

CAJ's submission no. S339

CAJ's submission to the CITB Construction Skills' consultation on the draft Equality Schemes

June 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 CITB Construction Skills' Consultation on the draft Equality Schemes

**Committee on the Administration of Justice
June 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-convenor of the Equality Coalition. We welcome the opportunity to comment on the CITB Construction Skills ('CITB') consultation on its draft equality scheme.

CAJ acknowledges CITB's efforts in producing a comprehensive draft equality scheme and in beginning its consultation period in good time to allow for submission to the Equality Commission for Northern Ireland (ECNI) on 1 August 2011. We are encouraged to see that CITB has adopted the ECNI model scheme as a basis for its draft equality scheme, and expanded on it in parts. In this brief submission, we will query some divergences from the ECNI model scheme and suggest a few additions, which would strengthen the CITB equality scheme.

Consultation arrangements

We would like to point out some passages relating to consultation, which are included in the ECNI model scheme, but not the CITB draft equality scheme. Although they are seemingly minor, we believe they could affect the application of the CITB equality scheme in practice.

First, CITB has removed the commitment, at 3.2 ECNI model scheme to carry out any consultation in accordance with the principles outlined in the ECNI Guide for Public Authorities¹ ('the ECNI Guide'). Although most of these

¹ 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>.

principles are included in the CITB draft scheme's Chapter 3, not all is included. Also, ECNI may release future guidance, whose principles would not be captured in addition to those currently listed in the CITB model scheme. We note that CITB has also not included reference to the ECNI guidance on consulting with children and young people.² We recommend that CITB include references to the ECNI guides on consultation, to help ensure comprehensive consultation practices.

Secondly, in relation to accessibility, we note several passages included in CITB's draft equality scheme to help ensure disadvantaged groups' access to its consultation exercises. In addition to these, we suggest that CITB include a time limit within which alternative formats will be made available (as recommended at para 3.2.4 ECNI model scheme). Also, the inclusion of focus groups and telephone consultation in the example methods of consultation could help participation for ethnic minorities, those with disabilities and younger or older people (see 3.6 CITB draft scheme and 3.2.2 ECNI model scheme).

Similarly, we note CITB's commitment to consult with a wide range of individuals and organisations. However, instead of referring to those 'who have a legitimate interest in the matter, whether or not they have a direct economic or personal interest' (3.2.1 ECNI model scheme), CITB has narrowed this to those 'who may be adversely affected' (at 3.2 CITB draft equality scheme). We recommend that CITB include the more expansive language to ensure as wide a category of persons as possible have the option of consultation.

Thirdly, although CITB has committed to consult with those on its consultation list (at Appendix 3), it has not included the specific commitment to notify all consultees, as a matter of course, of the matter/policy being consulted upon to ensure they are aware of all consultations (3.2.1 ECNI model scheme). While we understand that this language was perhaps removed due to the lack of reference to targeted consultation, it might be considered by CITB to be implicit within its scheme. However, for the avoidance of doubt, we request that the relevant language is included in the CITB equality scheme, in order to ensure clarity for those applying the scheme. Please also include CAJ in CITB's consultation list at Appendix 3.

² Equality Commission's guidance *Let's Talk Let's Listen – Guidance for public authorities on consulting and involving children and young people (2008)*.

Finally, we note that CITB has consulted on its current audit of inequalities. This is welcomed, as it will help civil society inform CITB of any irregularities or omissions, and also provide a useful frame of reference for the draft action plan. We recommend that CITB also commits to consult upon its audit of inequalities, as well as its action plan, in the future (at para 2.15 CITB draft scheme). Please note that, due to a lack of time and expertise, we have not reviewed the CITB audit of inequalities or draft action plan.

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

Screening of Policies

In relation to the screening of policies, we believe it is important to include reference, and so commitment, to involving 'other relevant team members, for example, equality specialists, those who implement the policy and staff members from other relevant work areas' in the screening process (see para 4.6 ECNI model scheme). The involvement of staff at all levels is integral to the mainstreaming of equality in policy development, which is an important objective of s75 Northern Ireland Act 1998 ('s75'). We therefore recommend that the above passage is included in the CITB equality scheme.

Similarly, it is not clear why CITB has removed the commitment for the policy decision maker, with authority to make changes, to take the lead in the screening process (see 4.6 ECNI model scheme and 4.6 CITB draft scheme). We suggest that this be considered, in case it helps facilitate mitigation or the application of alternative policies, where required.

In relation to the publication of screening, it would be helpful for consultees to be informed when screening forms are posted on the CITB website. We are concerned that, if screening reports are sent to consultees on a quarterly

basis, it is possible that civil society may not be aware of a specific policy's screening for a long period of time. 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 CITB 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 CITB include a statement, at para 4.13, that consultees will be informed of screening forms when they are completed or posted on its website.

Finally, in relation to the screening of the annual levy rate, we do not fully understand the rationale as to when such assessments will be included in CITB proposals to the Assembly (see 4.26 CITB equality scheme). CITB states that, as the levy rate will affect all employers within the scope of CITB, the assessment of equality implications will not be included in the proposal for Assembly approval. Conversely, we would have expected that, implications within CITB's scope would be included in proposals and those outside its scope would not. Equality impact is important information of which the Assembly should be aware before legislating. We would appreciate some explanation of the above.

Staff Understanding of s75

We note CITB's careful attention to staff training on s75 within its draft equality scheme. In addition to this, we recommend that CITB makes reference to the issues experienced by s75 groups, and including the latter in developing training, where relevant (see 5.4 and 5.5 ECNI model scheme). It may also be helpful to include reference to s75 developments (5.4 ECNI model scheme). This would help to ensure CITB staff is fully aware of all aspects of s75.

Beyond the ECNI model scheme, CAJ recommends that CITB include statements in its equality scheme to explain the operation s75 Northern Ireland Act 1998 ('s75'), which is often misunderstood. In particular, the CITB

equality scheme does not explain the relationship between the equality duty (s75(1)) and the good relations duty (s75(2)). 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’.³ 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.’⁴

As the CITB 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.’⁵

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

³ Ibid at page 26.

⁴ Ibid, at page 27.

⁵ 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.’