

CAJ's submission no. S417

**CAJ's submission to the North/South Language
Body on its consultation on its draft Equality
Scheme**

August 2013

About 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 such as Amnesty International, Human Rights First (formerly the Lawyers Committee for Human Rights) and Human Rights Watch 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, Hilda Mullen Foundation, Joseph Rowntree Charitable Trust, Oak Foundation and UNISON.

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 North/South Language Body on its Consultation on its draft Equality Scheme

About CAJ

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 this opportunity to comment on North/ South Language Body consultation on its draft equality scheme. CAJ is encouraged that the North/South Language Body (the Language Body) has adopted the ECNI model scheme as a basis for its draft equality scheme, and welcomes the way in which they have expanded on it in parts, particularly in relation to the commitments under 4.5 and 4.17 'screening arrangements' in the draft equality scheme.

In this brief submission, we will recommend four ways in which the Language Body Ireland could build upon its draft equality scheme, in order to make it stronger. This submission is a brief outline of what CAJ believe to be important points we have come across in the second generation equality scheme process, rather than any assessment of how the language bodies themselves have applied s75.

First, CAJ welcomes the commitment that the Language Body has cited in 2.15 of their scheme, 'we will monitor our progress on the delivery of our action measures annually and update the action plan as necessary to ensure that it remains effective and relevant to our functions and work. We will review the audit of inequalities and action plan in 2016-2017 and thereafter every two years, seeking input and consulting with our stakeholders as appropriate.' We acknowledge that the Language Body could still be working on an audit of inequalities and action plan but we recommend that these are published or consulted upon as this would help civil society inform the Language Body of any irregularities or omissions from the audit of inequalities, and also provide a useful frame of reference for the draft action plan.

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

Secondly, CAJ would like to suggest that 'ongoing' monitoring takes place across all the Language Bodies functions and not just biennially as stated in 6.7 of the draft equality scheme. It is important that a public authority is continuously working to promote equality of opportunity and sees the application of the equality scheme and accompany equality documents as tools to help them in their work and not just a tick box exercise.

Thirdly, CAJ recommends that when the Language body are offering the training to their staff that they include an explanation of the relationship between the equality duty (s75(1)) and the good relations duty (s75(2)). The ECNI Guide provides useful statements on positive action and multiple identities. We believe that the inclusion of this in any section 75 training would help staff to understand s75 better. 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.’¹

Finally CAJ would like to draw the Language Body to the recent research report by CAJ entitled, ‘Unequal Relations’ (included with this submission) which includes, on page 40, a specific case study on the application of the 75(2) good relations duty on Irish language policy. CAJ in this research have outlined serious concerns in relation to misapplication and misinterpretation of the duty in a manner detrimental to minority language rights and provision.

Often this has can result in a misinterpretation of ‘good relations’ considerations undermining the purpose of the equality duty. The legislation clearly sets out that the good relations duty is to be discharged ‘without prejudice’ to the equality duty, and that public authorities ‘should have regard to the desirability of promoting good relations’ rather than the stronger language of the equality duty- ‘to pay due regard to the need to promote equality of opportunity.’ Although recommended by the Equality Commission the legislation itself does not require public authorities to include ‘good relations’ impacts within EQIAs, and hence such matters are not a legal requirement, if and unless the public authority decides to include them within their equality scheme. CAJ would urge the Language Body to take into consideration when carrying out future EQIAs, the learning from the reaserch and case study to ensure application of the duties in a manner compatible with equality imperatives and international standards including the specific provisions under the European Charter for Regional and Minority Languages.

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¹ 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.’