



CAJ

**Committee on the
Administration of Justice**

*CAJ's response to the
Head of Elections Unit, Northern Ireland Office consultation on*

Filling Casual Vacancies on District Councils

January 2010

Submission No. S.243

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Promoting Justice / Protecting Rights

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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.

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Promoting Justice / Protecting Rights

Winner of the Council of Europe Human Rights Prize

Response to Consultation on Filling Casual Vacancies on District Councils

Committee on the Administration of Justice ('CAJ')

1. Summary

While CAJ agrees that party nomination offers the most efficient way of maintaining party and community balance, we are concerned that no consideration has been given to the need to promote equality of opportunity for other sections of the community, such as women, ethnic minorities and people with disabilities.

CAJ requests that, given the potentially adverse impact of this policy on several categories listed in s75 of the Northern Ireland Act 1998, an equality impact assessment be undertaken before any decisions are made on the best mechanism for filling casual vacancies on district councils.

2. Introduction

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 works on a broad range of human rights issues and its membership is drawn from across the community. Its activities include - publishing reports, conducting research, holding conferences, monitoring, campaigning locally and internationally, individual casework and providing legal advice.

CAJ's areas of work are extensive and include policing, emergency laws, criminal justice, equality and the protection of rights. The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize. Together with UNISON, we co-convene the Equality Coalition.

For some time CAJ has been involved in the process of furthering the mainstreaming of equality in Northern Ireland and we are keen to forward our views on as many equality related documents as

possible. This is particularly the case where the documents concerned have important implications for the delivery of greater equality, as is the case for the consultation on filling casual vacancies on district councils ('the Consultation').

CAJ agrees that, in the case of casual vacancies on district councils, party nomination offers the most efficient way of maintaining party and community balance. However, CAJ is concerned that the Consultation has not taken into account the need to promote the equality of opportunity of other categories listed in s75 of the Northern Ireland Act 1998 ('s75'). We have read and support the consultation prepared by Women's Support Network.

3. The Application of s75 to the Consultation

Under s75, public authorities must have due regard to the need to promote equality of opportunity

- (a) between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
- (b) between men and women generally;
- (c) between persons with a disability and persons without; and
- (d) between persons with dependants and persons without.

The Consultation states that '*[t]he proposals suggested would not result in adverse implications to section 75 groups and altering the proposals would not result in better community relations or equality of opportunity*' (at 4.1.3). However, the proposals contained in the Consultation would clearly affect the equality of opportunity of s75 groups.

The Consultation only addresses the need for maintaining the balance of representation for those of different political opinion and religious belief, but ignores the need for a balance in representation, and so the promotion of equality of opportunity and good relations, for the other s75 categories. Indeed the Consultation does not even include all of the categories in its reproduction of the text of s75 ('age' is omitted).

It is unclear how the NIO could have reached the conclusion that this policy would not result in any adverse impacts, and so did not

need an equality impact assessment ('EQIA'). In the NIO's Equality Scheme, the NIO states that it will '*consult on the screening processes.. with relevant public sector organisations and with those representative groups and individuals of the section 75 categories*' (at 4.3). We query whether the NIO has fulfilled this commitment.

Further, it is not sufficient for the NIO to base its equality assessment only on the lack of adverse impact to s75 groups; it has a duty also to consider the positive promotion equality of opportunity. The Equality Commission's Statutory Guidance makes clear that "[w]ays of delivering the policy aims... which better promote equality of opportunity for the relevant equality category, must in particular be considered" (at page 29). We believe that altering the proposals in the Consultation could better promote the equality of opportunity of s75 groups.

CAJ requests that a full EQIA is carried out on the Consultation, as required under s75.

4. Equal Opportunities in Public Office

The Northern Ireland Office ('NIO') is under an obligation to consider the equality of opportunity and diversity in all public appointments. One of the seven principles of public appointments, set out by the Commissioner of Public Appointments in Northern Ireland is that '*[d]epartments should sustain programmes to promote and deliver equal opportunities principles.*' This principle is also repeated in OFMDFM's Guide to Public Appointments.

Similarly, the official government website, www.nidirect.gov.uk, states that '*[t]he government is committed to addressing the under representation of some groups on the boards of public bodies, including women, people from ethnic minority backgrounds and people with disabilities.*'

Indeed, the NIO has set out targets for public appointments in relation to women, ethnic minorities and people with disabilities. Each of these categories will be considered in turn, due to their particular relevance to the Consultation (and this does not imply a lack of equality impact for each of the other s75 categories).

4.1 Women in Public Office

The Convention on the Elimination of Discrimination Against Women 1979 ('CEDAW'), which has been ratified by the UK, states that '*States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right... to hold public office and perform all public functions at all levels of government*' (at Article 7).

This fundamental need to promote the equality of opportunity for women in public office is recognised in the Good Friday / Belfast Agreement, in which the parties affirm '*the right of women to full and equal political participation*'. However, in 2008, the UN Committee that monitors compliance with CEDAW expressed concern about '*the under-representation of women in public office*' in Northern Ireland (CEDAW/C/UK/CO/6, at 284).

The Consultation does not address this under-representation and its proposed policy could potentially reduce the number of women in public office, as there is no requirement for an outgoing female councilor to be replaced by another female candidate.

We remind you that s43A Sex Discrimination (Northern Ireland) Order 1976, as amended, allows for positive discrimination '*for the purpose of reducing inequality in the numbers of men and women elected, as candidates of the party, to be members of the... district council*'.

4.2 Ethnic Minorities in Public Office

In its Racial Equality Strategy for Northern Ireland 2005 – 2010, the government states that it must, and will, ensure '*that public institutions and public services reflect the communities that they serve*' (at 4.27). It recognises that '*[m]inority ethnic people are also under-represented in public appointments*' (at 4.28) and includes as one of its 'measures for success' the number of minority ethnic people included in '*[a]pplications for, and offers of, appointment to the public service*' (at page 67).

However, the government clearly is not applying these standards within the Consultation.

4.3 People with Disabilities in Public Office

Under Section 49A of the Disability Discrimination Act 1995, the NIO is required to have due regard to the need to '*encourage participation by disabled people in public life*'. We believe that the NIO has failed in this statutory duty.

Further, under the NIO's Disability Action Scheme 2005-10, the NIO is committed to '*widening the diversity of people who sit on its public bodies*' (at page 28) and considering '*the specific needs of disabled people when consulting on NIO policies*' (at page 37). We maintain that the NIO has not fulfilled either of these commitments in the Consultation.

CAJ requests that the NIO consider the need to promote the equality of opportunity, particularly for women, ethnic minorities and people with disabilities, when developing its policy on filling casual vacancies in district councils, as required by local, national and international law.

We also seek confirmation that an EQIA would inform NIO's decision making in relation to this Consultation, despite taking place after receiving responses from the public in relation to the Consultation.

Should you require any further information in relation to any of the above, please don't hesitate to contact Debbie Kohner, Equality Programme Officer.

CAJ
15 January 2010