

CAJ's submission no. S389

**CAJ's submission to the
Northern Ireland Housing Executive on its
draft Equality Scheme**

June 2012

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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 Northern Ireland Housing Executive's ('NIHE') consultation on its draft equality scheme.

CAJ acknowledges NIHE's efforts in producing a comprehensive draft equality scheme. We have had the opportunity to engage with NIHE at an Equality Coalition event in June 2012, which was very useful. We are encouraged that NIHE 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 highlight a few additions, beyond the ECNI model scheme, which would strengthen the NIHE equality scheme in practice.

First, it would be helpful for consultees to be informed when screenings have been completed and the template available to view. 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.

Although we acknowledge that NIHE will make the screening forms available on request (para 4.13), we request that it also posts them on its website as soon as possible after completion, as suggested in the ECNI Model Scheme (at para 4.13). Even if this is included in the NIHE equality scheme, it is still important that NIHE include a statement that consultees will be informed of screening forms when they are completed. Otherwise, it is not clear how a consultee will be aware that a screening has taken place. Even when on the website, 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.

Secondly, we acknowledge that NIHE has published and consulted upon its audit of inequalities. This is welcomed, as it helps civil society inform NIHE of any irregularities or omissions, and also provide a useful frame of reference for the draft action plan. We recommend that NIHE continues to commit to publish and consult on its audit of inequalities in the future, by explicitly adding the audit as a document for which NIHE will seek input from its stakeholders and consult upon (at para 2.14 NIHE draft equality scheme). Please note that, due to a lack of resources, we have not reviewed the NIHE audit of inequalities or draft action plan.

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

Finally, CAJ recommends that NIHE include statements in its equality scheme to explain the operation of s75, which is often misunderstood. In particular, we recommend that the NIHE equality scheme include an explanation of the relationship between the equality duty (s75(1)) and the good relations duty (s75(2)). The ECNI Guide for Public Authorities¹ ('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'.² 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'.³

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>.

² As above, at page 26.

³ As above, at page 27.

As the NIHE 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.'⁴

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⁴ As above, 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.'