

## **CAJ's submission no. S316**

# **CAJ's submission to the Department of Employment and Learning's consultation on its draft Equality Scheme**

**April 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 the Department for Employment and Learning'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-convenor of the Equality Coalition. We welcome the opportunity to comment on the Department for Employment and Learning's ('DEL') consultation on its new equality scheme.

CAJ acknowledges DEL's efforts in producing a comprehensive equality scheme. However, we believe that the consultation period was too short to allow for full consideration by civil society. Given that the draft equality scheme was published on 24 February 2011, stakeholders have had less than two months to respond. This is clearly well below the three month minimum recommended in the OFMDFM,<sup>1</sup> BERR<sup>2</sup> and ECNI<sup>3</sup> Guidance. Also, please add CAJ to DEL's list of consultees at Appendix 3 of its equality scheme.

We are encouraged to see that DEL has adopted the ECNI model scheme<sup>4</sup> and also expanded upon it slightly, with consideration to the specific DEL context. We have also had the advantage of speaking with DEL representatives at an Equality Coalition event in relation to the draft equality scheme. In this brief submission, we will challenge a few divergences from the ECNI model scheme and also suggest a few additions, which would strengthen the DEL equality scheme.

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<sup>1</sup> 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>.

<sup>2</sup> Department for Business, Enterprise and Regulatory Reform, July 2008, *supra*. Criterion 2 states that '[c]onsultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.'

<sup>3</sup> 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'.

<sup>4</sup> ECNI model equality scheme, found at [http://www.equalityni.org/sections/default.asp?secid=8&cms=Publications\\_Statutory+duty&cmsid=7\\_43&id=43](http://www.equalityni.org/sections/default.asp?secid=8&cms=Publications_Statutory+duty&cmsid=7_43&id=43).

## Complaints Procedure

We note, with concern, that DETI has added a major qualification to the ECNI recommendations with which it will comply post-investigation. In the ECNI model scheme, para 8.8 states that the relevant public authority ‘will make all efforts to implement promptly and in full any recommendations arising out of any Commission investigation.’<sup>5</sup> By contrast, in the DETI draft equality scheme, this is limited to giving ‘full consideration’ to any such recommendations (at para 8.8).

We strongly believe that this limitation is both inappropriate and unnecessary. Schedule 9 Northern Ireland Act 1998 charges the ECNI with making recommendations on the correct application of s75 Northern Ireland Act 1998 (‘s75’). It would be wholly inappropriate for a public authority to usurp the ECNI’s role, by adopting a veto to these recommendations. This incursion into the ECNI’s powers is also unnecessary, as the para 8.8 obligation to comply with ECNI recommendations is already qualified by the term ‘make all efforts’. We therefore request that the DETI draft equality scheme, at para 8.8, is amended to reflect the ECNI model scheme.

## Publication of Screening

It is not clear over which time period DEL intends to publish its screening reports. Paras 4.15 and 4.20 of DEL’s draft equality scheme state that DEL will publish its screening reports quarterly. By contrast, para 4.25 states that ‘screening reports.. which include all policies screened over a 6 month period are also sent directly to all consultees on a bi-annual basis.’ We expect that the former reflects DEL’s intention, as it replicates the time period set out in the ECNI model scheme. However, clarification on this is essential, and we would suggest that DEL’s draft equality scheme is amended at para 4.25 to three months, as in para 4.25 ECNI model scheme.

Further, it would be helpful for consultees to be informed when screening forms are posted on the DEL website. We are concerned that, as screening reports are sent to consultees on a quarterly (or even bi-annual) basis, 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

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<sup>5</sup> Ibid, at para 8.8.

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 DEL 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 DEL include a statement, at para 4.13, that consultees will be informed of screening forms when they are completed or posted on its website.

#### Staff understanding of s75

CAJ recommends that DEL include statements in its equality scheme to explain the operation of s75, which is often misunderstood. In particular, the DEL equality scheme DELs not explain the relationship between the equality duty (s75(1)) and the good relations duty (s75(2)). The ECNI Guide for Public Authorities<sup>6</sup> (‘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’.<sup>7</sup> 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.’<sup>8</sup>

As the DEL 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.

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<sup>6</sup> 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>.

<sup>7</sup> Ibid at page 26.

<sup>8</sup> Ibid, at page 27.

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.’<sup>9</sup>

We also recommend that the suggested consultation methods, included at 3.2.2 ECNI model scheme, are included in the DEL equality scheme to help staff consider the various forms of consultation, and those which would be most appropriate to each specific consultation exercise.

### Audit of Inequalities and Action Plan

We note that DEL has not consulted upon its audit of inequalities. The ECNI has made clear that the consultation on the audit of inequalities is implicit in the request for consultation on the draft action plan. The publication or consultation of audit of inequalities would help civil society inform DEL of any irregularities or omissions arising, which are more difficult to identify within the action plan. Commentary would also be more constructive, given that the audit is not constrained by resources and strategic plans, as is likely the case for the draft action plan. We therefore recommend that DEL publish and/or consult on its draft audit of inequalities.

Further, we recommend that DEL commits to publish and consult on its audit of inequalities and action plan in the future, by explicitly adding them as documents for which DEL will seek input from its stakeholders and consult upon (currently only the draft action plan is referred, and as a completed event at para 2.20 DEL draft equality scheme).

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<sup>9</sup> 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.’

We would like to remind DEL that, in addition to the s75 action-based plan, s75 continues to apply to all DEL 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.

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**  
**April 2011**