

CAJ's Submission no. S446

CAJ's submission to Mid Ulster District Council Consultation on the Equality Impact Assessment (EQIA) of the draft Irish Language Policy

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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 has a long track record of involvement in commenting both on Equality Impact Assessment (EQIA) processes and the human rights policy framework for the Irish language.¹ CAJ received Mid Ulster Council's EQIA of the Draft Irish Language Policy and welcomes the opportunity to comment on it. The EQIA appendages the policy itself, the aim of which is:

Operating within the spirit of the European Charter for Regional or Minority Languages, and having due regard to the status afforded to Irish within that Charter, Mid Ulster District Council aims to take resolute and positive actions that will aspire to promote, enhance and protect the Irish language within the Council and District.

The associated policy objectives are:

- To encourage the use of Irish in both speech and writing within the District and Council.
- To promote a range of initiatives that will reduce intolerance and promote understanding of the Irish language across the District and within the Council.
- To preserve townland names through the use of appropriate signage.

¹ CAJ was part of the coalition of groups who successfully campaigned for the adoption of the 'Section 75' statutory equality duty and its inclusion in the Belfast/Good Friday Agreement. Since the 1990s CAJ has Co-Convened, with UNISON, an Equality Coalition of groups representative of all the equality categories in section 75 and beyond. In 2013 CAJ issued the '*Unequal Relations?*' research report which examined the question of Equality Commission advice on the Section 75 duties in relation to interpretations of the 'good relations' duty, and included as one of its specific case studies advice given in relation to policies relevant to the Irish language. CAJ has responded to the three consultation exercises to date on the introduction of Irish language legislation, including most recently in May 2015. CAJ has also regularly engaged with the Council of Europe Committee of Experts (COMEX) and other bodies dealing with the state party's compliance with treaty-based commitments towards the Irish language, and have recently been involved with a number of initiatives regarding linguistic provision at local government level. CAJ publications are available at: www.caj.org.uk

- To recognise and celebrate the Irish language within the broader context of linguistic and cultural diversity across the District and Council.
- To maintain and develop links between groups using Irish with other groups using Irish and/or Ulster Scots.

CAJ regards the aim of the policy as consistent with obligations under the European Charter for Regional and Minority Languages (ECRML). As well as commitments to promote and safeguard Irish it is particularly welcome that the policy will include the objective reducing intolerance and promoting understanding of the Irish language as this provision of the Charter is often neglected. The provision to facilitate links with other speakers of Irish and with speakers of Ulster Scots is also welcome and consistent with the Charter.

The consultation, and hence this response, concerns the EQIA and not the draft Irish language policy per se. In summary, we do find problematic some of the EQIA's conceptualisation and interpretation of the statutory equality duty (as set out in Section 75 and schedule 9 of the Northern Ireland Act 1998 and the Council's Equality Scheme). These matters are set out in further detail throughout this submission.

The process of the current EQIA

It is not clear from the consultation document why the Council decided to conduct a full EQIA on this draft Irish language policy. Paragraph 4.11 of Mid Ulster Council's published (draft) Equality Scheme states that a policy will normally be subjected to a full EQIA when a 'major' adverse impact has been identified in a screening exercise. We have not seen the screening exercise but cannot see how the proposed policy could fall into this category. In general, it is difficult to foresee circumstances of whereby a policy consistent with the provisions of the ECRML (an instrument which itself has been careful to provide for the rights of speakers of minority languages in a manner consistent with the rights of others) could constitute an adverse impact on equality of opportunity for a section 75 category.²

² There are circumstances whereby provision for Irish or any other minority language would objectively adversely affect the rights of others, and hence equality of opportunity for particular groups. For example if a Council decided to provide all its services or produce its documents ONLY through Irish. The ECRML is intentionally framed to avoid such a scenario by ensuring there is provision for dominant languages as well as minority languages. It should be noted that there is no 'right' not to hear Irish, not to have to look at Irish in a logo or to be 'offended' by Irish. None of these matters affect the rights of others nor should be considered objectively as 'adverse impacts'.

We note that there is a residual provision in paragraph 4.10 that a draft policy ‘on occasion’ may be subjected to an EQIA where a potential ‘minor’ impact is identified. The document does not state whether the Council is relying on this provision in its decision to commission the EQIA. It is therefore not clear if the Council has followed its own Equality Scheme correctly in the decision to commission a full EQIA.

The statutory equality duty legislation requires designated public authorities to (through arrangements set out in their Equality Scheme) impact assess proposed policies *on the promotion of equality of opportunity* across the nine section 75 grounds³ and where there are identified adverse impacts on equality of opportunity consequently engage in equality monitoring and consideration of alternative policies or mitigating measures. There is no equivalent obligation or intention in the legislation that ‘adverse impacts’ on ‘good relations’ be assessed in the same manner. CAJ has cautioned against such an approach both given its likely subjectivity and potential conflict with the equality duty and related obligations. It is also explicitly stated in the legislation that compliance with the good relations duty must be exercised without prejudice to promoting equality of opportunity.

The draft EQIA singles out two areas, namely ‘deterioration in service delivery’ or harm to the ‘good and harmonious nature of the working environment’, which it considers may constitute ‘adverse impacts’. Only the first area is assessed on grounds of equality of opportunity the latter area is linked to the ‘good relations’ duty. The EQIA report concludes there is little concrete evidence to substantiate adverse impacts on either ground. It nevertheless concludes that such matters be subject to a two year period of monitoring after which it commits the Council to change the policy if there is evidence of ‘adverse impact’ on either of these two grounds. The EQIA also states a number of measures are already in place to ‘mitigate adverse affects’.

In the absence of evidence of any real adverse impacts on equality of opportunity an alternative approach meeting the letter of the equality scheme commitments would have been to reference such ‘mitigating’ measures as positive action measures designed to better promote the statutory duties, and to have screened out the policy for EQIA.

The recommendation of the EQIA report is problematic due to the way the document has broadly conceptualised the scope of ‘adverse impacts’. It appears to wish to monitor information over the next two years using indicators that include matters

³ In summary: gender, age, religious belief, political opinion, racial group, disability, dependents, marital status and sexual orientation.

which would not constitute an adverse impact on equality of opportunity under the legislation. Given this there is now a risk ironically that a policy which is essentially about promoting equality of opportunity for Irish speakers and complying with international standards to safeguard a minority language, could be put under threat through a misapplication of the Equality Scheme and misinterpretation of key section 75 concepts.

Interpretation of Key concepts

CAJ have noted a particular pattern of a number of EQIAs into language policy (mis) categorising political or attitudinal opposition to the Irish language as constituting an 'adverse impact'. This was then used as a basis to limit policies which would implement duties under ECRML.

An 'adverse impact' on equality of opportunity is not a lay concept devoid of any real meaning or legal certainty. The concept is (whilst not requiring a threshold of unlawfulness) close to that of discriminatory detriment on one of the equality grounds. The duty was never intended to be exercised as a political veto. It would be a misapplication of the duty to categorise a policy as an 'adverse impact' on equality of opportunity merely because it is politically contentious, or merely because there is hostility to a policy.

The legislation attaches the concept of 'adverse impact' to the equality limb of the Section 75 duty and not the 'good relations' limb of the duty. The 'good relations' duty is defined in legislation in Great Britain as being, in particular, about 'tackling prejudice and promoting understanding'. Whilst the Northern Ireland legislation does not define 'good relations' it is the same concept and clearly cannot have been intended to mean something entirely different. The Equality Commission has a 'working definition' of good relations which references structures which promote respect and 'embrace diversity in all its forms'.⁴ The Council has adopted this Commission working definition of 'good relations' into its Equality Scheme. Given as the good relations duty is therefore to be interpreted as one which involves 'embracing diversity in all its forms' it is difficult to see how complying with the 'good relations' duty can be interpreted as obliging the Council to end or limit its promotion of Irish. We are concerned however a more lay interpretation of what the duty means has been applied within parts of the EQIA in relation to both limbs of the duty.

⁴ "The growth of relationships and structures for Northern Ireland that acknowledge the religious, political and racial context of this society, and that seek to promote respect, equity and trust, and embrace diversity in all its forms."

The EQIA seeks to directly relate the provisions of Fair Employment legislation to the 'good relations' limb of the duty. Unless this related to implicit duties to, for example, tackle prejudice it is unclear what the basis for this is. Harmonious workplace issues have generally been related to the provisions of fair employment legislation relating to the equalities concepts of discriminatory detriment and more recently sectarian harassment. It is also worth emphasising that the jurisprudence on the cited fair employment duties for 'good and harmonious working environments' tends to refer to situations whereby employers are having to prevent situations whereby the symbols or emblems of one side of the community dominate the other. This situation should not arise in relation to policies to promote the Irish language consistent with the ECRML. The ECRML framework promotes bilingualism or other complimentary initiatives for Irish within a framework ensuring there is no prejudice to ongoing provision in English. The draft Irish language policy keeps the English language as the main language of the Council.

The draft EQIA cites controversial Equality Commission advice to Magherafelt Council cautioning against policies which are 'divisive' on grounds of political opinion/religious belief. Fair employment legislation does not contain explicit provisions outlawing 'divisive' policies. This advice prompted concern among equality groups and trade unions, not least given the implications for the promotion of equality on grounds of sexual orientation in the context of the different positions of political parties on this matter. Appended is correspondence to the Equality Commission from the civil society Equality Coalition dealing with this matter.

Available data and research

Section 2 of the EQIA report (along with appendix 2 and 3) deals with 'available data and research' to inform the EQIA. This includes population/staff statistics, data on Irish speakers, and public attitudes towards Irish and those from previous consultations. By far the largest amount of column inches is taken up by data relating to attitudinal and perception issues as regards the Irish language.

Under Article 7(4) of the ECRML (as applied to Irish in Northern Ireland) state parties commit to consultation with persons who are speakers of Irish in relation to the development of their policies. The Council has no doubt done this in relation to the development of the draft policy itself. Despite the EQIA recording that Irish speakers are concentrated within particular s75 groups such material, as regards the experiences of Irish speakers, is however omitted from consideration in the EQIA. By contrast the EQIA enumerates the views, perceptions or concerns of persons opposed to Irish language provision.

Assessment of impacts

Section 3 of the report deals with assessment of impacts and, after an overall assessment, deals separately with the issue of assessing impacts on Council service users and Council staff.

Overall assessment of EQIA

From the outset section 3 states that it has examined the differentials noted in section 2 of the report and concluded that it is 'likely that the adverse impacts identified' relate to the two Section 75 grounds of religious belief or political opinion. It is not clear on the basis of which differentials this position was however reached.

Section 2 highlights differentials on the basis of numbers of speakers of Irish within the section 75 categories of religious belief and age, with more Catholics and young people speaking Irish. There is clearly nothing 'adverse' about having a differential in the number of speakers.

The second area of section 2 where differentials are identified relates to attitudes to the Irish language. This also finds differentials in relation to 'age' and 'religious belief' in relation to numbers of persons likely to be 'in favour or against the use of Irish.' There is no explanation as to how the conclusion is then reached that there are likely adverse impacts on the basis of 'religious belief' and 'political opinion', but not on grounds of age given a similar differential is identified in the research data. An attitude per se is not an adverse impact on equality of opportunity. It is important to stress that there is a legally recognised human right to freedom of expression without discrimination on grounds of language.

Impacts on Council service users

In relation to assessing positive impacts on service users, the EQIA records that those who are Catholic or young, and hence more likely to be Irish speakers, will be more likely to benefit from the policy of increased Irish language provision. It goes on to note that in the longer term broader groups of persons will benefit from contact with the language. CAJ concurs with this, and welcomes its inclusion as consideration of positive benefits on section 75 categories has been overlooked in other EQIA's on minority language policy. In relation to provision of services to Irish speakers, we concur that those section 75 categories in which speakers are currently concentrated are likely to positively benefit more.

Had the draft EQIA included information on the experiences of Irish speakers the positive impacts of the policy could have been further quantified. Such information should include looking at the benefits provision in Irish has for speakers. In addition it may be there are still places in the district Irish speaking families fear using their language in, and are less likely to access services as a result. Data on this matter could evidence the positive benefits provisions in the policy to reduce intolerance may have.

In relation to the broader promotion of Irish we would also regard this as having the potential to benefit persons across the section 75 categories, and in particular those currently under represented among speakers, this is given as the local authority promoting Irish has the potential to bring the language and interest in it to a much broader audience in the local area.

Having identified that the policy does have a positive impact on promoting equality of opportunity, it is important to be conscious that compliance with the good relations limb of the duty must be exercised without prejudice to the equality duty, and hence these positive benefits on equality of opportunity.

In relation to assessing potential negative impacts on service users three issues are raised in the draft EQIA.

The first of these are that some persons may 'feel disadvantaged' by the policy as they do not speak Irish, and that such persons will tend to be members of Protestant and Unionist communities (no reference is made to the category of age). The EQIA concedes however that this is a feeling rather than actual disadvantage, and that the policy does not diminish council services in English, meaning there will be no adverse impacts.

The second issue raised is whether provision for the Irish language in general might detrimentally slow down Council services, for example the time taken to translate documents may delay their publication. The EQIA however concludes that this is not inevitable and even if it is the case it will not affect any s75 group more than another, and hence does not constitute an 'adverse impact' under the equality duty.

The third ground which is referenced is that provision of Irish may constitute a 'chill factor' discouraging persons from a Protestant or unionist community accessing Council services. A similar conclusion is not reached as regards the category of older persons.

There is no indication that there has been any drop off in access to services in relation the bilingual policies of predecessor Councils, with the draft EQIA concluding there is little actual evidence of this happening. We would caution against some of the reasoning presented in this section of the report. Firstly the report references a view that the Irish language has been ‘deliberately politicised’ but provides no elaboration as to what this means, and whether refers to past policies restricting or excluding the Irish language as having ‘politicised’ the language, or to those promoting or advocating for the language as having ‘politicised’ it. Either way it is not clear what this means in practice. Secondly this section concludes that it does not matter what the merits are of a perception or sentiment, rather that if a perception exists it has to be acted upon. We would caution that a perception should have some reasonable and legitimate basis for it to be acted upon. Otherwise an entirely unqualified approach runs the risk that perceptions based on prejudice or intolerance can become the basis for policy changes. The approach in the draft EQIA would set an extraordinary precedent for future policy making given it implies that even views that are racist, sectarian, sexist, homophobic or disablist should be factored into policy making.

Impacts on Council staff

This section on impacts on staff focuses on concerns that ‘good relations’ could be harmed within the Council workforce as a result of the policy. It does not reference impacts on equality of opportunity. The evidence base provided is derived from information from a previous consultation with staff in a predecessor council which enumerates four specific fears identified by staff members.

One fear is that there would be ‘sectarian bullying if staff are able to say things about others in a language they do not understand.’ This appears reflective of a misconception in predominantly monolingual societies that persons are speaking in other languages are to be suspected of being up to no good. Linguistic diversity training may assist in alleviating this as an issue. The normal rules of courteous behaviour apply regardless of which language is being spoken and it would be incompatible with the ECRML and potentially unlawfully discriminatory if rules were introduced to prevent staff speaking Irish to each other in the presence of others.

Another fear is that staff may lose their jobs if not able to speak Irish. The policy clarifies however that Irish will effectively be treated like any other skill and not made a requirement of a job description unless it is necessary for that post.

Another fear is that staff may feel disadvantaged if they do not participate in Irish language development learning. This presumably would also be the case with any other skills training the Council offers.

The final fear is that council staff may be attacked in Loyalist areas if Council vehicles and uniforms are inclusive of Irish. There is no evidence of this occurring in relation to predecessor Councils, and presumably if such a level of hostility was present within the Council area it would be further evidence of the need for anti-prejudice work. In any case this would not constitute an 'adverse impact' on a particular section 75 group.

This section concludes there is little evidence to support any of the fears that the policy will lead to an adverse impact on the working environment. The EQIA does point to a number of measures are proposed within the policy as regards its implementation to ensure understanding is promoted as to its aims and concerns about it are addressed.

Overall conclusions

It is the case that no actual adverse impacts on equality of opportunity are identified by the draft EQIA. We are nevertheless concerned about some of the subjective conceptualisation within the document as to which phenomena could potentially reach this threshold. Our concerns are that it is now proposed to monitor such phenomena as a basis for determining whether the policy constitutes an 'adverse impact', and a commitment to change the policy if this is the case. We would ask this is reviewed in the final EQIA report, and that any monitoring taken forward is based on matters which would objectively constitute an adverse or positive impact on equality of opportunity as is intended by the original legislation.

**Committee on the Administration of Justice
September 2015**