



CAJ

**Committee on the
Administration of Justice**

*CAJ's submission to the consultation on
draft PPS Hate Crime Policy*

October 2009

Submission No. S.241

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Promoting Justice / Protecting Rights

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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.

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Promoting Justice / Protecting Rights

Winner of the Council of Europe Human Rights Prize



John Rea
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2nd October 2009

Dear Mr Rea

Re: Consultation on draft PPS Hate Crime Policy

Thank you for inviting the Committee on the Administration of Justice (CAJ) to comment on the draft PPS Hate Crime Policy, and apologies for the slight delay in our submission.

As you will know, CAJ is an independent non-governmental human rights 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.

CAJ commends the PPS undertaking to develop a hate crime policy and to making the policy specific to Northern Ireland.

Hate crime cannot be dealt with in a vacuum and the various criminal justice agencies with responsibility for this issue - notably the PPS, PSNI, and the Court Service - must work in partnership. Whilst the proposed PPS policy demonstrates an awareness of the need for interagency communication and partnership (and the PPS has clearly heeded the 2007 recommendation of the CJI in this regard to develop a hate crime policy), the CJI also recommended that a hate crime strategy be established across the criminal justice system. A system-wide strategy for tackling hate crime and hate incidents should clearly link the policies and procedures of the relevant criminal justice agencies. The recent inquest into the death of Fiona Pilkington and her daughter highlights the seriousness of hate crime, its link to antisocial behaviour, the

need for cross-agency partnership and consistent monitoring of hate crime and hate incidents.

Criminal justice agencies must ensure that the policies are strengthened by tight procedures: for example, it appears that the PPS has adopted the recommendation of the CJI that all instances of hate crime are prominently marked on case files which facilitates bringing such cases to the attention of the court. However, CAJ would suggest that paragraph 2.1.4 of the proposed policy be worded so as to not leave room for misinterpretation of procedure. As such, 'the file *can be* marked accordingly' should perhaps be 'the file *will be/is* marked accordingly'. Similarly, parts of the document are quite vague and it seems that both policy and procedure should be open to public scrutiny. As such, Chapter 4 'Working with our Criminal Justice Partners to serve the Community' could give much greater detail on how such partnerships can and will transpire. In particular, there is a need for consistent training and guidance to ensure that all relevant evidence is gathered at the earliest opportunity particularly in the prosecution of offences aggravated by hostility.

Clear and effective procedures are needed so as to guarantee consistency in staff knowledge and awareness of relevant information (i.e. legislation, definitions) across all of Northern Ireland. Moreover, stronger language is needed in the proposed policy in order to demonstrate that hate crime is unacceptable and a clear message that hate crime is a criminal offence must be given.

Significantly, the recent Institute for Conflict Research report on disability hate crime in Northern Ireland noted, '*none of the participants in the research had followed the judicial process through from reporting an incident to the conviction of a perpetrator for a hate crime*' and that statistical evidence demonstrated '*that respondents with a long standing illness or disability have higher rates of concern about crime, fear of crime and antisocial behaviour than other respondents while at the same time holding lower rates of confidence in the criminal justice system, the PSNI and accountability structures.*' As such further efforts by the criminal justice system are needed to increase public awareness about hate crime and bolster public confidence in the justice system.

Member states of the Organisation for Security and Cooperation in Europe (OSCE) have committed to 'collect and maintain reliable data and statistics on hate crimes and incidents'¹ and various reports have commended the UK for combating and/or monitoring hate crime. The European Union Agency for Fundamental Rights (FRA) evaluated data systems for monitoring racist crimes in 27 member states and in its most recent assessment the UK was one of only 3 with a 'comprehensive' quality of data collection.² It is therefore vital that the criminal justice system in Northern Ireland maintain those standards. The appraisal by the CJI indicated that the PSNI have a 'sophisticated hate incident and crime recording system' and a 'comprehensive statistical system'. However, it is important that that 'discrepancies' and inaccurate

¹ Organization for Security and Cooperation in Europe, 'Tolerance and Non-Discrimination: Promoting Mutual Respect and Understanding,' OSCE Ministerial Council Decision, no. 10/07, MC.DEC/10/07, 30 November 2007, http://www.osce.org/documents/mcs/2007/12/28629_en.pdf

² European Union Agency for Fundamental Rights (FRA). MEMO / 24 June 2009. FRA Annual Report 2009. See also the Human Rights First 2008 *Hate Crime Survey* which states that 'considerable efforts have been undertaken in the UK to combat hate crimes'. <http://www.humanrightsfirst.org/pdf/FD-081103-hate-crime-survey-2008.pdf>

data input (which the CJI also noted) are not common throughout the criminal justice system.³

To further a holistic approach of the criminal justice system to tackling hate crime, sentencing should incorporate mechanisms to rehabilitate hate crime offenders.

CAJ also suggests the PPS refer to the *Ten-Point Plan for Combating Hate Crimes* (attached) which was drafted by Human Rights First as recommendations to the members of the Organisation for Security and Cooperation in Europe (OSCE), of which the UK is a member. Points 3 and 4 are particularly relevant to the PPS, especially on the need to train prosecutors.

Section 7.2.5 on the giving of reasons states that it is PPS policy to give reasons for not prosecuting in the most general terms but that consideration will be given to giving greater details for the reason not to prosecute when asked by the victim and when deemed suitable. Such a policy would benefit what the Director of the PPS, Sir Alasdair Fraser, is recently quoted as saying, namely that beginning in October 2009, the PPS '*will provide detailed reasons across a range of offences such as homicide, sexual offences, hate crime and offences involving vulnerable members of society, without a request having to be made*'.⁴ However, this is not explicit in the draft Hate Crime Policy. CAJ believes it should be stated PPS policy to provide as much information as possible to the victim without s/he having to ask unless it is determined that this is not feasible or the victim chooses not to know.

Finally, we would suggest that the PPS also make an 'Easy Read' version of the final hate crime document such as the CPS 'Policy for prosecuting cases of disability hate crime - easy read version'.

Yours sincerely,

Jacqueline Monahan
Criminal Justice Programme Officer

³ Criminal Justice Inspection. *Hate Crime in Northern Ireland*. January 2007.

⁴ BBC Online. 'New Crime Victim Policy for PPS.' 29 June 2009.

Ten-Point Plan for Combating Hate Crimes
Organisation for Security and Cooperation in Europe (OSCE)

1. **Acknowledge and condemn violent hate crimes whenever they occur.** Senior government leaders should send immediate, strong, public, and consistent messages that violent crimes which appear to be motivated by prejudice and intolerance will be investigated thoroughly and prosecuted to the full extent of the law.
2. **Enact laws that expressly address hate crimes.** Recognizing the particular harm caused by violent hate crimes, governments should enact laws that establish specific offenses or provide enhanced penalties for violent crimes committed because of the victim's race, religion, ethnicity, sexual orientation, gender, gender identity, mental and physical disabilities, or other similar status.
3. **Strengthen enforcement and prosecute offenders.** Governments should ensure that those responsible for hate crimes are held accountable under the law, that the enforcement of hate crime laws is a priority for the criminal justice system, and that the record of their enforcement is well documented and publicized.
4. **Provide adequate instructions and resources to law enforcement bodies.** Governments should ensure that police and investigators—as the first responders in cases of violent crime—are specifically instructed and have the necessary procedures, resources and training to identify, investigate and register bias motives before the courts, and that prosecutors have been trained to bring evidence of bias motivations and apply the legal measures required to prosecute hate crimes.
5. **Undertake parliamentary, inter-agency or other special inquiries into the problem of hate crimes.** Such public, official inquiries should encourage public debate, investigate ways to better respond to hate crimes, and seek creative ways to address the roots of intolerance and discrimination through education and other means.
6. **Monitor and report on hate crimes.** Governments should maintain official systems of monitoring and public reporting to provide accurate data for informed policy decisions to combat violent hate crimes. Such systems should include anonymous and disaggregated information on bias motivations and/or victim groups, and should monitor incidents and offenses, as well as prosecutions. Governments should consider establishing third party complaint procedures to encourage greater reporting of hate crimes and conducting periodic hate crime victimization surveys to monitor underreporting by victims and underrecording by police.
7. **Create and strengthen antidiscrimination bodies.** Official antidiscrimination and human rights bodies should have the authority to address hate crimes through monitoring, reporting, and assistance to victims.
8. **Reach out to community groups.** Governments should conduct outreach and education efforts to communities and civil society groups to reduce fear and assist victims, advance police-community relations, encourage improved reporting of hate crimes to the police and improve the quality of data collection by law enforcement bodies.
9. **Speak out against official intolerance and bigotry.** Freedom of speech allows considerable latitude for offensive and hateful speech, but public figures should be held to a higher standard. Members of parliament and local government

leaders should be held politically accountable for bigoted words that encourage discrimination and violence and create a climate of fear for minorities.

10. **Encourage international cooperation on hate crimes.** Governments should support and strengthen the mandates of intergovernmental organizations that are addressing discrimination—like the Organization for Security and Cooperation in Europe, the European Commission against Racism and Intolerance, and the Fundamental Rights Agency—including by encouraging such organizations to raise the capacity of and train police, prosecutors, and judges, as well as other official bodies and civil society groups to combat violent hate crimes. Governments should also provide a detailed accounting on the incidence and nature of hate crimes to these bodies in accordance with relevant commitments.