for an Equality Enforcement Project. The project seeks to dismantle the barriers to successful enforcement and hence application of the Section 75 equality duty through the employment of a dedicated equality duty enforcement post to work with the 80+ Equality Coalition member groups.

The post holder will be responsible for scrutinising policy initiatives in NI that impact on economic, social and cultural rights for non-compliance with the statutory equality duty; drawing such processes to the attention of directly affected member groups and facilitating enforcement processes.

This mix will seek to mainstream the Human Rights Based Approach (HRBA) and legal expertise of CAJ to build self sustaining capacity and ethos within Coalition member groups; to facilitate this, an information resource will also be built up.

A Troubling Turn: The Vilification of Human Rights Lawyers in Northern Ireland - Report Summary

Alarm over the implications of the Conservative Party's reliance on the Democratic Unionist Party is understandable. But threats to the Good Friday Agreement began well before the U.K. election.

The vilification of human rights lawyers is back. More than 20 years after the U.S.- based Human Rights First (then known as the Lawyers Committee on Human Rights) published a series of reports on attacks on solicitors, including the murders of Pat Finucane and Rosemary Nelson, we returned to Northern Ireland to document and highlight the new demonization of lawyers.

Our new report, *A Troubling Turn: The Vilification of Human Rights Lawyers in Northern Ireland*, details the vilification of Northern Ireland lawyers, including attack on lawyers by elements of the British press and some government officials. Lawyers targeted by the press and by British politicians are handling some of the hundreds of cases of killings by British soldiers during the Troubles.

The vilification has reached alarming levels. Two months after Prime Minister May's speech at the Tory conference, several articles in *The Sun* and *The Daily Mail* appeared in December 2016 using similar language to attack solicitors working on legacy cases.

"WHY ARE OUR SOLDIERS FACING A NEW WITCH-HUNT?" asked *The Daily Mail's* front-page headline on December 9. "Up to 1,000 retired soldiers in their 60s and 70s face a police witch-hunt some 40 years after they battled terrorism in Northern Ireland," the piece opened.

Headlines in *The Sun* included, "TANK- CHASE LAWYERS AGONY FOR 1,000 SQUADDIES; FIRMS' PROFIT FROM HEROES, and "LAWYERS SCORED £12M IN LEGAL AID." Several law firms were singled out, including KRW Solicitors, founded by Kevin Winters, and O Muirigh Solicitors, run by Padraig O Muirigh. The paper published photos of solicitors, including Kevin Winters, and featured details about his home.

In the comments section under the online version of the December 10 article one contributor wrote "Soldiers should have immunity from this kind of thing. These parasite lawyers need shooting along with the scum they're representing."

We hope that former and current U.S. government officials will publicly remind the U.K. government that the peace in Northern Ireland remains fragile, that families have a right to know the truth about the past, and that lawyers and others facilitating that process should be free from media and political attack.

The U.S. government has a long record of highlighting concerns of human rights lawyers in Northern Ireland. Rosemary Nelson testified in the U.S. House of Representatives shortly before she was murdered in 1999, and in May 2006 the House of Representatives passed a resolution by a vote of 390-31 calling for the U.K. government to establish a full "independent public judicial" inquiry into the murder of Pat Finucane, which has yet to happen.

We're also asking U.S. lawyers, academics, and legal organizations to publicly raise concerns with the U.K. government and with U.K. law organizations about the risks to lawyers and others upholding the rule of law.

We are asking senior U.K. government officials to publicly reaffirm the U.N. Basic Principles on the Role of Lawyers, and urgently calm the rhetoric around the work of lawyers working on legacy cases in Northern Ireland. The U.K. government should also outline how it will otherwise protect the lawyers from vilification and violence. Members of Parliament in the United Kingdom should refrain from inflammatory rhetoric against Northern Ireland lawyers and the Director of Public Prosecutions.

The full report can be found here: <http://www.humanrightsfirst.org/sites/default/files/A-Troubling-Turn.pdf>

Brian Dooley, Senior Advisor at Human Rights First

Civil Liberties Diary - April

4th April

It has been reported that a community hall scheme is weighted in favour of the Protestant community. While the scheme had an initial budget of £500,000, the cost of the programme has since spiralled to £1.9 million. Of the 90 successful applicants, 58 are from groups “perceived” to be Protestant while just 9 were from Catholic organisations.

A revised equality screening document published by the Department for Community’s reveals that DfC officials believe that the policy “is not expected to provide further opportunities to better promote good relations between people of different religious belief”.

Daniel Holder, CAJ said heavy redacted documents under the Freedom of Information Act reveal “that the decision to label what ultimately became a £1.9 million fund as a “pilot” seems to have been taken to avoid needing Department of Finance approval”.

6th April

The PSNI has revealed an action plan to recruit more people from Catholic backgrounds, in order to make the police force more representative of the community. Recently, only 31% of applicants to recruitment drives for the PSNI were Catholic.

7th April

A ban has been lifted on press publication of a mugshot of a woman jailed along with her husband for abuse of a disabled woman who was held captive in their home for eight years. The ban had been put in place in order to protect her right to life under Article 2 of the European Convention on Human Rights, but after a risk assessment by police, a court ordered that the ban should be ended.

Various events examining the legacy of the civil rights movement will mark the 50th anniversary of the official founding of the Northern Ireland Civil Rights Association.

12th April

Victims of historical abuse have spoken out about their ongoing wait for financial payments for compensation, due to the collapse of the Stormont government. A report into church and state abuse was published in January, mere days before Stormont collapsed, recommending compensation payments reaching £100,000. However, the failure of Stormont meant that the report was never presented to the Assembly, and the recommendations from the report therefore have not been implemented.

13th April

The PSNI has decided to stop sharing sensitive files with the Police Ombudsman due to an alleged theft of documents by a former ombudsman investigator. The alleged thief has been

arrested, but the PSNI will undertake a security review of the Police Ombudsman’s office before it resumes the sharing of such files.

19th April

A prominent figure in the Ulster Teachers’ Union (UTU) has stated that Northern Irish schools should consider having gender-neutral toilets, in order to accommodate transgender children.

Avril Hall Callaghan, the general secretary of UTU, stated that this was a very important issue, and that it could also help schools to save money by building one toilet block instead of two.

Compiled by Fiona McGrath from various newspapers

Just News

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