

CAJ's submission no. S.283

CAJ's response to the
Department for Employment
and Learning's consultation on
its Draft Budget 2011-15

February 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.

Minister Danny Kennedy MLA

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Cc Bob Collins and Evelyn Collins, Equality Commission NI

16 February 2011

Dear Minister

Budget 2011-15: Inadequate assessment of equality impacts

Thank you for the letter of 27 January 2011, sent by your private secretary, and for further explaining the Department for Employment and Learning's ('DEL') approach to its equality duties in relation to the budget. Thank you also for sending us a copy of your High level Impact Assessment ('HLIA') on DEL's spending proposals and options for reductions.

However, despite access to these documents, we feel unable to respond in a meaningful way to DEL's budget 2011-15 consultation exercise. The timing of the proposed equality screening and impact assessments, required by s75 Northern Ireland Act 1998 ('s75'), will not allow their findings to inform public input to the budget 2011-15 consultation exercise. As such, DEL is not in compliance with s75. Further, DEL's draft budget 2011-15 and its associated HLIA provide insufficient information on the likely equality impacts to scrutinise the proposals in full.

Incorrect timing of s75 impact assessment

DEL's budget 2011-15 consultation document states that a preliminary equality impact assessment ('PEQIA') has been undertaken and that an HLIA was being finalised. However, despite our Freedom of Information request in our letter of 21 December 2010 for '*a copy DEL's equality assessment on its own spending proposals and savings measures*', we have only been sent a copy of the HLIA. Please could you send us a copy of the PEQIA, if it is indeed different to the HLIA.

As agreed upon in your private secretary's letter, the HLIA (and, from what we understand, the PEQIA) are not sufficient in themselves to discharge the s75 duties. Although DEL commits to considering mitigating measures and, if required, carrying out an EQIA on each proposal where the PEQIA / HLIA find an adverse impact, no such action has yet taken place. We note DEL's intention to carry out a full EQIA '*before final decisions are taken regarding [the proposals] implementation*', but this would be too late to allow full consideration of the equality impacts of the DEL budget.

In this regard, the various proposals included in the budget inter-relate, given the need to balance the books. As such, each proposal cannot be considered in isolation, particularly after the draft budget has been approved. At that stage, changes to existing proposals would have an impact on those spending and/or savings plans that have already been implemented, and so cannot be changed. We understand that this would inhibit DEL's ability to amend its proposals later in the budget process.

Accordingly, it is essential for DEL to assess equality impacts, as required by s75, before the draft budget is approved. As we have stated in our previous correspondence, caselaw in GB¹ has underlined the need for advance consideration of the promotion of equality of opportunity², as opposed to 'rearguard action'.³ The courts have warned that '*it is unlawful to adopt a policy contingent on an assessment*',⁴ and that such an equality impact assessment would amount to '*policy-based evidence rather than evidence-based policy*'.⁵

Also, at 4.2.4 of DEL's equality scheme, it states that '[w]henever a Preliminary Section 75 Assessment indicates that an option for change is likely to impact on equality of opportunity or on good relations, then before any such option is adopted by the Minister or by the Department, the Department will estimate the likely impact on equality of opportunity or good relations using available relevant information and commissioning research if appropriate.'

¹ In relation to s71 Race Relations Act 1976, which requires public authorities to have due regard for the need to promote the equality of opportunity in relation to race.

² R (Elias) v Secretary of State for Defence [2006] WLR 321, [2006] EWCA Civ 1293

³ R (BAPU and Another) v Sec of State for the Home Department and for Health, *supra*.

⁴ R (Kaur and Shah) v London Borough of Ealing [2008] EWHC 2062, at para 36.

⁵ *Ibid*, at para 37.

We remind you that the purpose of the s75 duty is to consider the impact of proposals on vulnerable people. In a time of recession, people who are already disadvantaged should be given every consideration and there is a duty on officials to mitigate any adverse impact. This correspondence is not merely for the purpose of administrative argument. It is to focus on the process of making crucial decisions over spending for the next four years; decisions which will impact on people who already live in difficult circumstances.

The importance of these impacts is also reflected in international human rights treaties.⁶ Indeed the UN Independent Expert on human rights and extreme poverty stated last month that *[h]uman rights are not dispensable and cannot be disregarded in times of economic uncertainty.. before designing and implementing any policy measures aimed at the recovery, policy makers must assess the impact of the measures on the most vulnerable groups of society, assess the appropriateness of the measures, and examine alternative policy options that would protect vulnerable sectors of society as a matter of priority.*⁷

Insufficient information

Unfortunately, we have received insufficient information to comment on DEL's draft budget 2011-15, as the potential equality impacts are unclear. In order to engage in meaningful consultation, consultees must be provided with sufficient information to understand, scrutinise and comment on the policies proposed. In the BERR Code of Practice on Consultation,⁸ *Criterion 3* (entitled *Clarity of scope and impact*) states that *'[c]onsultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals'*.⁹

The above is referred to in the Equality Commission for Northern Ireland's ('ECNI') Guidance on s75 which recommends *'that information is made available to ensure meaningful consultation, including detailed information on*

⁶ Such as the International Covenant on Economic, Social and Cultural Rights, ratified by the UK in 1976.

⁷ Statement of Magdalena Sepúlveda, UN Independent Expert on human rights and extreme poverty, following a recent mission to Ireland. Full text can be found at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10658&LangID=E>.

⁸ Department for Business, Enterprise and Regulatory Reform, July 2008, found at <http://www.berr.gov.uk/files/file47158.pdf>.

⁹ Ibid at page 9.

*the policy proposal being consulted upon and any relevant quantitative and qualitative data.*¹⁰ Also, in common law, the need for sufficient information in any consultation process is set out in the “Sedley Requirements”¹¹, which state that:

- i. it must be undertaken when proposals are still at a formative stage;
- ii. it must give sufficient reasons to permit the consultee to make a meaningful response;
- iii. it must allow adequate time for consideration; and
- iv. the results of the consultation must be conscientiously taken into account in finalising any proposals.

We believe that these minimum requirements for meaningful consultation have not been fulfilled in relation to equality impacts. In the HLIA received, scarce information is provided on the equality impacts, or the underlying evidence on which conclusions were reached. For example, under heading 1 – *EQIA for Budget 2010 spending proposals: Summary of the equality and good relations implications* – there is no mention of any equality implications at all, whether positive, negative or neutral.

In relation to savings plans, at heading 3 – *EQIA of options for reduction for the Budget 2010 period: Summary of the impact of the proposed savings plans in terms of equality* – the HLIA affirms a bizarrely circular statement that DEL has undertaken an HLIA. Despite mention of some neutral, positive or negative impacts, it is not set out what these are, their extent, to which policies they relate or on which evidence these impacts were found.

Finally, at heading 5 – *Mitigating Measures* – reference is made to the only three proposals that are expected to have a negative impact on equality groups. Despite the title, no mitigating measures are proposed; only a commitment to carry out an EQIA in the future (which, presumably, is different in substance to the ‘EQIA’ referred to in headings 1 and 3 of the HLIA). Furthermore, the three proposals identified do not correspond to the many proposals listed in the notes to the expenditure reductions in DEL’s Budget

¹⁰ Section 75 of the Northern Ireland Act 1998 A Guide for Public Authorities, April 2010, at page 39, found at <http://www.equalityni.org/archive/pdf/S75GuideforPublicAuthoritiesApril2010.pdf>.

¹¹ R v London Borough of Barnet, ex parte B [1994] ELR 357, 372G.

2011-15 consultation document, many of which could have negative equality impacts.¹²

Therefore, it is not clear what the impacts of DEL's draft budget may be on equality. The bald declaration that its proposals may have some negative impacts, without details or an evidence base, does not provide sufficient information to respond to DEL's budget consultation in a meaningful way.

Given the points above, we repeat our request that DEL carry out thorough, evidence- based impact assessments in relation to the promotion of equality of opportunity, as required by s75, before consulting upon or approving its draft budget 2011-15.

We also request that any future consultation run for at least the 12 week period recommended in OFMDFM,¹³ BERR¹⁴ and ECNI¹⁵ Guidance.

We look forward to hearing from you.

Yours sincerely



Mike Ritchie

Director

¹² For example, withdrawing funding for adult apprenticeships (at page 12) and a reduction in capacity for higher education (at page 13).

¹³ OFMDFM (2003) „A practical guide to policy making in Northern Ireland“, at section 8.5, found at: <http://www.ofmdfmi.gov.uk/practical-guide-policy-making.pdf>.

¹⁴ Department for Business, Enterprise and Regulatory Reform, July 2008, *supra*. Criterion 2 states that ‘*Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.*’

¹⁵ Section 75 of the Northern Ireland Act 1998 A Guide for Public Authorities, April 2010, *supra*. At page 38, it states ‘*[w]e recommend that the consultation period lasts for a minimum of twelve weeks.*’