

CAJ's submission no. S299

CAJ's to Business Services Organisation's
consultation on the draft Equality Schemes for

- **Blood Transfusion Service;**
- **Business Services Organisation;**
- **Health and Social Care Board;**
- **NI Guardian Ad Litem Agency;**
- **NI Practice and Education Council for Nursing and Midwifery;**
- **Northern Ireland Social Care Council;**
- **Patient and Client Council;**
- **Public Health Agency and Regulation; and**
- **Quality Improvement Authority**

March 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 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, Joseph Rowntree Charitable Trust and the Oak Foundation.

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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Committee on the Administration of Justice
March 2011

The Committee on the Administration of Justice ('CAJ') is an independent human rights organisation with cross community membership in Northern Ireland and beyond. It was established in 1981 and lobbies and campaigns on a broad range of human rights issues. CAJ seeks to secure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its obligations in international human rights law. CAJ is co-convener of the Equality Coalition. We welcome the opportunity to comment on Business Services Organisation's ('BSO') consultation on its draft equality schemes.

We recognise that each health and social care body represented by BSO for equality matters ('Represented HSC Body'¹) has very different functions, and would benefit from individual and separate consideration. However, we have limited this submission to general points affecting all of the Represented HSC Bodies' draft equality schemes. As a result, this submission also applies to the draft equality schemes under consultation for the Blood Transfusion Service, Health and Social Care Board, NI Guardian Ad Litem Agency, NI Practice and

¹ Including Blood Transfusion Service, Health and Social Care Board, NI Guardian Ad Litem Agency, NI Practice and Education Council for Nursing and Midwifery, Northern Ireland Social Care Council, Patient and Client Council, Public Health Agency and Regulation and Quality Improvement Authority.

Education Council for Nursing and Midwifery, Northern Ireland Social Care Council, Patient and Client Council, Public Health Agency and Regulation and Quality Improvement Authority. In particular, any reference to the BSO equality scheme applies also to each of the Represented HSC Bodies' equality schemes.

CAJ acknowledges BSO's efforts in producing the nine draft equality schemes for the Represented HSC Bodies in good time to allow for Equality Commission ('ECNI') approval before the 1 May 2011 deadline. We were also encouraged to see that BSO has used the ECNI model scheme as a basis. In this brief submission, we would like to suggest a few additions, which would strengthen the BSO equality schemes, and also query one deviation from the ECNI model scheme.

First, it would be helpful for consultees to be informed when screening forms are posted on the BSO website². We are concerned that, as screening reports are sent to consultees on a quarterly basis (para 4.25), it is possible that civil society may not be aware of a specific policy's screening for a period of three months. By this time, the policy may be implemented or further developed, so that alternative measures would be more difficult to apply. It would therefore be important for civil society to be informed sooner of policies for which 'no' or 'minor' impact was found, but for which they may have specialist knowledge of otherwise unforeseen equality impacts.

We appreciate that BSO will make the screening forms available on its website and on request (para 4.13). However, given that there are over 200 designated public authorities in Northern Ireland, it is impossible to review each of those websites daily, or even weekly, to check if screening forms have been posted. We would therefore recommend that BSO include a statement, at para 4.13, that consultees will be informed of screening forms when they are completed or posted on its website.

Secondly, CAJ recommends that BSO include statements in its equality scheme to explain the operation s75 Northern Ireland Act 1998 ('s75'), which is often misunderstood. In particular, the BSO equality scheme does not explain the relationship between the equality duty (s75(1)) and the good

² Or the relevant Represented HSC Body's website.

relations duty (s75(2)). The ECNI Guide for Public Authorities³ ('the ECNI Guide') clearly states that 'good relations cannot be based on inequality' and confirms that 'the term due regard was intended to be, and is, stronger than regard'.⁴ It also clarifies that 'the discharge of the good relations duty cannot be an alternative to or cannot set aside the equality of opportunity duty'.⁵

As the BSO equality scheme will be used as a point of reference for its staff's application of s75 and any training provided, it is crucial that the equality scheme itself contains clear statements on the relationship and difference between the two s75 duties. Similarly, the ECNI Guide provides useful statements on positive action and multiple identities. We believe that the inclusion of these statements, or similar, would help staff to understand s75. For example, it is a common misunderstanding that 'universal application' implies a neutral impact on equality groups, when it can, of course, exacerbate inequalities.

The useful passages in the ECNI Guide are as follows: 'The promotion of equality of opportunity entails more than the elimination of discrimination. It requires proactive measures to be taken to facilitate the promotion of equality of opportunity between the categories identified in Section 75 (1). The equality duty should not deter a public authority from taking action to address disadvantage among particular sections of society – indeed such action may be an appropriate response to addressing inequalities. There is no conflict between the Section 75 statutory duties and other affirmative action measures or positive action measures which a public authority may undertake under anti-discrimination laws.'⁶

Finally, we would like to remind BSO that, in addition to the s75 action-based plan, s75 continues to apply to all BSO policies in relation to all nine equality groups. Although we recognise the positive impacts that the action-based plan could have on addressing inequalities, we are also aware that it could have a limiting influence on the operation of s75 outside the specific priorities

³ Section 75 of the Northern Ireland Act 1998: A Guide for Public Authorities, ECNI, April 2010, found at <http://www.equalityni.org/archive/pdf/S75GuideforPublicAuthoritiesApril2010.pdf>.

⁴ Ibid at page 26.

⁵ Ibid, at page 27.

⁶ Ibid, at page 25. At the same page, the ECNI Guide also states: 'Individuals do not neatly fit into one Section 75 category or another, individuals will invariably be members of a number of Section 75 categories. Thus Section 75 enables multiple identity issues to be considered as well as issues regarding particular categories of people.'

identified within it. Also, newly emerging inequalities may not be captured in the original audit of inequalities. We therefore hope that any data gaps identified in the audit of inequalities will be addressed, and that the audit will provide a useful tool for policy-makers when applying s75 beyond the scope of the action-based plan.

In regard to gaps in data, we note that BSO has made a small amendment to the ECNI model scheme. At para 4.29 of the equality scheme, BSO has limited to 'where appropriate' the commitment to audit existing information systems and take action to address any gaps in data. We are concerned that this could be used to avoid addressing gaps in data, which is fundamentally important to assessing equality impacts.

Following a discussion with a BSO representative at an Equality Coalition event on 9 March 2011, we understand the language 'where appropriate' is intended to limit action to equality related data. Therefore, we would suggest that the qualification is made more explicit, such as 'in relation to equality groups'. We believe that this would enhance the BSO equality scheme and so make the operation of s75 more effective.

If you would like any further information, please do not hesitate to contact CAJ at the details listed below.