

CAJ's Submission no. S426

CAJ's request to ECNI for Para 11 Investigation into Department of Social Development (DSD) Strategic Housing Policy

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 Department of Social Development (DSD) in relation to failure to abide by its Equality Scheme in relation to the strategic Housing Strategy policy

This is a request that the ECNI use its paragraph 11 powers under Schedule 9 of the Northern Ireland Act 1998 to investigate procedural breaches of the DSD equality scheme for failure to carry out screening and equality impact assessment of strategic housing policy centred around its '*Facing the Future: Housing Strategy for Northern Ireland 2012-2017*' policy. The most significant section of the DSD equality scheme¹ which has been breached is paragraph 3.1 which states:

Any proposed policies which emerge during the lifetime of the Scheme will be screened against the four criteria in paragraph 3.2 and those identified as having significant implications for equality of opportunity following such a review will be subject to a full impact assessment.

This has not happened with either 'Facing the Future' or key individual policies emerging from it. The timing of this request is related to:

- DSD recently confirming to CAJ that the 'Facing the Future' Housing Strategy will not be reissued and hence that it is sticking to the position in the draft consultation document that the Housing Strategy will not be screened;
- DSD is regardless taking forward an Action Plan on the strategic policy without screening or EQIA's being conducted on collective or individual elements;
- It becoming increasingly apparent decisions are already being taken and there is a concerted movement away from approaches to promote equality of opportunity within key elements of strategic housing policy with enormous impacts on s75 groups in the short as well as medium term;
- It is also increasingly apparent that there is a cumulative effect leading to DSD attempting to bypass the application of its section 75 obligations in any meaningful manner in relation to strategic housing reform;

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 DSD equality scheme itself and any subsequent paragraph 10 complaint to the ECNI.

¹ DSD Equality Scheme (approved 2001) http://www.dsdni.gov.uk/dsd_equality_scheme.pdf
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The Equality Commission's current guidance for public authorities in relation to the Section 75 duties sets out the following definition of policy for the purposes of the guidance "*the term policy is used to denote any strategy, policy (proposed/ amended/ existing) or practice and/or decision, whether written or unwritten*" and also recommends that policies should be screened at different stages of development and implementation: "[screening] should be completed at the earliest opportunity in the policy development process. For more detailed strategies that are to be put in place, through a series of stages, a public authority should then consider screening at various times during implementation."² Further information as to the sequence of events in relation to DSD policy proposals is provided as follows.

Original Consultation on Proposed Strategic Housing Policy

DSD issued their proposed policy as a consultation document entitled '*Facing the Future: Housing Strategy for Northern Ireland' 2012-2017 consultation*' on the 15th October 2012 and ran the consultation until December 2012 (full document [HERE](#)).

There is evidence of major adverse impacts on s75 grounds of the wide ranging policy proposals. The recent PPR research report '*Equality Can't Wait*' highlights impacts of two elements of the proposed policy in particular. The first is its '*fundamental review of the social housing allocations policy*' which proposed significantly moving away from objective need in social housing criteria which will have major impacts on s75 groups facing disadvantage. The Terms of Reference for the Review, which was apparently already underway despite the consultation, were to consider opening the social housing waiting list for persons with "no demonstrated housing need" as well as looking at redefining 'objective need' itself. Rather than being screened and published the review has been conducted behind closed doors. Secondly the proposed policy on a "housing-led approach to regenerating communities" which also proposed moving away from objective need and instead proposed a number of characteristics for choosing pilot areas for the policy which remarkably included (with clear adverse impacts on religious/ political grounds) areas which have a "decline in housing demand" and are in "proximity" to places that actually have housing need.³ A range of other equality impacts were put forward by consultees to DSD, and published in the 'summary of responses' to the consultation itself. This includes, for example, the potential for an adverse impact on disability grounds due to less secure tenancy agreements was raised in relation to proposals

² ECNI 'Section 75 of the Northern Ireland Act 1998 A Guide for Public Authorities April 2010' pages 30, 50/51.

³ Participation and the Practice of Rights 'Equality Can't Wait' 2013, chapter 7.

of additional forms of social housing tenancy. It is recorded other consultees raised impacts on grounds of age, community background and dependents.⁴

Despite the clear commitment in paragraph 3.1 of its equality scheme DSD did not screen or subsequently EQIA the policy proposals set out in the consultation document. Instead an entirely different process was proposed whereby DSD stated its position was not to screen the strategic policy but to ask consultees for any evidence of equality impacts outside of this process. The consultation document stated:

As each of the policies set out in this draft strategy are developed, they will be screened in the context of our section 75 duty and, where appropriate, an equality impact assessment undertaken. However, we also welcome any evidence at this stage of any equality impacts of any of the proposed measures contained in this strategy, particularly where there may be an adverse impact on a particular group specified within section 75.⁵

This approach is not compatible with the DSD equality scheme. Such an approach also would reduce the effectiveness of the s75 process by restricting analysis to smaller specific policies rather than the macro policy, which reduced meaningful analysis given individual policies cannot be linked back to the bigger picture. It has also now become clear that the commitment to screen individual policies also does not appear to have been taken forward. The Equality Commission in its response to the consultation questioned why screening had not been conducted in line with Commission guidance.⁶

Additional policy of ‘Social Housing Reform Programme’ added January 2013

In January 2013 the Minister gave a Written Statement to the Assembly on policy proposals for a ‘*Social Housing Reform Programme*’ which had not been explicitly referenced in the Facing the Future Consultation.⁷ No reference was made to any screening of the policy. The Minister, in an indication the policy was being rapidly taken forward, announced one of the ‘time-critical’ issues was the urgent consideration of legislation which would support the new delivery model.

The *Facing the Future* consultation had alluded to new structures (by March 2015) to ‘take forward’ a review of the Housing Executive (completed in June 2011). The Ministerial Statement instead put forward a policy of dismantling the Housing

⁴ DSD Facing the Future: Housing Strategy for Northern Ireland 2012-2017: Summary of Responses to Consultation: <http://www.dsdni.gov.uk/index/hsdiv-housing/hsdiv-publications/hsdiv-facing-the-future.htm> p15-29.

⁵ Facing the future consultation, p51,

⁶ ECNI ‘Facing The Future: Northern Ireland Housing Strategy 2012-2017 (Dsd) Consultation Response, December 2012, paragraph 4.3.

⁷ Written statement to the Assembly by Social Development Minister Nelson McCausland 9 January 2013 <http://www.northernireland.gov.uk/news-dsd-090113-written-statement-to>

Executive and the transferring of 90,000 units of housing stock outside the public sector and into housing associations.⁸

Major equality impacts would flow from such policy changes. As set out in recent research commissioned by NIPSA, Housing Association rent costs are considerably higher than NIHE homes, with a current average difference of £30 a week. The research cites a recent NIHE-Housing Association transfer having led to rent rises of 28.5% and more.⁹ Generally higher costs would adversely impact on s75 groups facing comparative disadvantage (i.e. Catholics/nationalists, ethnic minorities, women, persons with disabilities and dependents etc) and exacerbate inequality in general. Other potential impacts would result from public functions being put beyond the practical scope of human rights and equality safeguards, with the NIPSA report citing the loss of democratic accountability of the social landlord, which may also lead to less representation or engagement with s75 minority groups.¹⁰ There are also practical problems likely to be faced by specific equality groups (e.g. it may be more difficult/costly for disabled persons to get housing adaptations) and there are the enhanced risks of political discrimination in housing allocation if the safeguards of an independent body and 'objective need' criterion are dismantled. This is a major policy shift as significant as welfare reform whose impacts should rightly be assessed in the EQIA process.

DSD Publication of Housing Strategy Action Plan: July 2013

Over the summer on the 2 July 2013 DSD published a '*Facing the Future: Housing Strategy for Northern Ireland 2012-2017: Action Plan*'. The Action Plan stated it was going to set out the steps which would be taken to deliver the Housing Strategy. It is clear that respondents to the original consultation had petitioned DSD to screen/EQIA the Housing Strategy, which in any case is a requirement of its Equality Scheme. In the action plan DSD does respond to 'the suggestions of stakeholders' by adding to its statement on four main roles of government in relation to housing a fifth role of 'promoting equality of opportunity in housing in NI and to promote good relations.' However the Action Plan is silent on whether the final policy will include screening/an EQIA of the Housing Strategy, rather it just restates that there is a statutory duty to equality screen each individual policy as it is developed.¹¹

The Action Plan is also silent as to whether there would be any amendment to the consultation document proposal that 'fairness and equity' would be a 'core principle' that would guide the development and delivery of the housing strategy.¹² 'Fairness and Equity' could be indicative of a significant policy shift from approaches based on equality of opportunity (through objective need) to one based on allocating resources

⁸ See *The Detail* 'End of an era as McCausland announces dismantling of NIHE' 08 January 2013 <http://www.thedetail.tv/issues/159/housing-executive-disbanded/end-of-an-era-as-mccausland-announces-dismantling-of-nihe>

⁹ Smyth, Stewart 'Keeping Our Housing Public' NIPSA executive summary, pii.

¹⁰ As above, p13.

¹¹ DSD Facing the Future: Housing Strategy Action Plan 2012-2017, July 2013, page 3.

¹² DSD Facing the Future: Housing Strategy for Northern Ireland 2012-2017, page 7.

on a 'parity' approach to the two main communities, and hence exacerbating inequality and discriminating on religious/political grounds. The Equality Commission in its response queried the use of this term and instead suggested 'Equality of Opportunity and Good Relations' be used in the strategy.¹³ The Action Plan is silent as to whether the core principle of 'equity and fairness' will change and also as to what its implications are. The Commission also raised issues of a lack of clarity on some policy proposals including that on 'harmonising' standards between the public and private sector, and seeking clarity that this did not mean regression for social housing standards which the draft Strategy had noted were currently built to a 'much higher standard'.¹⁴ The Commission recommended that the 'final Strategy' provide a clearer strategic vision and be supported by further information on housing need.¹⁵

DSD confirms decision: no revised final Housing Strategy, October 2013

Whilst it had been the clear expectation of the Commission, CAJ and no doubt others that there would be a final Housing Strategy, DSD confirmed to CAJ on the 18 October 2013 that there is no intention of publishing a final strategy. DSD informed us that the consultation document will not be rewritten but rather the Action Plan was informed by the consultation responses and would implement the strategy.¹⁶ It has hence now becomes clear s75 has been entirely bypassed in relation to the overall Housing Strategy in conflict with the DSD equality scheme.

The Action Plan contains a total of 33 policy areas as actions, there are commitments to 'consult' on some of them but not all – including Action 33 on taking forward the 'Social Housing Reform Programme' where the action is set out as simply implementing the programme.¹⁷ No explicit commitments are cited to screen or EQIA any of the actions.

Only four policy areas in the Action Plan are linked to 'role 5' (that of promoting equality of opportunity and good relations') two (nos 19 & 20) relate to implementing welfare reform. The other two actually relate to areas of policy likely to generate adverse impacts on s75 groups. The first (29) risks actively undermining equality of opportunity to create a Belfast City Centre shared community boundary for shared housing schemes. As the PPR report has highlighted this, as well as impact on all persons in housing need, will have a major adverse impact on Catholics/nationalists.¹⁸ There is no reference to screening rather that the boundary will be 'identified' and 'agreed' and then housing schemes will be delivered within it. The final 'role 5' action (30) relates to developing a policy framework to tackle anti-social

¹³ ECNI 'Facing The Future: Northern Ireland Housing Strategy 2012-2017 (Dsd) Consultation Response, December 2012, paragraph 4.3.

¹⁴ As above, paragraph 5.8.

¹⁵ As above, paragraph 4.6.

¹⁶ E-mail from Policy, Research and Legislation Team, Housing Division, DSD 18 October 2013.

¹⁷ DSD Facing the Future: Housing Strategy Action Plan 2012-2017, July 2013, page 15.

¹⁸ Participation and the Practice of Rights 'Equality Can't Wait' 2013, chapter 4.

behaviour, which may have impacts on s75 categories such as age, gender, religion etc but again there is no commitment to screen.

DSD announces regeneration policy being taken forward, October 2013

On Monday the 28 October 2013 the DSD Minister announced a policy decision on six 'pilot' areas to take forward, as "part of the Minister's 'Facing the Future - Housing Strategy for Northern Ireland'", the housing-led approach to regeneration element of the strategy discussed earlier in this submission. The Minister stated that all six met the criteria for selection as "detailed in the Housing Strategy". Criteria which are now clearly being implemented without screening.¹⁹ The six areas selected are all east of the Bann (five in Belfast) and appear to be three mainly Catholic/nationalist and three mainly Protestant/unionist areas, indicating the implementation of an approach based on 'parity' rather than objective equality of opportunity.²⁰

CAJ contacted DSD to confirm whether any screening had or would take place in relation to this decision. DSD responded that it would not as the decision was not a 'policy' rather it was an 'initiative' and that screening would instead take place in the future once these areas had been subject to assessment as it was only then the policy would be formulated.²¹ The *Facing the Future Action Plan* references the policy on housing-led approaches to regeneration under action 25, which sets out pilots will be in place for four areas by 2014 and that a 'policy' will not be developed until May 2015.

There has already been significant controversy over the DSD Minister's role in special housing preference given to a number of the same areas in 2012. *The Detail* reported that the Minister had sought emergency approval to add 'four loyalist areas in the Ministers own constituency' to the NIHE three year building programme for social housing after the NIHE plan had already been approved. It also reports the s75 screening process was bypassed and provides statistics demonstrating the areas had not been selected on the basis of objective housing need. A statement from the Minister, confirming his personal involvement in the decision, states that the areas were added in pursuance of 'housing-led regeneration', despite this being some months before even the *Facing the Future Strategy* proposed this policy. The *Detail* reports that when questioned as to why none of the schemes had been subject to s75 screening before emergency legislation was used to add them to the NIHE plan DSD responded "At this stage these are indicative schemes and each will

¹⁹ DSD Press Release 'Bulldozers and grass seed don't build communities – McCausland'
<http://www.northernireland.gov.uk/index/media-centre/news-departments/news-dsd/news-dsd-281013-bulldozers-and-grass.htm>

²⁰ The six areas selected are at Belfast's Lower Oldpark/Hillview, Divis/Albert Street, Tiger's Bay/Mountcollyer, Shankill/Brown Square, Andersonstown and Doury Road in Ballymena.

²¹ E-mail from Policy, Research and Legislation Team, Housing Division, 29 October 2013.

come to board for approval before resources are committed. When the schemes are progressed they will also be subject to normal EQIA...”²² This has not happened.

Cumulative effect of DSD failing to screen strategic Housing Policy

Whilst individual failures to screen in themselves are incompatible with commitments in the DSD equality scheme taken together the above narrative paints a worrying and pressing picture of DSD avoiding any meaningful application of the section 75 duties in policy development in social housing.

Given that this is incompatible with the DSD equality scheme CAJ calls on the ECNI to exercise its powers of investigation with a view to compelling compliance by DSD to screen and EQIA its strategic ‘Facing the Future’ Housing Strategy for Northern Ireland policy.

In relation to the criteria for a paragraph 11 investigation set out in paragraph 5.7 the ECNI investigation procedure CAJ regards the above information as sufficient for the Commission to ‘form the required belief that a failure to comply with an approved equality scheme may have occurred’ and that the matter clearly is sufficiently strategic to merit a Commission-initiated investigation.

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²² ‘McCausland challenged over special housing preference for loyalist areas’ *The Detail* 18 June 2012,

<http://www.thedetail.tv/issues/102/mccausland-challenged-over-fast-tracking-for-loyalist-areas/mccausland-challenged-over-special-housing-preference-for-loyalist-areas>).