

CAJ's submission no. S. 254

CAJ's Response to "Reviewing the Map" –
Consultation on Court Boundaries in
Northern Ireland

April 2010

Promoting Justice /
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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, 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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Re: 'Reviewing the Map' – Consultation on Court Boundaries in Northern Ireland

Thank you for your letter of March 1st 2010 inviting the Committee on the Administration of Justice (CAJ) to present our views on the *'Reviewing the Map' – Consultation on Court Boundaries in Northern Ireland*. 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.

Question 1:

Yes, we agree that it is appropriate to establish a single Northern Ireland jurisdiction for County Courts and Magistrates' Courts.

Question 2:

It would appear that the flexibility afforded by a single jurisdiction, underpinned by the administrative framework, *may* facilitate the more effective management of court business (section 4). However, the administrative framework is somewhat confusing in that it states that 'the Lord Chancellor or, post-devolution of justice, by the Northern Ireland Justice Minister, with the concurrence of the Lord Chief Justice' would issue direction (4.2) whilst subsequently stating that the Lord Chief Justice could issue direction with concurrence of the Minister (4.3). Clarity on this needed.

Question 3:

CAJ welcomes the acknowledgment of the Northern Ireland Courts and Tribunals Service (NICTS) that courthouses should adequately meet the needs of all court users and applauds the commitment of NICTS to ensure that court users have access to accommodation of the highest standards (section 3). Whilst there is clearly an attempt to ‘strike the correct balance between preserving access to local justice while affording some additional flexibility in certain prescribed circumstances’ CAJ requests that adequate safeguards are in place so as to guarantee that the distribution of cases prioritises court users’ needs rather than NICTS’ convenience.

For example, while it may meet NICTS’ needs to take a case outside the guiding principle, this change may create substantial difficulties for one or more of the parties to a case. In particular, court attendees with disabilities, those who are very young or old, and those who have responsibilities for dependants may find it difficult to travel further afield in order to attend a case. We remind you that NICTS has a responsibility, under s75 Northern Ireland Act 1998, to have due regard to promoting the equality of opportunity for each of these groups.

CAJ is concerned that, under NICTS’ proposals, court users would not have any right of reply when a case is taken outside of the guiding principle. Even with the need for agreement by the Lord Chief Justice or the relevant judiciary, this does not ensure that equality considerations will be given sufficient weight. Indeed, given that courts in the Belfast area are clearly overcharged, it is possible that the business case for departure from the guiding principle could be relatively frequent and so the judicial agreement could become a formality.

In the interests of equality of opportunity and access to justice, CAJ suggests that the administrative framework should allow, when departing from the guiding principle, the possibility for the alleged offender, victim or witness to object. We recognise the need for some certainty, and that the expectations of all parties be managed. As such, we would suggest that any such objections be guided by prescribed reasons, such as disability, age or caring for dependents (this list is not intended to be exhaustive). Further, the ability to object to the departure from the guiding principle should be clearly accessible, including to those with disabilities and ethnic minorities.

Question 4:

We believe that the specified reasons for departing from the guiding principle are, on the whole, appropriate. The ‘Draft Direction Governing the distribution of court business in the magistrates’ courts and county courts in Northern Ireland’ presented in Annex C of the consultation document states that with ‘good reason’ the guiding principle may, with the agreement of the Lord Chief

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Justice or local judiciary, be departed from. ‘Good reason’ may include ‘the need to deal with cases of a specialist nature or requiring special measures...’ (section 4.9(d)). We support the view of the Courts and Tribunals Service that ‘cases requiring special measures could be listed at venues that provide facilities that best suit the needs of a particular case’ and agree that ‘this would go some way in addressing concerns about the suitability of some court venues for certain types of business’.

However, bearing in mind the pre-consultation of 2009 on ‘*Special Measures: an evaluation and review*’ to which CAJ expressed concern around the apparent confusion regarding application of special measures, we again suggest that there be clear procedural guidelines for judges and others within the criminal justice system who are meant to identify vulnerable witnesses who may require special measures.

Further, CAJ is concerned that good reason (d) could be used to avoid the NICTS’ obligations to make its courts’ accommodation suitable for all court users. Despite NICTS’ commitment to ‘*adequately meet the needs of all court users and, in particular, victims, witnesses, children and disabled people*’ (section 3.8), it seems to be NICTS policy to avoid the expense of upgrading its courthouses by listing ‘[c]ases requiring special measures...at venues that provide facilities that best suit the needs of a particular case’ (section 3.9).

While we appreciate that not every courthouse can be upgraded in the short term, CAJ requests that at least one courthouse in each LGD be equipped to cater to the specialist needs of victims, witnesses, children and people with disabilities. We remind you that court users may already have further to travel, given the larger surface area of each LGD. We believe that it would be contrary to equality of opportunity to require vulnerable court users to travel even further than the rest of the population.

Equality Screening:

CAJ is concerned that NICTS did not identify any equality impact when screening this policy. As outlined above, the use of a single jurisdiction could substantially impact upon the equality of opportunity of young and older people, people with disabilities and those with dependants. It could also impact upon other s75 groups, such as ethnic minorities.

CAJ requests that NICTS review its screening document for this policy. In particular, it should consider all available data and consult with the s75 groups who are likely to be affected by the policy. If an equality impact is found, as is expected, NICTS should carry out a full equality impact assessment of this policy, as required by its equality scheme.

Our final comment is on the use of language in the consultation document, specifically the word 'coterminosity', as it appears to be contrary to the Cabinet Office Code of Practice on Consultation (section 6) criterion of accessibility. In fact, in 2008 the Local Government Association in England and Wales circulated a list of 'non-words' that public bodies should try to avoid, including coterminosity as they are 'meaningless' to the general population. This is recommended in order to assist NICTS move towards fulfilling the criteria of accessibility.

Thank you for permitting CAJ to submit our views and we look forward to seeing the Northern Ireland Courts and Tribunals Service response to the consultation.

Yours sincerely,

Jacqueline Monahan
Criminal Justice Programme Officer