

CAJ's submission no. S303

CAJ's submission to the Safefood's consultation on its draft Equality Scheme

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.

Submission to Safefood's Consultation on its draft Equality Scheme

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 *Safefood's* consultation on its new equality scheme.

CAJ acknowledges *Safefood's* efforts in producing a fairly comprehensive equality scheme and in beginning the consultation period in good time to allow for Equality Commission ('ECNI') approval before the 1 May 2011 deadline. We are encouraged to see that *Safefood* has, on the whole, adopted the ECNI model scheme¹. However, we have noted two key instances where *Safefood* has diverged from the ECNI model scheme, with a consequent limiting effect on the operation and effectiveness of its own draft scheme. We will also suggest a few additions, beyond the ECNI model scheme, which would strengthen the *Safefood* equality scheme.

Publication of screening forms

CAJ is concerned that *Safefood* has not included in its draft equality scheme any provisions allowing for the unilateral publication of screening forms or reports. This represents a major divergence from the ECNI model scheme and in practice could lead to persistent breaches of s75 Northern Ireland Act ('s75').

Further to Schedule 9 Northern Ireland Act 1998, *Safefood* is under an obligation to include within its equality scheme the arrangements for publishing the results of its assessments of the likely impact of policies on the promotion of equality of opportunity (para 4(2)(d)). Under *Safefood's* draft equality scheme, impact assessments will be published only where a major

¹ ECNI model equality scheme, found at http://www.equalityni.org/sections/default.asp?secid=8&cms=Publications_Statutory+duty&cmid=7_43&id=43.

impact has been found, and so a full equality impact assessment ('EQIA') has taken place (para 4.20).

By contrast, the ECNI model scheme allows for the screening forms and screening reports also to be published, as soon as possible after completion and quarterly respectively.² Although *Safefood's* draft equality scheme allows for screening forms to be 'made available on request' (para 4.13), civil society would generally not be aware when a screening exercise has taken place, and so this does not, in effect, allow for publication. CAJ requests that *Safefood* include, within its draft equality scheme, the automatic publication of screening forms.

Further, it would be helpful for consultees to be informed when screening forms are published or posted on the *Safefood* website. Given that there are over 200 designated public authorities in Northern Ireland, it is impossible for civil society to review each of those bodies or their websites daily, or even weekly, to check if screening forms have been published. Those affected by a policy may not be aware of its screening until the policy has been implemented or further developed, when alternative measures would be more difficult to apply.

It is therefore important for civil society to be informed as soon as possible of policies for which 'no' or 'minor' impact was found, but for which they may have specialist knowledge of otherwise unforeseen equality impacts. We recommend that *Safefood* include a statement that consultees will be informed of screening forms when they are completed or posted on its website.

Consideration of gaps in data

We note, with disappointment, that *Safefood* has not consulted on its audit of inequalities. We understand, from ECNI Guidance on s75,³ that *Safefood's* action plan is based on an audit of inequalities. However, without reference to the audit of inequalities, it is difficult to understand how and why specific action measures have been chosen. As such, we have not reviewed *Safefood's* action plan for this submission. Also, any irregularities or

² Ibid, at paras 4.13, 4.15, 4.20 and 4.24.

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>.

omissions in the audit of inequalities will be carried forward to the action plan. It is more difficult to address any deficiencies in the evidence base at this point, as the action plan does not include its sources and will also be affected by policy and resource impacts.

Furthermore, the ECNI has stated that consultation on the audit of inequalities is implicit in the consultation of action plans, as it allows for consultees to have access to the evidence base and understand how each public authority has arrived at the specific action measures included in the action plan. We recommend that *Safefood* release its audit of inequalities, or a list of sources used, for reference and review by civil society.

Further, we would like to remind *Safefood* that, in addition to the s75 action-based plan, s75 continues to apply to all *Safefood* 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 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.

As a result, we are concerned that *Safefood* has not included in its draft equality scheme a commitment to audit its information systems and take action to address any gaps in data. The ECNI model scheme includes, within systems to monitor the impact of policies and better promote equality of opportunity, the following: 'An audit of existing information systems within one year of approval of this equality scheme, to identify the extent of current monitoring and take action to address any gaps in order to have the necessary information on which to base decisions' (at para 4.29). We recommend that *Safefood* include this commitment in its draft equality scheme.

Staff understanding of s75

CAJ recommends that *Safefood* include statements in its equality scheme to explain the operation of s75, which is often misunderstood. In particular, the *Safefood* equality scheme does not explain the relationship between the equality duty (s75(1)) and the good relations duty (s75(2)). The ECNI Guide

for Public Authorities⁴ ('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'.⁵ 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'.⁶

As the *Safefood* 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.'⁷

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

Committee on the Administration of Justice
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⁴ 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>.

⁵ Ibid at page 26.

⁶ Ibid, at page 27.

⁷ 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.'