

CAJ's submission no. S360

CAJ's submission to the Police Service for Northern Ireland's consultation on its draft Equality, Diversity and Good Relations Strategy 2011-16

September 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 Police Service for Northern Ireland
on its Consultation on its draft
Equality, Diversity and Good Relations Strategy 2011-16**

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 Police Service for Northern Ireland's (PSNI) consultation on its draft Equality, Diversity and Good Relations Strategy 2011-16 ('the Equality Strategy').

CAJ acknowledges the advantages of producing an integrated action plan to include PSNI's gender action plan, disability action plan and equality action plan. However, we believe that the PSNI's Equality Strategy does not constitute an equality scheme, which is required by Schedule 9 Northern Ireland Act 1998 ('Schedule 9') to show how PSNI will fulfil the duties imposed by s75 Northern Ireland Act 1998 ('s75').

We have met with PSNI representatives at the Equality Coalition event on 28 September 2011. This submission will reaffirm the points raised at that meeting. In particular, it address the lack of equality scheme in the Equality Strategy and recommends that PSNI adopt the Equality Commission for Northern Ireland's ('ECNI') model scheme, with some additions, which would help ensure that PSNI fulfils its statutory duties under s75.

Lack of Equality Scheme in Equality Strategy

The requirement for each designated public authority to submit an equality scheme, or revised equality scheme, is set out in paras 2 and 3 Schedule 9 respectively. We understand that the PSNI's Equality Strategy is intended to comply with the ECNI's formal request for a revised equality scheme, and would be submitted for approval by ECNI as an equality scheme. However, the PSNI Equality Strategy is not an equality scheme in form or content.

Lack of Equality Scheme in Form

The Equality Strategy is not an equality scheme in form. Indeed, it is not even referred to as an equality scheme by the PSNI, on its face or inside the document. The front cover of the Equality Strategy states that it 'includes our arrangements to meet our duties under Section 75 of the Northern Ireland Act (Equality Scheme)' and, inside the Equality Strategy, it is described as 'evidencing how we will meet our obligations as per Section 75' (at page 5). At no point does it describe itself as an equality scheme.

The Equality Strategy does refer to an equality scheme, seemingly as an external document. At page 9 it includes, as an action measure to engage with more communities, the 'implementation of an Equality Scheme'. However, it also makes clear that PSNI will not be producing a separate equality scheme. The Equality Strategy states that it will 'cover issues previously addressed in the.. Section 75 Equality Scheme' (page 11). PSNI representatives have also confirmed that PSNI does not intend to produce a separate equality scheme.

As the Equality Strategy is not an equality scheme, in both name and form, CAJ believes that the PSNI could be in breach of Schedule 9 if it does not produce a separate document. Further, paras 10 and 11 Schedule 9, which set out the complaints and investigation procedures for the application of s75 cannot apply without an equality scheme in place. Both paragraphs refer to 'the failure of a public authority to comply with a scheme'. It is not clear how this could be applied to the PSNI 'strategy'.

Even if the Equality Strategy were to be called an 'equality scheme' or include 'equality scheme' as a chapter title within it, we do not believe that the Equality Strategy amounts to an equality scheme in substance.

Lack of Equality Scheme in Substance

Para 4(1) Schedule 9 states that an equality scheme 'shall show how the public authority proposes to fulfil the duties imposed by s75'. We understand that PSNI has intended to achieve this, through its Equality Strategy, but we believe that this has not been achieved. The Equality Strategy states, at page 10, that 'whilst this document may not always use the same technical language familiar in Equality Schemes, do not doubt our commitment to the

principles and practices of promoting and mainstreaming equality of opportunity.’ Unfortunately, even if this commitment is in place, certain information must be included in order for the document to amount to an equality scheme, within the meaning of Schedule 9.

First, the Equality Strategy does not set out PSNI’s arrangements for ‘assessing its compliance with the duties under s75 and for consulting on [such] matters’ (para 4(2)(a) Schedule 9). The Equality Strategy only makes a general statement that ‘[w]e are striving to ensure the approach we have adopted truly evidences the concept of “mainstreaming” equality into all our functions by demonstrating how the consideration of the promotion of equality and good relations are factored into decision making’ (at page 13). The only ‘arrangements’ set out for so doing repeat a list from Schedule 9 (see below), without developing their practical application, as required by statute.

Para 4(2) continues that an equality ‘scheme shall state, in particular, the authority’s arrangements –

- (b) for assessing and consulting on the likely impact of policies adopted or proposed to be adopted by the authority on the promotion of equality of opportunity;
- (c) for monitoring any adverse impact of policies adopted by the authority on the promotion of equality of opportunity;
- (d) for publishing the results of such assessments as are mentioned in paragraph (b) and such monitoring as is mentioned in paragraph (c);
- (e) for training staff;
- (f) for ensuring, and assessing, public access to information and to services provided by the authority.’

We stress that Schedule 9 does not merely state that the actions listed above must be carried out by a designated public authority, or even that it should commit to so doing in a scheme. Rather, it specifies that each designated public authority’s equality scheme must set out the arrangements that have been put in place to carry out the above actions. As a result, it is not sufficient, for the purposes of para 4 Schedule 9, for the Equality Strategy to make a bald statement (at page 13) that PSNI will:

- ‘ - screen all policies, using an assessment of relevancy and proportionality and then
- assess and consult on (using screening and EQIA)
- publish the results

- monitor the impact
- publish data where negative differential impact is found’.

In relation to consultation, the Equality Strategy only sets out its commitment to general consultation principles, but does not set out how and when it will consult on the ‘likely impact of policies’, as required in para 4(2)(b).

Also in relation to para 4(2)(b) Schedule 9, the Equality Strategy does state that PSNI will use ‘screening and equality impact assessment as tools for assessing the likely impact of a policy on the promotion of equality of opportunity and on good relations’ (at page 20). However, PSNI only intends to assess ‘the intended outcomes of the policy in question’ (also at page 20), which is much more restrictive than the ‘likely impact’ of policies, which could have many unintended outcomes.

Furthermore, the only arrangements for such assessment are set out in an appendix (a flow chart) and a footnote (reference to ECNI Guide for Public Authorities¹ (‘ECNI Guide’)). As a result, even these references to ‘arrangements’ for assessing the likely equality impact of policies are not included within the Equality Strategy (or a scheme). PSNI also uses footnotes in its Equality Strategy to set out its arrangements for the publication of impact assessments, consultation and monitoring (see page 12), instead of setting out such arrangements in the scheme, as required by para 4(2)(d) Schedule 9.

Indeed, the use of footnotes in this regard makes the Equality Strategy less accessible. We understand, from our meeting with PSNI representatives, that the use of an integrated Equality Strategy is intended to make the document more user-friendly for PSNI staff. However, the need to refer to several other documents, each of which does not contain clear timelines for delivery, would make the application of s75 even more complicated and time-consuming for PSNI staff. It would also complicate the application of the complaints and investigation procedures under para 10 and 11 Schedule 9.

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>.

Secondly, we believe that the Equality Strategy does not comply with para 4(3)(a) Schedule 9, which states that each equality scheme shall ‘conform to any guidelines as to form or content which are issued by the Commission with the approval of the Secretary of State’. We acknowledge that PSNI does refer to the ECNI Guide in the Equality Strategy (at page 14 and in footnotes on pages 20, 21 and 25). However, such references do not amount to conforming to the guidelines as to form and content. Indeed, several aspects of the ECNI Guide are absent, or only included by oblique reference.

Thirdly, the Equality Strategy does not ‘specify a timetable for measures proposed in the scheme’, as required by para 4(3)(b) Schedule 9. Indeed, the timetable included at page 19 of the Equality Strategy only sets out timelines for publishing and reviewing the Equality Strategy. The timeline for the delivery of commitments within the Equality Strategy is only set out as ‘Nov 12 – Nov 16’, which does not add anything in substance, given that those are the dates of application for the Equality Strategy itself.

Finally, the Equality Strategy does not set out the duties arising from an equality scheme, which is required under para 9 Schedule 9. In particular, it does not specify that, ‘[i]n publishing the results of an assessment of equality impacts, the PSNI shall state the aims of the policy to which the assessment relates and give details of any consideration given by the authority to—

- (a) measures which might mitigate any adverse impact of that policy on the promotion of equality of opportunity; and
- (b) alternative policies which might better achieve the promotion of equality of opportunity’ (see para 9(1) Schedule 9).

As a result, the Equality Strategy is not (and does not include) an equality scheme, within the meaning of schedule 9, in either form or content, which leads to various implications.

Implications of Lack of Equality Scheme

As the Equality Strategy is intended to include an equality scheme, and yet does not comply with the requirements of Schedule 9, we believe that it cannot be approved by the ECNI. Indeed, we believe that PSNI will not be submitting a ‘revised equality scheme’ to the ECNI within the requirements of para 3(2) Schedule 9, and so will be in breach of statute. Beyond the

legislative imperatives, the PSNI's use of an Equality Strategy, instead of an equality scheme, causes various difficulties in applying s75 in full.

First, the complaints and investigation procedures at paras 10 and 11 Schedule 9 become redundant, if PSNI does not have an equality scheme containing clear commitments for the application of s75. The enforcement of s75 is regulated through the ECNI's investigation of an alleged breach of equality scheme. We believe that this procedure would not be possible with the Equality Strategy. We recognise that footnotes have been used in some instances to create obligations, but it is not clear how, or if, these could operate with paras 10 and 11 Schedule 9. This lack of clarity could cause difficulties for both civil society and PSNI staff, as it would not be clear which actions would amount to breach of 'scheme', which could either lead to less regard to the need to promote equality of opportunity, or the liability of the PSNI, without its knowledge.

Secondly, the lack of transparency and clarity in relation to the PSNI's intended application of s75 will limit civil society's ability to participate in the process. Civil society's involvement in the s75 process is integral to the full mainstreaming of equality into public policy. Consultees, particularly those in affected equality groups, can input to the policy development process and inform the PSNI of any likely impacts of proposed policies on the promotion of equality of opportunity. If PSNI does not clearly set out the way in which s75 will be applied, civil society's access to the mechanisms will be impeded.

Thirdly, the lack of PSNI equality scheme suggests a lack of commitment to promoting equality of opportunity in Northern Ireland. In this regard, the PSNI's commitment to equality of opportunity is particularly important, given the sensitivities around the role and make-up of the PSNI in our divided, post-conflict society. As noted in the Equality Strategy, the 'promotion of equality, diversity and good relations will help achieve this vision [to be the finest personal, professional and protective police service in the world] by increasing trust, confidence and satisfaction, particularly among underrepresented groups, in the Police Service of Northern Ireland' (at page 8).

We therefore recommend that PSNI implements the most robust equality scheme, in keeping with best practice, in order to demonstrate its commitment to the promotion of equality, and thus increase confidence in the PSNI. Particularly as the PSNI appears to intend to carry out all of the commitments

included in the ECNI model equality scheme, it is not clear why it has not adopted it as a basis for its own equality scheme.

Recommended Approach for PSNI Equality Scheme

CAJ recommends that PSNI re-consult on an equality scheme, which uses the ECNI model scheme as a basis. This would ensure that PSNI complies with Schedule 9, and also attains the minimum best practice for mainstreaming equality. The use of the ECNI model scheme would provide consistency in approach, for the application of s75, with other designated public authorities (all of which, thus far, have adopted the ECNI model scheme approach). This, in turn, would facilitate civil society's participation in the application of s75 and further promote confidence in the PSNI's commitment to promoting equality of opportunity in Northern Ireland.

Also, given that ECNI model scheme contains all of the arrangements for applying s75, PSNI staff would not need to refer to several documents in order to mainstream equality in policy development and implementation. In addition, so that PSNI staff fully understand the application of s75, CAJ suggests that PSNI include statements in its equality scheme to explain the operation of s75. In particular, the ECNI model scheme does not explain the relationship between the equality duty (s75(1)) and the good relations duty (s75(2)), which is often misunderstood.²

As the PSNI's 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.

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'. 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' (at pages 26 and 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.’³

PSNI Action Plan

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

Further, we recommend that PSNI commits to publish and consult on its audit of inequalities and action plan in the future, by explicitly adding them as documents for which PSNI will seek input from its stakeholders and consult upon. CAJ has not commented on the PSNI Action Plan, currently at Appendix D of its Equality Strategy, as it has not been able to review the PSNI audit of inequalities.

We would like to remind PSNI that, in addition to the s75 action-based plan, s75 continues to apply to all PSNI policies in relation to all nine equality groups. Although we recognise the positive impacts that the action 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

³ 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.’

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 plan.

Conclusion

CAJ does not believe that the PSNI Equality Strategy is an equality scheme within the meaning of Schedule 9. We recommend that PSNI publish a new equality scheme, which builds upon the ECNI model scheme. We recommend that the eventual PSNI draft equality scheme is released for a three month consultation, before being submitted to the ECNI for approval.

Committee on the Administration of Justice
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