



Strategy Consultation
Community Safety Unit
4th Floor Millennium House
Great Victoria Street
Belfast
BT2 7AQ

19th February 2009

Dear Sir/Madam

Re: “Together. Stronger. Safer. Community Safety in Northern Ireland”

The Committee on the Administration of Justice (CAJ) is an independent non-governmental organisation that was established in 1981. 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 policing, emergency laws, criminal justice, equality and the protection 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.

Thank you for inviting CAJ to respond to the above-named consultation. Rather than respond to the specific questions set out in the consultation document, which do not get to the heart of the concerns we would like to raise, this response will instead highlight a number of general issues and then raise specific concerns.

General comments

- 1) CAJ recommends as a starting point the suspension of this consultation in Northern Ireland until such time as power for criminal justice and policing matters is devolved to the local administration.**

CAJ is a member of the advisory group that supports the representatives of NICVA in the Criminal Justice Issues Group that was set up by the NIO. As such, we endorsed the letter sent to the Secretary of State by the Chief Executive of NICVA in December 2008 requesting a delay to the consultation on the new strategy until responsibility for policing and justice passes to the locally elected Assembly. We agree with NICVA that community safety is an issue that impacts on everyone in Northern Ireland and that the strategy should be developed by an inclusive and informed public debate that should be led by local politicians.

While we acknowledge the response of the Secretary of State in which he outlines consultation with devolved departments and ministers, we remain of the belief that decisions on this issue should be made by local ministers.

We further agree wholeheartedly with NICVA's assertion that the transfer across of legislative provision from other jurisdictions is not always the best way to develop effective solutions for problems relating to Northern Ireland.

- 2) CAJ recommends an immediate and comprehensive screening exercise and Equality Impact Assessment of these proposals and a redrafting of the policy in accordance with the findings of that EQIA.**

The approach adopted by the NIO to its statutory equality obligations under Section 75 of the Northern Ireland Act is wholly inadequate and in breach of the Department's equality scheme and indeed the statutory duty itself. The equality process is not an optional afterthought but rather forms a fundamental part of the process of policy development. The draft community safety strategy is a policy and should have been screened for equality purposes. Such a screening could not but have identified the potential adverse impact on a number of equality grounds, and as such should trigger an Equality Impact Assessment. This should all take place before a policy reaches as advanced a stage as this strategy clearly has, and in particular, should inform the development of the policy.

- 3) CAJ recommends that in future easy read versions, all of the proposals contained in the consultation document are included.**

CAJ encourages the production of accessible and "easy read" versions of consultation documents; indeed this is a fundamental requirement under the Equality Commission's statutory guidance for implementing section 75, as well as the equality schemes of most designated bodies (including that of the NIO). As such we were pleased to see the production of an easy read version of these proposals. However, easy read versions should be an accessible version of all of the original proposals. Instead, the easy read document issued in relation to the community safety strategy omits some of the most contentious aspects of the proposals, such as dispersal zones. This is an unacceptable and objectionable practice, and arguably in breach of equality obligations by failing to consult on the proposals in their entirety.

- 4) CAJ recommends full disclosure of the actual impact of proposals in consultation documents to allow proper and informed consideration by consultees.**

The purpose of any consultation must be to enable full and informed consideration of proposals. To enable such full and informed consideration, all of the information in relation to the proposals, their implementation and their impact must be disclosed. In the current document, there is a lack of information throughout on the actual impact of the implementation of many of the proposals. This required research by organisations as to their operation

elsewhere to ascertain what that impact might be, an onus that should not lie with consultees. This is particularly problematic given that the application of many of these measures in England and Wales (which it can only be presumed would also be the case here) reveals that the punishment for failure to comply with many of the proposals (such as Parenting Support Orders, Individual Support Orders, and Parental Compensation Orders) is a criminal conviction. This is a very serious outcome of the proposals, and failure to disclose it does not allow a proper and informed assessment of the necessity and proportionality of the proposals.

5) CAJ requests an analysis of how these proposals comply with the government's human rights obligations generally, and particularly the Human Rights Act, the International Covenant on Civil and Political Rights (including the most recent recommendations of its monitoring committee) and the UN Convention on the Rights of the Child.

The UK government has numerous domestic and international human rights obligations, which a cursory assessment of the current proposals reveals may be breached if they were implemented. So, for example, CAJ is of the opinion that the current proposals potentially contravene Articles 6 (right to a fair trial), 8 (right to respect for private and family life), 10 (right to freedom of expression), 11 (right to freedom of assembly and association) and 14 (right to the enjoyment of rights without discrimination) of the Human Rights Act, and the corresponding articles in the International Covenant on Civil and Political Rights. The submission of the Children's Law Centre clearly highlights those articles of the UN Convention of the Rights of the Child that would be breached.

Further, the monitoring committee of the ICCPR in its examination of the UK government last year expressed concern that *"...despite anti-social behaviour orders (ASBOs) being civil orders, their breach constitutes a criminal offence which is punishable by up to five years in prison. The Committee is especially concerned with the fact that ASBOs can be imposed on children as young as 10 in England and Wales and 8 in Scotland, and with the fact that some of these children can subsequently be detained for up to two years for breaching them. The Committee is also concerned with the manner in which the names and photographs of persons subject to ASBOs (including children) are frequently widely disseminated in the public domain."* It further recommended that: *"The State party should review its legislation on anti-social behaviour orders (ASBOs), including the definition of anti-social behaviour, in order to ensure that it complies with the provisions of the Covenant. In particular, the State party should ensure that young children are not detained as a result of breaching the conditions of their ASBOs and that the privacy rights of children and adults subject to ASBOs are respected."*

Given that many of these proposals would in fact broaden the scope and application of the already subjective concept of "anti-social behaviour", the government is acting in direct contravention of this recommendation.

Specific concerns:

We have read the excellent submission by the Children's Law Centre and are in complete agreement with the concerns they raise in relation to specific measures such as dispersal zones, Parental Supporting Contracts, Parental Supporting Orders, Parental Compensation Orders, Individual Support Orders and the sharing of information. In particular, CAJ is concerned that:

- ❖ There is an unacceptable further blurring of the line between civil and criminal law in the criminalisation of behaviour which is not actually criminal in nature. As such, the proposals are disproportionate, draconian and overly punitive in nature and will only result in increasing criminalisation (especially of children and young people). Indeed, it is hard to reconcile the government's stated aim of reducing crime with a corresponding increase in the number of potential criminal offences.
- ❖ Given the generally higher incidences of anti-social behaviour in those areas where there is least provision of facilities to engage children and young people, these measures - and particularly the proposed fines - will have the greatest impact on the already most deprived communities. The ability of these families to pay the fines proposed and thus the feasibility of the proposals at all must be fundamentally questioned. We would also encourage the NIO to look at its consultation document of 2008 on fine default and consider whether the current proposals will have a detrimental impact on the government's strategy in that regard.
- ❖ We object to the de facto lowering of the age of criminal responsibility by virtue of finding parents responsible for "criminal" behaviour of children under 10, who by law are recognised as incapable of being criminally responsible. Northern Ireland (and the rest of the UK) already has one of the lowest ages of criminal responsibility in the world, and international human rights law is clear that this should be increased, not decreased.
- ❖ These proposals represent a fundamental shift of responsibility for addressing the root causes of anti-social behaviour from government, where it properly lies, to the shoulders of those who are least able to address it. CAJ would welcome a genuine consultation on how to effectively address anti-social behaviour and community safety, and the lack of facilities, resources and interventions available in those communities where these issues are most prevalent. As such, **CAJ recommends that these proposals be withdrawn and the entire strategy be revisited.**

Yours sincerely,

Aideen Gilmore
Deputy Director