

CAJ's Submission no. 292

CAJ's response to the Department for Social Development'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 Alex Attwood MLA

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cc Bob Collins and Evelyn Collins, Equality Commission NI

18 February 2011

Dear Minister

Budget 2011-15: Inadequate assessment of equality impacts

Thank you for your letter of 3 February 2011 and for further explaining the Department for Social Development's ('DSD') approach to its equality duties in relation to the budget. Thank you also for directing us to DSD's draft budget 2011-15 consultation document and spending bids on the DSD website.

However, despite access to these documents, we feel unable to respond in a meaningful way to DSD's budget 2011-15 consultation exercise. We believe that DSD has not complied with the requirements of s75 Northern Ireland Act 1998 ('s75'). Even if the proposed equality screening and impact assessments are carried out, they will be too late for their findings to inform public input to the budget 2011-15 consultation exercise. Further, DSD's draft budget 2011-15 consultation documents provide insufficient information on the likely equality impacts to scrutinise the proposals in full.

Inadequate s75 impact assessment

Due to the inadequate assessment of equality impacts, we believe that DSD has not complied with s75, DSD's equality scheme¹ and Equality Commission for Northern Ireland Guidance on s75.²

¹ DSD equality scheme, found at http://www.dsdni.gov.uk/dsd_equality_scheme.pdf.

² Section 75 of the Northern Ireland Act 1998 A Guide for Public Authorities, April 2010, at found at <http://www.equalityni.org/archive/pdf/S75GuideforPublicAuthoritiesApril2010.pdf>.

➤ *Spending bids*

DSD's budget 2011-15 consultation document contains, at para 11, an '*Equality Impact Assessment*' and your letter of 3 February 2011 claims that each DSD spending bid includes an '*an appropriate equality impact assessment*'.

However, neither the consultation document, nor the spending bids forms, contains all of the seven elements required in an equality impact assessment ('EQIA'), further to the ECNI Procedure for Conduct of Equality Impact Assessments,³ including the consideration of available data and research. This also runs contrary to the clear statement in DSD's equality scheme that '*[t]he Department will carry out equality impact assessments in accordance with the procedures set out in Annex 1 of the guidelines.*'⁴

We acknowledge the efforts that have been made to consider the equality impacts of the spending bids. However, the assessment is incomplete, as it does not refer to any underlying evidence or consider the screening questions set out in DSD's equality scheme.⁵ Furthermore, within the spending bids *pro forma* sections on equality, certain comments cause us concern as to DSD's understanding of s75's objectives and operation.

First, some spending proposals claim to have '*a positive impact on all s75 groups*' (at page 66, Social Housing Development Programme) or '*have potential to benefit all on an equal basis*' (page 101, Physical Development). However, the promotion of equality of opportunity does not involve merely applying funds universally to social initiatives. Due to underlying inequalities in our society, even among the disadvantaged themselves, some groups may have less access to or benefit from a policy, despite its universal application. S75 is in place to help understand these barriers and adapt policies to help facilitate access and benefit for all.

Secondly, we believe that DSD has not fully distinguished between the concepts of equality of opportunity and good relations. While we recognise that both are important objectives enshrined within s75, they amount to quite different operations and results. In this regard, it is clear that equality of

³ ECNI Procedure for Conduct of Equality Impact Assessments, Annex 1 to Guidelines on s75, found at <http://www.equalityni.org/archive/pdf/GuidetoStatutoryDuties0205.pdf>.

⁴ DSD equality scheme, *supra*, at page 15, para 3.6.

⁵ *Ibid.*

opportunity takes priority over good relations.⁶ Therefore, it is a *non sequitur* to state that, as a ‘*scheme will create shared space in the City centre*’, it will have a positive impact on equality (spending bids, page 109, Royal Exchange Development Scheme). Indeed, where inequalities exist, the exclusive consideration of ‘*shared spaces*’ would likely serve to exacerbate the underlying inequalities.

➤ *Saving plans*

Despite some effort to assess equality impacts in relation to spending bids, we were not provided with any comparative information on savings delivery plans, which would be much more likely to have a negative impact on equality.

We welcome DSD’s admission, in the main consultation document, that ‘[t]his Department’s role in tackling disadvantage and protecting the most vulnerable in our society would be seriously impacted by cuts’.⁷ Also, the specific mention of certain s75 groups that would be affected by cuts in benefits, regeneration/ development and child maintenance show there has been some consideration of the impacts of DSD’s budget. In addition, the intention to divert cuts away from these programmes shows some consideration of mitigation.

However, the above efforts are not sufficient to discharge the s75 duties. First, only some possible saving plans are considered, which does not show a complete picture of impacts. Secondly, the bald statements are not supported by any underlying data. Despite the Freedom of Information request in our letter of 21 December 2010, DSD has not published any detailed impact assessments of its savings plans, or set out any evidence to support its conclusions. This suggests that assessments of equality impacts have not been carried out in relation to savings plans, in breach of para 9(1) Schedule 9 Northern Ireland Act 1998.

➤ *Timing of impact assessment*

We acknowledge your intention, as set out in both your letter and the consultation document, that ‘[i]ndividual proposals will be subject to Equality Impact Screening and, where necessary, full Impact Assessments as they are

⁶ See ECNI Guidance on s75, *supra*, at page 26.

⁷ DSD Draft Budget 2011-15 consultation document, at para 11.

*developed and considered for implementation.*⁸ However, even if this were the case, that assessment would be too late to allow full consideration of the equality impacts of the DSD 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 DSD's ability to amend its proposals later in the budget process.

Accordingly, it is essential for DSD to assess equality impacts, as required by s75, before the draft budget is approved. As we have stated in our previous correspondence, caselaw in GB⁹ has underlined the need for advance consideration of the promotion of equality of opportunity¹⁰, as opposed to 'rearguard action'.¹¹ The courts have warned that '*it is unlawful to adopt a policy contingent on an assessment*',¹² and that such an equality impact assessment would amount to '*policy-based evidence rather than evidence-based policy*'.¹³

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.¹⁴ Indeed the UN Independent Expert on human rights and extreme

⁸ Ibid, at para 11 and the Minister's letter of 3 February 2011.

⁹ 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.

¹⁰ R (Elias) v Secretary of State for Defence [2006] WLR 321, [2006] EWCA Civ 1293

¹¹ R (BAPI and Another) v Sec of State for the Home Department and for Health, supra.

¹² R (Kaur and Shah) v London Borough of Ealing [2008] EWHC 2062, at para 36.

¹³ Ibid, at para 37.

¹⁴ Such as the International Covenant on Economic, Social and Cultural Rights, ratified by the UK in 1976.

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.*¹⁵

Insufficient information

Unfortunately, we have received insufficient information to comment on DSD'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,¹⁶ *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'*.¹⁷

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.'*¹⁸ Also, in common law, the need for sufficient information in any consultation process is set out in the "Sedley Requirements"¹⁹, 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

¹⁵ 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>.

¹⁶ Department for Business, Enterprise and Regulatory Reform, July 2008, found at <http://www.berr.gov.uk/files/file47158.pdf>.

¹⁷ *Ibid* at page 9.

¹⁸ 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>.

¹⁹ *R v London Borough of Barnet, ex parte B* [1994] ELR 357, 372G.

- 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. As stated above, the equality assessments of spending bids do not provide any evidence base. The savings bids do not provide any information on equality impacts; except that the proposals will likely have some negative impacts. Therefore, it is not clear what the impacts of DSD's draft budget may be on equality, and we do not therefore have sufficient information to respond to DSD's budget consultation in a meaningful way.

Given the points above, we repeat our request that DSD 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,²⁰ BERR²¹ and ECNI²² Guidance.

We look forward to hearing from you.

Yours sincerely



Mike Ritchie

Director

²⁰ 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>.

²¹ 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.*’

²² 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.*’