

**The Committee on the Administration of Justice (CAJ)**  
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*Winner of the Council of Europe Human Rights Prize*

*CAJ's response to*

**Public Processions (Amendment) (NI) Order 2005 and  
consultation paper on mediation**

**May 2005**

**Submission No. S.165**  
**Price £1.00**

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## What is the 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, 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, monitoring, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include prisons, policing, emergency laws, the criminal justice system, the use of lethal force, children's rights, gender equality, racism, religious discrimination and advocacy for a Bill of Rights.

The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize.

## **Response to Public Processions (Amendment) (NI) Order 2005 and consultation paper on mediation**

**(May 2005)**

Thank you for sending copies of this material to the Committee on the Administration of Justice (CAJ). In conformity with the submissions that we made both to the Quigley Review, and the subsequent inquiry by the Northern Ireland Affairs Committee, CAJ agrees that “a case has not been made to make fundamental changes to parading arrangements in Northern Ireland” (Ministerial cover letter dated 22 February 2005). We share the view that parades have become increasingly peaceful over the last few years, and the number of contentious parades has fallen. The work of the Parades Commission, improvements in public order policing, and extensive local efforts at dialogue have changed the situation dramatically since the summer of 1996, when CAJ first sent out human rights observers to monitor events on the streets.

### **Public Processions (Amendment) (NI) Order 2005**

While CAJ understands the value of moving ahead speedily with the proposed new legislation so that it would be in place in time for much of the 2005 parading season, we feel that it is highly unfortunate that there was insufficient time for appropriate consultation. As you are aware, there is extensive interest across the community in the issue of parading, and it is vital that any legislative changes are thoroughly scrutinised to ensure that they effectively respond to both real and perceived problems.

The new legislation has two major planks. Firstly, the new Order extends the authority of the Parades Commission to the issue of protest meetings. CAJ has always been somewhat unclear as to what was intended in proposing an extension in this regard, and we will await with interest to see what changes, if any, this makes in practice to peaceful protest.

Secondly, the legislation clarifies the powers of the Parades Commission with regard to supporters, given the fact that a judicial review last year showed that there was legal uncertainty in this domain. CAJ welcomes the decision of government to clarify this ambiguity, since last year’s developments again placed the police centre-stage in the disputes around parading. Any situation that places the police in the position of determining both whether or not a parade (or elements of a parade) should proceed, as well as policing the subsequent decision, is retrograde and should be avoided. Accordingly, the judicial review taken last year clearly highlighted a legal ambiguity that needed to be remedied, but we are unconvinced that the new formulation is adequate. What would have been the advantages or disadvantages of formally interpreting the expression “taking part” in a parade to include supporters? This legislative initiative would appear to be less legally contentious, and might well have better reflected the position espoused by the Loyal Orders themselves in the past – whereby a parade is not restricted to the Order’s members, or the accompanying band, but to the whole event. The measure adopted by the legislature – adding in a distinct concept of those who “support” a parade – risks leading to many legal disagreements.

## Mediation Measures

CAJ has indicated in response to earlier consultation papers that we have no particular expertise in the area of mediation. We can however confirm that we believe that mediation must be voluntary (as proposed in para 24) if it is to secure satisfactory outcomes. We believe that mediation *can* be combined to some extent with an arbitration function, but that the parties to the dispute are best placed to comment on whether or not that has worked to date. If government has correctly interpreted feedback on this point, it seems that the Minister has concluded that the functions of mediation and arbitration should be more clearly delineated, and CAJ has no objection in principle to such delineation.

Without more justification, CAJ wonders why the paper concludes that successful mediation will *automatically* mean that no determination is required (para 24). We believe that mediation could be successful in some aspects of the negotiations, but less successful elsewhere, and that it might be possible to agree certain things by way of mediation, but nevertheless ‘agree to disagree’ on other aspects, therefore requiring that the Commission make a final determination on the outstanding areas of disagreement.

Nor was CAJ clear about the meaning of the statement that “Local Authorised Officers would provide feedback to the Commission” (para 24). Could a conflict of interest arise here?

In response to the questions posed (para 26), we have little detailed comment to make. We can however note that:

It is in the interests of all to ensure that parades and protests take place as peacefully as possible. To ensure this, all the different parties need to be convinced that they can benefit from engaging meaningfully in a mediation process. The language of rights, and the fact that there is a genuine conflict of rights engaged in the disputes around parading has assisted this dialogue to some extent. CAJ believes that the language and construct of rights can continue to be helpful. If the starting point of the debate is that the rights of all must be protected, people on the ground will often be in an ideal position to think creatively about how that can best be done.

Mediation has to be independent, and seen to be independent, of the various protagonists. The mediators must be made aware of the legal parameters surrounding parades and of the duties imposed on the Parades Commission and the PSNI by the Human Rights Act. Successful mediation cannot be a matter of colluding with whoever shouts loudest!

It is CAJ’s belief that the Local Authorised Officers recruited and appointed by the Parades Commission have, by and large, secured local credibility for their efforts. If this is the case – and this would need to be ascertained more directly with the Loyal Orders and different residents’ groups – then this model might usefully be replicated for the recruitment of mediators?