

**Briefing note from the
Committee on the Administration of Justice (CAJ) to the
Northern Ireland Affairs Committee
regarding its Inquiry into prisons**

May 2007

The Committee on the Administration of Justice (CAJ) is an independent non-governmental organisation working to promote and protect human rights in Northern Ireland. We have made numerous submissions to the Northern Ireland Affairs Committee (NIAC) over the years, and welcome an opportunity to make a short submission to this current inquiry.

CAJ has previously been in touch with Committee staff recommending a range of personnel that we believe the Committee might want to hear from in the course of this Inquiry. On the assumption that the Committee will be receiving oral or written evidence from a wide range of key agencies, we can keep our intervention very short. The Prisons Service, the Prisoner Ombudsman, the Criminal Justice Inspection (and HM Chief Inspector of Prisons, Ms Anne Owers), the NI Human Rights Commission, the NI Association for the Care and Resettlement of Offenders, the Law Centre, & individual solicitors acting for prisoners will all have particular contributions to make. Her Majesty's Coroners (especially the Chief Coroner, John Lecky) and Professor Roy McClelland, who has particular expertise in the area of people with mental health problems, will also have specific expertise to offer, as will political parties such as Republican Sinn Fein, which has been publicly critical of the situation affecting the prisoners that they represent.

In terms of issues that the Committee should address in the course of its inquiry, we believe that some or all of the above entities will want to raise the following kinds of concerns:

- The extent of suicides and self-harming in prison;
- The nature of medical care to prisoners specifically in instances of suicide risks and more generally practices surrounding medical prescribing;
- The treatment of specific categories of prisoners (women, juveniles, asylum seekers, Travellers, separated prisoners etc.)

Assuming that most of these issues will be addressed in detail by others, CAJ will concentrate in this short submission on a few key issues and a number of questions that we have been pursuing directly with the Prison Service in recent months.

a. deaths in prison

Obviously, any death in prison is extremely serious. The Inquiry will want to ask the Prison Service the following questions:

- How many deaths have occurred in the Prison Service in the last ten years?
- How soon after the death did an inquest take place?
- What learning has arisen over time from these inquests?
- What specific action plans have been initiated (and with what success) by the Prison Service in the light of adverse inquest findings?

As already suggested, the Inquiry may want to hear from experts such as John Lecky, Senior Coroner for Northern Ireland, and Professor Roy McClelland who carried out an inquiry into six specific deaths in prison.

b. staffing composition

The Prison Service is aware of the fact that its staff is predominantly male and Protestant. Prison Service statistics are not disaggregated in the Equality Commission's annual monitoring figures but combined with the staffing of other criminal justice agencies, so it is not possible to keep a very close eye on developments. However, in response to a PQ reprinted in a letter to CAJ from the Director General, the prisoner service grades breakdown in 2005 was 80.2% Protestant, 8.7% Catholic and 11.1% non-determined. Whilst great efforts are made in workforces in Northern Ireland (in the public and private sector) to ensure fair participation, this goal seems very far distant for the Service. Moreover, the objective of fair participation seems particularly significant in the prison setting, both because there is a large prison staff, and because their inter-actions bring them into daily contact with people whose liberty and daily well-being are very much dependent on the attitudes and treatment of those staff.

The Committee may want to ask the Prison Service what steps are being taken to ensure more representative staffing?

- what outreach measures are used by the Service?
- what support is given to "minority" recruits?
- did the transfer of staff from a private security firm in February 2007 improve or exacerbate the representative nature of Prison Service staff overall?
- what difference to staff composition can be expected from the recent announcement regarding the recruitment of 68 new Prisoner Custody Officers (press release dated 11 May 2007)?
- has the Prison Service found any transferable good practice in the recent equality impact assessment carried out by the PSNI indicating unintended obstacles to Catholics and women in their training and testing systems?

In discussions with the Director of the Northern Ireland Prison Service, CAJ was informed that it is difficult to expect radical compositional change at a time of retrenchment and in the absence of anything equivalent to the 50/50 provisions which apply to policing, post Patten. We (and possibly the Director) were unaware at the time that 168 other new staff were to be transferred or recruited into the Prison

Service as part of an integrated prisoner escorting service. Will these additional personnel had any impact on the overall balance of staff? CAJ has recommended that the Prison Service carry out a thorough Equality Impact assessment of its staffing recruitment and training procedures, but we believe that this has not occurred to date.

The Northern Ireland Affairs Committee may want to ask the Equality Commission for Northern Ireland to submit written testimony on the specific problems the Service faces in terms of compositional imbalance. CAJ had asked the Equality Commission to assist the Prison Service by carrying out an inquiry into the latter's recruitment and training policies (see attached copy of CAJ letter dated 30 March 2006), and though we have been assured that regular discussions take place, we believe that a formal investigation would still prove necessary and helpful.

c. Staff training and attitudes:

Of course, a more representative staff *per se* does not resolve problems of institutional bias; much more needs to be done. One route for assuring that the staff, however composed, treat all within their care impartially lies in effective staff training. A number of problems have been highlighted in the course of inquests and other external scrutiny, but it is not clear to what extent the Service has adapted its training accordingly. For example:

- The inquest jury into the death of Patrick Joseph Mongan (an Irish Traveller) called for “*training and increased awareness to cultural difficulties in ethnic minorities ie Travelling community*” – how has this proposal been operationalised?
- The inquest jury into the death of Roseanne Irvine called for “more ongoing training on suicide awareness for prison staff” – what follow-up has been given to this recommendation? (Article from Statewatch outlining the facts of this case, are enclosed for convenience, Jan-March 2007 issue)
- What has happened since the discrimination case taken against the Prison Service by a Muslim prison chaplain (see Equality Commission press release attached)? The Prison Service undertook to liaise with the Equality Commission and the Belfast Islamic Centre to discuss how NIPS practices and procedures could respond more positively to cultural and religious differences in the prison population.

The Committee may want to ask the Prison Service to spell out in some detail what human rights training it provides all its officers – and most specifically what support is given to staff to help them address (whether in the prison population, or amongst colleagues) issues of racism, sectarianism, harassment & victimisation. In the Patrick Mongan case it became very apparent that whilst several of the NIPS witnesses had heard of the equality duties arising under Section 75 of the Northern Ireland Act, none of them had received specific training in the relevance of this duty to their work with Traveller prisoners (or, one can safely assume, other section 75 groups).

The Committee may be interested in the verdict in the inquest of Patrick Mongan (attached herewith) which highlights a range of communication, procedural and training problems. In the course of his testimony at the inquest, Professor Roy

McClelland, in the words of one observer, was “*scathing about life in prison generally saying that it was not conducive to good mental health, with little or no means of distraction or meaningful ways of occupying time. He indicated that although his group did not examine the issue specifically, he thought there may be issues around poor communication skills and life in a structured environment that may particularly affect members of the Travelling community*”. CAJ understands that the Coroner, John Lecky, intended in the light of these inquest findings to ask the Director General of the Prison Service and the Chief Medical Officer to re-convene the group that Professor McClelland had led, with a view to looking explicitly at the situation of Travellers in prison. The Committee may want to ascertain if this has in fact happened, with what result?

More generally, CAJ has argued that the Northern Ireland Prison Service should develop its own Equality Scheme, rather than seek to apply the generic Northern Ireland Office originated Equality Scheme to its work. Given the size and importance of the Service, and the unique role it could perform in promoting greater equality, vis-à-vis employees and detainees, CAJ believes there would be enormous value in developing a more tailored equality programme relevant to the Prison Service (see earlier also our comments about the value of disaggregated data for following employment trends in the Service more effectively).

The Northern Ireland Affairs Committee may want to seek testimony from both the Prison Service and the Equality Commission with regard to the above matters.

d. Oversight

The Prisoner Ombudsman is a relatively recent oversight mechanism. The Committee might want to ask the Ombudsman to comment specifically on the extent of his powers, and ask whether experience shows that further powers should be accorded to his office. CAJ has expressed concern that the Ombudsman seems to have limited authority to comment on prison policies and practices, other than those that may arise as a result of an individual complaint. The Committee should explore if this is a power that the Ombudsman should have, and whether legislative change would be necessary to ensure such oversight.

The Independent Monitoring Boards are also a relatively new institution. CAJ has no information on their operation, but NIAC may want to seek testimony from others about the value or otherwise of these new entities. If it proves too early to determine the value they provide, the Committee may want to propose that the Criminal Justice Inspection undertake in due course a thematic inspection of the operation of the IMBs to see how well they are working.

Despite the fact that the UK government is very active internationally in promoting acceptance of the Optional Protocol to the Convention Against Torture (OPCAT), it proved unwilling to give the Northern Ireland Human Rights Commission (NIHRC) the authority to make unannounced visits to places of detention. CAJ had long argued that the NIHRC should have this power but government refused to amend the Justice and Security Act to this effect when recently debated in parliament. Since it has now been decided not to assign this power of unannounced visits to the NIHRC, who will

perform this role for Northern Ireland? The domestic operationalisation of the UK's duty under OPCAT to create a "national visiting mechanism" is far from clear. The Committee should seek formal submissions from both the NIHR and the CJI on what their understandings are in this matter. The Westminster government retains responsibility for ensuring "*that the UK's international obligations are met in respect of Northern Ireland*" (Good Friday/Belfast Agreement), and NIAC seems well placed to secure greater clarity on this matter for all concerned.

Last but not least, the Committee may want to seek information regarding developments in the Billy Wright Inquiry. Just before Christmas, in preliminary hearings in relation to the Inquiry, it became evident that over 800 files of possible relevance to the case had been destroyed by members of the Prison Service. The Committee may want to ask a series of questions in this regard:

- have any current staff been subjected to disciplinary action in regard to loss of files, as documented by the Billy Wright Inquiry?
- has the Prison Service's policy of destroying files been reviewed?
- what role is the Prison Service playing in the Wright Inquiry?
- What lessons, if any, does it expect to garner for current and future policy making from the Inquiry?
- Is it making a clear distinction between its duty of care to Prison Service staff, and its duty to prison inmates – eg on disputes around anonymity, what is the distinctive role, if any, played on the one hand by the Prison Service and on the other by the Prison Officers Association?

e. Restraint & control

At least two issues are relevant under this rubric: the introduction of PAVA and the use of passive drugs dogs.

1. After consulting about the introduction of **PAVA incapacitant spray**, the Prison Service determined in April 2007 to introduce the spray. CAJ welcomes the fact that the Prison Service circulated a chart (see attached) indicating the nature of the responses submitted, and their response to each, but was disappointed to see how few of the responses proved acceptable to the Service. For example, of the 20 recommendations made by a "rights organisation" (we presume this is British Irish Rights Watch) only three were accepted (and even one of these – recommendation 13 - is ambiguous). Of the six recommendations made by a "justice organisation" (which we assume is CAJ), only one was accepted. The disability organisation seems to have been more influential, in that three of its four recommendations were taken on board, and the "security organisation" had three out of nine accepted. By virtue of the fact that it is a consultation process, one would not necessarily expect all of the recommendations to be taken on board; nevertheless, the tone and explanations for the rejected recommendations may serve merely to feed the belief that the Prison Service was determined to introduce this weapon to their armoury, regardless of the responses received.

2. **Passive drugs dogs** – CAJ has been made aware of several concerns about the use of this technique on prisoners. In one particular case, in January 2007, a prisoner on return from compassionate leave was brought to the attention of the staff by a passive drugs dog. Although accompanied on leave all the time by the prison chaplain, the prisoner alleges that once he came to the attention of the passive drugs dog he was kept in the Special Supervision Unit (SSU) for 48 hours, and was strip searched 12 times. He also reports that he was denied his antidepressant medication and was subjected to a barrage of verbal abuse. The drugs test came back negative. This does not appear to have been an isolated incident since CAJ was told of another prisoner who was strip-searched on five different occasions, and we are also aware of an application for judicial review currently where a republican prisoner is challenging similar treatment. In this latter case, it is being argued that indications on return from home leave are leading automatically to a prisoner being removed from association. (See also earlier reference to the Prison Service treatment of a Muslim chaplain; the Equality Commission press release indicates that a passive drugs dog figured in that case as well).

Conclusion:

CAJ produced a handbook on prisoners' rights in 1998 that was widely distributed to prisoners at the time. We have no plans to up-date the handbook, though it is clearly very much out-of-date and does not reflect the intervening changes in European and domestic prison rules. The Northern Ireland Affairs Committee may want to explore with the Prison Service, the NI Human Rights Commission and others, whether there would be an advantage to producing more up-to-date advice and guidance on human rights protections of relevance to prisoners and prison staff.

Last but not least, the move towards the devolution of criminal justice and policing issues in the coming period, may prove a unique opportunity to carry out a more fundamental review of the extent to which the Prison Service is 'fit for purpose'. As the Director has indicated to CAJ and others on several occasions, the Prison Service has not undergone any overhaul equivalent to that imposed on policing by virtue of the Agreement and the work of the Patten Commission. Yet, as an agency within the broader criminal justice network, it faces many challenges of cultural transformation.

Enclosed please find a report carried out by CAJ into the whole question of devolution. While not focusing particularly on prisons, the report does raise a number of issues regarding staffing composition, cultural change, human rights ethos, and equity monitoring - all of which are relevant for the Northern Ireland Prison Service. This Inquiry by the Northern Ireland Affairs Committee is very timely and could provide a unique opportunity in preparing the ground for discussions about human rights compliance within the prisons as Northern Ireland moves to devolved authority.