

CAJ's Submission no. S.290

CAJ's response to the Office of the First Minister and Deputy First Minister'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.

First Minister Peter Robinson MLA and
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Cc Bob Collins and Evelyn Collins, Equality Commission NI

16 February 2011

Dear Ministers

Budget 2011-15: Inadequate assessment of equality impacts

We are unable to respond in a meaningful way to Office of the First Minister and Deputy First Minister's ('OFMDFM') budget 2011-15 consultation exercise, as OFMDFM has not fulfilled the equality duties set out in s75 Northern Ireland Act 1998 ('s75'). Further, the consultation document does not provide sufficient information on the likely equality impacts to scrutinise the proposals in full.

Inufficient s75 impact assessment

We strongly believe that OFMDFM has not discharged its s75 duties. The draft budget 2011-15 consultation document states that a *'high level impact assessment has been undertaken of the equality, good relations, poverty/social inclusion, and sustainable development impacts of spending and saving proposals'* (at page 5). However, despite our Freedom of Information request, OFMDFM has not published the high level impact assessment ('HLIA').

Even if an HLIA has been carried out, this would not, in itself, discharge the s75 duties, as we have made clear in previous correspondence. Therefore,

we expect that OFMDFM has not assessed or consulted upon equality impacts, as required by para 4(2)(b) Schedule 9 Northern Ireland Act 1998. In this regard, OFMDFM is also breaching its own equality scheme, which provides for equality screening and, if necessary, a full equality impact assessment of any new policies.¹

It is particularly worrying that OFMDFM has not carried out full s75 impact assessments of its draft budget 2011-15, given that it has responsibility within the Executive for equality issues in Northern Ireland. Indeed, one of OFMDFM's three key objectives, as set out in the draft budget 2011-15 consultation document, is '*tackling disadvantage and promoting equality of opportunity*' (at page 1).

However, OFMDFM is clearly not leading by example, as it has failed to produce a departmental impact assessment and merely states that '[n]o adverse impacts have been identified'. This is surprising, given the extent of cuts suffered and OFMDFM's responsibilities for equality.

We note OFMDFM's intention, that the '*programmes funded through the Budget allocation will be subjected to Equality screening and, where appropriate, full Equality Impact Assessment, in line with statutory duties.*'² However, this would be too late to allow full consideration of the equality impacts of the OFMDFM budget.

It is essential for OFMDFM to assess equality impacts, as required by s75, before the draft budget is approved. As we have stated in our previous correspondence, caselaw in GB³ has underlined the need for advance consideration of the promotion of equality of opportunity⁴, as opposed to '*rearguard action*'.⁵ The courts have warned that '*it is unlawful to adopt a policy contingent on an assessment,*'⁶ and that carrying out an equality impact assessment at that stage would amount to '*policy-based evidence rather than evidence-based policy.*'⁷

¹ OFMDFM equality scheme, at chapter 4, found at <http://www.ofmdfmi.gov.uk/equalityscheme-4.pdf>.

² OFMDFM draft budget 2011-15 consultation document, at page 6.

³ 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.

⁴ R (Elias) v Secretary of State for Defence [2006] WLR 321, [2006] EWCA Civ 1293.

⁵ R (BAPI and Another) v Sec of State for the Home Department and for Health, *supra*.

⁶ R (Kaur and Shah) v London Borough of Ealing [2008] EWHC 2062, at para 36.

⁷ *Ibid*, at para 37.

Furthermore, OFMDFM explicitly takes responsibility for ‘*co-ordinating and reviewing the Programme for Government*’.⁸ However, the Programme for Government (‘PfG’) has not yet been published, which will severely impact on the effectiveness of the budget consultation and any equality assessment that has already taken place. We appreciate the time pressures involved in the budget process, but the necessary review of policies once the PfG is published will further delay the adoption of the budget.

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.⁹ 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.*¹⁰

Insufficient information

We have received insufficient information to comment on OFMDFM’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

⁸ OFMDFM draft budget 2011-15 consultation document, at page 1.

⁹ Such as the International Covenant on Economic, Social and Cultural Rights, ratified by the UK in 1976.

¹⁰ 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>.

proposed. In the BERR Code of Practice on Consultation,¹¹ *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'.¹²

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 the policy proposal being consulted upon and any relevant quantitative and qualitative data.*'¹³ Indeed, in OFMDFM's own equality scheme it states that '*[i]nformation will be made available to ensure meaningful consultation. This will include quantitative and qualitative data which the Department holds or has collated, and other documents such as consultants' reports. This approach will apply in respect of all consultations.*'¹⁴

Also, in common law, the need for sufficient information in any consultation process is set out in the "Sedley Requirements"¹⁵, 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. The OFMDFM draft budget 2011-15 consultation document states that an HLIA '*has been undertaken*'¹⁶, and yet the HLIA has still not been published and so its results cannot be used to inform the consultation process.

¹¹ Department for Business, Enterprise and Regulatory Reform, July 2008, found at <http://www.berr.gov.uk/files/file47158.pdf>.

¹² Ibid at page 9.

¹³ 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>.

¹⁴ DHSSPS equality scheme, at para 5.12, found at <http://www.dhsspsni.gov.uk/equality-scheme.pdf>.

¹⁵ R v London Borough of Barnet, ex parte B [1994] ELR 357, 372G.

¹⁶ On final page of consultation document, under the heading 'Equality and Good Relations'.

Further, despite our Freedom of Information request of 21 December 2011 for 'OFMDFM's impact assessment on its own spending proposals and savings measures relating to equality, good relations, poverty/social inclusion and sustainable development, as referred to in your private secretaries' letter of 19 November 2010', we have received no reply from you or your office. As you are no doubt aware, the OFMDFM is under a duty to respond no later than 20 working days after receipt of the request.¹⁷ Even taking out the Christmas and New Year break, OFMDFM has had over 30 working days to respond. This is in breach of the Freedom of Information Act 1998.

Even when the HLIAs are published, it is not clear that they will provide sufficient information on equality impacts to allow full scrutiny of the draft budget 2011-15 proposals. The description of HLIAs in DFP Guidance does not allow for much detail on equality impacts and it is clear that they do not fulfil the requirements of s75, as confirmed by the ECNI.

Given the points above, we repeat our request that OFMDFM 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,¹⁸ BERR¹⁹ and ECNI²⁰ Guidance.

We look forward to hearing from you.

Yours sincerely



Mike Ritchie, Director

¹⁷ S10 Freedom of Information Act 1998.

¹⁸ 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>.

¹⁹ 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.'

²⁰ 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'.