

Keeping it Effective – Note from CAJ on the Section 75 Review

CAJ welcomes:

CAJ welcomes the fact that no changes are proposed to the existing legislative framework and has been of the view that the existing provisions offer an opportunity to effect change if properly implemented. It is clear that going down the route of amending the legislation would not be a helpful way forward.

Equally however, CAJ along with other Coalition members has argued for some time that changes are needed to the existing processes in order to deliver on the potential of the legislation. There are a number of measures we believe can and should be taken within the existing framework to enhance the operation of Section 75. This would include a greater enforcement role on the part of the ECNI through the use of Schedule 9 investigations for example, and indeed the greater use of litigation generally around failures to comply with Section 75.

In particular, CAJ we would wish to reiterate the point made in the Brice Dickson/Colin Harvey report that the threshold required by the ECNI to carry out an investigation under Schedule 9 is not as high as the threshold required to carry out an investigation under anti-discrimination legislation. The ECNI would appear however from the guidance that has been developed on Schedule 9 investigations not to recognise this lower threshold. The ECNI should therefore in our view amend its procedures for carrying out investigations to reflect this different, and lower threshold. Such an amendment would facilitate a more proactive use of the ECNI's investigative powers under Schedule 9. Indeed it is regrettable in our view that the "Keeping it Effective" report does not address this issue.

Notwithstanding these criticisms, there are some aspects of the document with which we would agree. CAJ welcomes more specific analysis within Equality Schemes of how public bodies can deliver equality outcomes, and read-across between Section 75 objectives and Corporate Plans for example (Page 8).

In relation to making the whole system more outcome focused we note that according to the report (Page 51)

"Research on the impacts of Section 75 on policy development (Bridge, 2007) found that, in monitoring compliance, the Commission had not requested sufficient or accurate information from public authorities on the changes they had made to the policymaking process as a result of Section 75, on the policy outcomes arising from the process or on the

extent to which the authority has better promoted equality of opportunity and good relations. Requests for such information in annual progress reports would have required public authorities to present this evidence, thereby having an impact on practice throughout the year. The research recommended changes to the kind of information sought from public authorities by the Commission”.

This is an argument that CAJ and indeed a number of Coalition members have been making for some time and changes in this respect could be effected by the ECNI to their Guidance on annual progress reports relatively easily.

CAJ also notes that (Page 56)

“The Commission is recommending that schemes be amended to set outcome-oriented actions which will be achieved over time. By broadening the scope of schemes, investigations could consider whether a public authority has worked to achieve a particular action as set out in its equality scheme, rather than whether the public authority has followed a process contained in its equality scheme”.

This is certainly a useful way forward however much will depend on the timeliness with which this recommendation can be implemented.

CAJ also welcomes the call for the development of baseline data and indicators to measure progress of the legislation across groups (Page 8), again however, we are disappointed that this issue, which Coalition members have consistently called for has not been addressed already.

Some Concerns for the way forward

While there are several references to “future guidance” on for example Equality Schemes, CAJ would be concerned that “awaiting future guidance” should not become an excuse for lack of action around existing responsibilities.

Equally, the focus on developing new guidance should not become another “process intensive exercise” which diverts attention away from carrying out EQIA’s of ongoing decisions.

For example, the report states that (Page 56):

“the Commission will work closely with OFMDFM in the development of guidance on equality schemes to manage the development, implementation and measurement of actions to promote equality of opportunity and good relations to ensure effective cross-over between equality schemes, and actions committed to under cross-departmental strategies including the gender strategy and A Shared Future”.

While the objective of linking equality schemes to high-level strategies is a worthwhile one, CAJ would have serious concerns as to how effective this move will be in practice given the track record to date on “development of guidance”, particularly when other public bodies/government departments are involved. We would cite the Guidance on Monitoring as an example of a process which went way beyond an acceptable timeframe.

High Level Impact Assessment

CAJ is somewhat unclear as to what the position is regarding the distinction between a “high level impact assessment” and an “equality impact assessment”.

We note that the report states that the

“Commission will, as a matter of priority, provide targeted and detailed advice across government departments to promote clarity on an approach to high-level impact assessment” (Page 9)

CAJ has always been of the view that the existing guidance does not distinguish between the level of policy and the nature of the procedure to be applied. As such, we would be opposed to any measure which is seen as a watering down of the current processes that are required for high level policies.

On the other hand however, advice designed to ensure the proper application of existing guidance on how to carry out an EQIA in relation to any policy, whether “high” or “low” level is always welcome and is entirely within the remit of the ECNI.

Questions about the following points in the report:

Roles of the Voluntary and Community Sectors

There are a number of issues here which we believe need clarified not least the recommendations that: (Page 64)

“To ensure a consistent level of awareness across the sectors, larger voluntary organisations should play a greater role in raising awareness of Section 75 among small voluntary and community organisations. The sectors should also build a more effective approach to co-ordination, to maximise the opportunities presented by Section 75 in terms of influencing public policy outcomes.

The commission will further consider its role in the promotion of the duties, by working with public authorities and the voluntary and community sectors to ensure sufficient capacity amongst individuals and organisations who wish to engage with the process.”
(Page 11)

CAJ would question whether it is appropriate, let alone possible within the existing resources for larger organisations to assume a role vis a vis “awareness raising” of smaller organisations if indeed that is what is being suggested. Moreover, the voluntary and community sector considers one of its strengths to be its diversity, and therefore there are limits to what can be achieved in terms of co-ordinating views among organisations who may disagree about a range of issues.

Again, the problem may be one of interpretation, but we would be particularly concerned that any public body might read this recommendation as meaning that a public body can merely engage with larger organisations in the community and voluntary sector, who are then responsible for disseminating information among smaller organisations.

Errors in the Report

CAJ and indeed the wider Coalition is of the view that there are clearly a number of problems relating to the content of some of the independent research reports. While there are numerous points that both CAJ and the Coalition would wish to take issue with, there is one particular error which directly affects the Coalition – and therefore its members. This relates to a section in the MMMA Consultancy Report which states that (Para. 5.4, 5.8, P.39)

“The Equality Coalition wants the Commission to use their powers and to work more closely with the community and voluntary sectors. They believe that a recent judgement by Girvan, confirming the right of community and voluntary organisations to be regarded as “an individual” for the purposes of taking a complaint under Paragraph 10 of the Northern Ireland Act, is an important step affirming the role of the sector and the Commission to hold public authorities to account”.

This is incorrect on a number of levels, not least because the Girvan judgement specifically did NOT find that community and voluntary organisations were to be regarded as an individual for the purposes of taking a complaint under paragraph 10 and certainly the Equality Coalition did NOT state this.

Coalition members would therefore request that the ECNI make clear on the website that this particular point is an incorrect interpretation of our views.