

## **CAJ's Submission no. S425**

### **CAJ's request to ECNI for Para 11 Investigation into OFMdFM Strategic Investment Fund decisions**

**October 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.

**Request to Equality Commission for Northern Ireland (ECNI) for a ‘Paragraph 11’ Investigation into the Office of the First and deputy First Minister (OFMdfM) in relation to compatibility with the OFMdfM Equality Scheme of a reported policy decision not to approve the release of Social Investment Fund (SIF) monies on the basis of objective need.**

CAJ recently met, as part of a delegation from the Equality Coalition, with the ECNI and among the items discussed were equalities issues relating to the SIF. Since that time first *the Detail*, and then the media in general have extensively reported that projects which have been presented by officials, alongside official deprivation statistics, have not been signed off due to apparent disagreements as to whether funding should be allocated on the basis of objective need.<sup>1</sup> OFMdfM information available to date on SIF however has indicated objective need based criteria will be applied.<sup>2</sup> Questions therefore arise as to whether there has now been a policy review or change.

As you will be aware successive ECNI guidance has made clear that decision making on objective need does not conflict with the equality duties<sup>3</sup> and the equality duties themselves require proactive measures to address inequalities.<sup>4</sup> The Department will be aware that official statistics show that whilst there is deprivation in all communities it is presently significantly higher among Catholics than Protestants.<sup>5</sup>

If decisions have been taken not to sign off on SIF funding allocations based on objective need due to objections that Catholic/nationalist areas would receive proportionately more monies this indicates a failure to abide by commitments to promote equality of opportunity in the OFMdfM Equality Scheme. In the

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<sup>1</sup> [‘Is Stormont’s £80m poverty fund deadlocked over cash going to Catholics or Protestants?’](#) *The Detail* 20 October 2013.

<sup>2</sup> The [published official information on SIF](#) sets out three ‘objective need’ indicators, which make an area eligible for SIF funding, two related to most deprived Super Output Areas.<sup>2</sup> At a meeting with an Equality Coalition delegation on the 31 July 2013 OFMdfM officials had indicated to us that these were the criteria being applied to projects. In correspondence with the Equality Coalition, shared with the ECNI, the department has also argued that SIF operates as part of the Executive’s legal obligations to adopt an anti-poverty strategy, which the legislation sets out must be based on objective need (S28E of the Northern Ireland Act 1998 (as amended)).

<sup>3</sup> Equality Commission ‘Section 75 of the Northern Ireland Act 1998: Guide to the Statutory Duties’ February 2005, paragraph 2.1.

<sup>4</sup> “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.” ECNI ‘Section 75 of the Northern Ireland Act 1998 A Guide for Public Authorities’, page 24

<sup>5</sup> [See, for example, statistics from NISRA collated in the Community Relations Council Peace Monitoring Report cited in ‘Deprivation and Religion in Northern Ireland’](#) *The Detail* 20 October 2013

circumstances it also raises related questions of whether there has been discriminatory practice and even potential sectarianism in decision making.

In addition to monitoring procedural obligations (e.g. screening), the ECNI has in the past authorised investigations on the alleged infringement of the s75 duties per se committed to by public authorities in their Equality Schemes. The ECNI has held that such an investigation is appropriate if a public authority may potentially be acting in an “extreme or clearly unacceptable manner, for example, if it acted in an overtly sexist, racist, homophobic or sectarian way.”<sup>6</sup>

In the context of the present circumstances CAJ therefore requests that the ECNI use its paragraph 11 powers under Schedule 9 of the Northern Ireland Act 1998 to investigate the circumstances of the reported decisions in relation to SIF and determine whether there has been a breach of the OFMDFM equality Scheme.

This in particular would relate to the following provisions of the recently approved OFMDFM Equality Scheme:<sup>7</sup>

- “OFMDFM is committed to the discharge of our Section 75 obligations in all parts of our organisation” paragraph 1.3; (paragraph 1.1. sets out the duties as including the requirement to have due regard to promote equality of opportunity among persons of different religious belief and political opinion.
- “We are committed to the fulfilment of our Section 75 obligations in all aspects of our work” paragraph (2.2);
- “we view the requirement that having due regard for the need to promote equality of opportunity and regard for the desirability of promoting good relations as policy objectives.” (2.1)
- In the context of Section 75, ‘policy’ is very broadly defined and it covers the ways in which we carry out or propose to carry out our functions in relation to Northern Ireland (4.1) Screening is completed at the earliest opportunity in the policy development/review process. Policies that we propose to adopt will be subject to screening prior to implementation (4.5).

The information published in the media will give the ECNI sufficient reason to form the required belief there may have been a breach of the Department’s Equality Scheme. The second criterion set out in paragraph 5.7 the ECNI investigation procedure is that an issue be ‘sufficiently strategic’ to warrant investigation.

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<sup>6</sup> ECNI Final Report of Investigation under paragraph 10 of Schedule 9 of the Northern Ireland Act 1998 [Paul Butler v Lisburn Council](#) October 2009 (see also [Equality Commission comment regarding Duke of Edinburgh awards controversy](#)) a [current investigation](#) in to Newry and Mourne Council is also based on the question of compliance with commitments to fulfil the general s75(1) and (2) duties.

<sup>7</sup> Approved by the ECNI on 25 September 2013 – it is possible some decision making on SIF has taken place under the previous 2001 scheme which contains similar commitments to the above.

CAJ believes that this issue is highly strategic for the following reasons. First, SIF is a fund of £80 million to tackle deprivation which has now been subject to lengthy delay. SIF is clearly an active policy with delivery structures having been long established, yet monies have not been allocated with the Finance Minister now stating £15 million made available for SIF projects in this year has now been reallocated.<sup>8</sup> We do not believe it is premature to investigate whether the Equality Scheme has been complied with over SIF decisions. If money has failed to be allocated due to seeking not to use objective need as a criterion on the basis outlined above these actions would already be incompatible with the commitments in the Equality Scheme. Furthermore we believe it would be an entirely proper use of the Commission's investigatory powers to help *prevent* what is potentially a large scale abuse of equality principles in relation to a major government strategic investment.

Second, despite legal obligations there is also a broader worrying pattern of objections or movement away from resource allocation decision-making on the basis of objective need, or attempts to redefine objective need, in other areas of policy.<sup>9</sup> Any such move away from approaches dealing with socioeconomic rights on the basis of objective need towards more of a 'parity' approach to funding such initiatives to the two main communities, will clearly exacerbate and sustain existing inequalities and disadvantage other s75 groups. Should further precedents be established for moving away from objective need there will be significant repercussions across a range of areas of social policy.

This request for a paragraph 11 investigation is issued in the context that CAJ is unlikely to satisfy the 'directly affected' requirement for complaints under the OFMdfM equality scheme itself and any subsequent paragraph 10 complaint to the ECNI.

**CAJ October 2013**

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<sup>8</sup> [Social Investment Fund - no cash for the poor, but nearly £400,000 'to consultants'](#) *The Detail* 21 October 2013.

<sup>9</sup> In the field of housing for example see critique in the Participation and Practice in Rights Report '[Equality Can't Wait](#)'. In addition both CAJ and the Equality Commission recently [gave evidence to the Northern Ireland Affairs Committee](#) in relation to the implementation of the Armed Forces Covenant in Northern Ireland in which any approach affording preferential treatment not based on objective need was cautioned against.