

## **CAJ's submission no. S323**

# **CAJ's submission to the South Eastern Regional College's consultation on its draft Equality Scheme**

**May 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 South Eastern Regional College'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 South Eastern Regional College's ('SERC') consultation on its new equality scheme.

CAJ acknowledges SERC's efforts in producing a comprehensive equality scheme and in beginning the consultation period in good time to allow for Equality Commission ('ECNI') approval before the 1 August 2011 deadline. We are encouraged to see that SERC has, on the whole, adopted the ECNI model scheme<sup>1</sup> and also expanded upon it slightly. However, we would like to challenge a few instances where SERC diverged from the ECNI model scheme, and also suggest a few additions, which would strengthen the SERC equality scheme.

### **Consultation arrangements**

We note that SERC's draft equality scheme diverges from the ECNI model scheme in relation to consultation, which we believe could affect the application of s75 in practice.

First, SERC has removed the list, in para 3.2.1 of the ECNI model scheme, of the types of persons to be included in a consultation. These are important categories of persons who should be consulted on equality impacts, and all of whom may not be included at Appendix 3 (list of consultees). We recommend that the ECNI model scheme be used as a minimum threshold for the SERC draft equality scheme, and that content not be removed without good reason.

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<sup>1</sup> ECNI model equality scheme, found at [http://www.equalityni.org/sections/default.asp?secid=8&cms=Publications\\_Statutory+duty&cmid=7\\_43&id=43](http://www.equalityni.org/sections/default.asp?secid=8&cms=Publications_Statutory+duty&cmid=7_43&id=43).

Similarly, SERC has qualified the matters on which it will consult from those 'relevant to the Section 75 statutory duties' (para 3.1 ECNI model scheme) to those 'determined by the College to be relevant to the Section 75 statutory duties' (para 3.1 SERC draft scheme). It is not clear why this change has been made. We therefore suggest that these passages are included in the SERC equality scheme.

Secondly, SERC has qualified the extent of training that will be provided to staff on facilitating consultation to 'where necessary' (para 3.2.4). As you will be aware, SERC is under a duty to provide training on s75, further to para 4(2)(e) Schedule 9 Northern Ireland Act 1998 and ECNI Guidance. We recommend that SERC remove this qualification from para 3.2.4 of its draft scheme.

Further, SERC has removed the references to making consultation more accessible, particularly to children and young people, people with disabilities and ethnic minorities (at para 3.2.3 ECNI model guide). We request that SERC insert this passage in its own equality scheme (also at para 3.2.3) to help staff understand the need for accessibility when carrying out its consultations.

Thirdly, SERC has removed the examples of situations where a consultation period will last longer than 12 weeks (para 3.2.7). It would be helpful if examples, such as the summer or Christmas break or the complexity of the policy, were included. This would help promote clarity and certainty as to the likely time period for consultations.

Finally, it is not clear why SERC has removed reference to the detail that will be included in the feedback report following a consultation exercise. Para 3.2.10 ECNI model scheme states that a feedback report will include 'summary information on the policy consulted upon, a summary of consultees' comments and a summary of our consideration of and response to consultees' input.' This information would provide the necessary transparency for SERC's treatment of the consultation exercise, which in turn would boost confidence in the process. In order to ensure that SERC staff includes this information, we recommend that SERC insert the above passage in its equality scheme.

### Publication of screening forms

CAJ is confused by the arrangements set out in SERC's draft equality scheme for the publication of screening templates / forms / reports. All references to screening templates appear to be removed from the draft scheme and there are conflicting provisions in relation to screening forms and reports, which are set out below.

First, SERC only commits to publish its screening forms 'at an appropriate time' (para 4.13 of its draft scheme, SERC). We are concerned that this may result in screening forms not being published at all, or only a long time after completion.

Secondly, SERC states that 'screening reports' will be published quarterly at para 4.15 draft scheme. This provision refers to paras 4.20 - 4.22 and 4.23 for more information, but 'screening reports' are not mentioned in those paragraphs or elsewhere in the SERC draft scheme.

Finally, SERC commits to publish its screening forms 'once completed', at para 4.20. This provision sets out the contents that will be included in each screening form, which are the same that the ECNI model scheme sets out for 'screening reports'.

We expect that SERC intends to publish each screening form in full after each screening exercise rather than complete quarterly reports. If so, this should be made clear. CAJ recommends that SERC clarify that screening reports will be published 'once completed', and not merely 'at an appropriate time' or 'quarterly'. Fundamentally, the time period must be the same throughout the document to avoid confusion.

Further, it would be helpful for consultees to be informed when screening forms are posted on the SERC website. We are concerned that, if screening forms are not sent to consultees as appears to be the case in SERC's draft scheme, it is likely that civil society would not be aware of a specific policy's screening for a long period of time. The policy may be implemented or further developed by the time civil society is aware of its screening, by which time their input would be difficult to act upon and alternative measures may 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. Even if SERC publishes the screening forms 'once completed', 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 SERC include a statement that consultees will be informed of screening forms when they are completed or posted on its website.

### Consideration of Data

We note that SERC 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 SERC 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 SERC publish and/or consult on its draft audit of inequalities.

Further, we recommend that SERC commits to publish and consult on its audit of inequalities and action plan in the future, by explicitly adding them as documents for which SERC will seek input from its stakeholders and consult upon (currently only the draft action plan is referred to, and as a completed event at para 2.16 SERC draft equality scheme). Please note that, due to a lack of time and expertise, we have not reviewed the SERC draft action plan.

We would like to remind SERC that, in addition to the s75 action-based plan, s75 continues to apply to all SERC 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 were disappointed that SERC has not committed to ‘monitor more broadly to identify opportunities to better promote equality of opportunity’ (as set out at para 4.28 ECNI model scheme). We recommend that this commitment is included at para 4.28 of the SERC equality scheme.

### Staff understanding of s75

CAJ recommends that SERC include statements in its equality scheme to explain the operation of s75, which is often misunderstood. In particular, the SERC equality scheme SERCs not explain the relationship between the equality duty (s75(1)) and the good relations duty (s75(2)). The ECNI Guide for Public Authorities<sup>2</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>3</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>4</sup>

As the SERC 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

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<sup>2</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>3</sup> Ibid at page 26.

<sup>4</sup> Ibid, at page 27.

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>5</sup>

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**  
**May 2011**

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<sup>5</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.'