

CAJ's submission no. S353

CAJ's submission to the Council for Catholic Maintained Schools' consultation on its draft Equality Scheme

July 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 Council for Catholic Maintained Schools' Consultation on its Draft Equality Scheme

**Committee on the Administration of Justice
July 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 Council for Catholic Maintained Schools' (CCMS) consultation on its draft equality scheme.

CAJ acknowledges CCMS' efforts in producing a comprehensive draft equality scheme. However, the three week consultation period is too short to allow for full consideration by civil society, particularly over a holiday period. This is clearly well below the three month minimum recommended in the OFMDFM,¹ BERR² and ECNI³ Guidance. We were encouraged to hear, from a conversation with a CCMS representative, that responses will be accepted until the end of September, despite the official deadline of 27 July 2011, and that the CCMS equality scheme will be revised accordingly, as required.

We welcome CCMS' adoption of the ECNI model scheme as a basis for its draft equality scheme, and that it has expanded on it in parts. However, we are unclear why the CCMS draft scheme differs from the ECNI model scheme in a few respects. We believe that the ECNI model scheme should be used as a minimum standard, which can be built upon by public authorities. In the first part of this submission, we will query a few divergences from the ECNI model scheme. In the second part we will recommend a few additions, beyond the

¹ 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>.

² 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.'

³ 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'.

ECNI model scheme, which would strengthen the CCMS draft scheme in practice.

Complying with the ECNI Model Scheme

We draw your attention to three aspects of the CCMS draft scheme, which do not fully meet the ECNI modal scheme format. First, we query why CCMS has removed para 3.44 of the ECNI model scheme, which outlines where monitoring information would be published. It is important for consultees to be able to access any CCMS monitoring information, so that they can fully understand CCMS' approach to its policies' impacts on s75 groups, and respond to any consultation in a more meaningful way. We therefore recommend that the relevant passage is included in CCMS's draft scheme.

Secondly, we recommend that a precise timeline for reviewing the accessibility be included in the CCMS scheme (para 6.8.) We appreciate the fact that CCMS is committed to publishing all relevant information and ensuring it is easily accessible. However, monitoring the accessibility of its information and services 'on an ongoing basis', without a clear timeline for when such review takes place, could result in no monitoring taking place. We therefore recommend that a precise timeline is included in the CCMS equality scheme.

Finally, it is unclear why CCMS has removed the maximum two month time period for the Equality Team to respond substantively to a complainant following an internal investigation (para 8.5 CCMS draft scheme and ECNI model scheme). We understand that some complaints may require additional time to investigate, due to their complexity. However, if there is no maximum time period, the internal investigation could continue for an indefinite period, which would impede resolution. We recommend that the two month maximum be included in the CCMS equality scheme, as per the ECNI model scheme, in order to ensure transparency, certainty and any complaints to be resolved in an appropriate timeframe.

Beyond the ECNI Model Scheme

We recommend that CCMS include the following amendments to its equality scheme to make it more effective in practice. First, it would be helpful for consultees to be informed when screening forms are posted on the CCMS

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 CCMS 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 CCMS include a statement, at para 4.13, that consultees will be informed of screening forms when they are completed or posted on its website. Additionally, the CCMS scheme reveals that other monitoring information will be reviewed on 'an ongoing basis' (para 4.31). We recommend that you include a clear timeline for monitoring, as required by the ECNI model scheme.

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

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.

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

Finally, we note that CCMS 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 CCMS 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 CCMS publish and/or consult on its draft audit of inequalities.

Further, we recommend that CCMS commits to publish and consult on its audit of inequalities and action plan in the future, by explicitly adding them as documents for which CCMS will seek input from its stakeholders and consult upon (currently only the draft action plan is referred to at para 2.15 CCMS draft equality scheme). Please note that, due to a lack of resources, we have not reviewed the CCMS draft action plan.

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.’

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