

CAJ's submission no. 261

**CAJ's Response to the
Increasing Jurisdictional Limit in
County Courts**

Consultation
June 2010

Promoting Justice /
Protecting Rights

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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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4 June 2010

Dear Ms. Stevenson,

Thank you for inviting the Committee on the Administration of Justice (CAJ) to present our views on the proposed '**Increasing the Jurisdictional Limit of the County Courts in Northern Ireland.**' As you know CAJ is an independent non-governmental human rights organization 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 welcomes the invitation to comment on proposed changes at this stage and supports the NICTS assertion that the current 'jurisdictional limits of the county courts' in Northern Ireland are in need of review. However, we believe that this is only part of the system that needs to be addressed.

We recognise that inflation is a significant factor for changing the jurisdictional limits. If the NICTS is changing the limits in order to keep them in line with inflation, then it should keep them in line with inflationary figures, as identified in the consultation document. However, the NICTS' preferred proposals in the consultation document will also change the current division of cases between the various courts.

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Although the consultation is entitled ‘Increasing the Jurisdictional Limit of the County Courts in Northern Ireland’, the proposals clearly reach beyond the county courts. In this regard, NICTS’ objectives and logistical planning are not entirely clear. We are not convinced that ‘there is a distinct advantage in having a *substantial increase* on the present figure in order to establish a clear dividing line between cases suitable for the county court and those suitable for the high court’ (para. 3.7)

The consultation document states that, ‘many cases are presently being heard in the High Court which do not appear to require a High Court hearing in terms of quantum, or complexity. An increase in the present jurisdictional limit is therefore required to ensure cases are disposed of in the appropriate court’ (Executive Summary). CAJ would suggest that an increase in the present jurisdictional limit is not sufficient, in itself, to ensure that cases are allocated to the appropriate court. As noted in the consultation document, ‘value does not necessarily reflect time or effort required in a particular case; small value cases can raise difficult or novel issues whereas high value cases can be quite straightforward in terms of principles engaged’ (para. 3.15). While the NICTS’ preferred option makes allowance for this in relation to medical negligence cases, we believe that these are not the only types of cases for which complexity is relevant.

Therefore, we propose that, if changes to the jurisdictional limits are to go beyond inflationary increases, the primary focus should be on factors that determine case allocation in the civil court system. While we note that NICTS has anticipated the possibility of ‘restructuring the system so [that] cases are allocated to the High Court on the basis of complexity and not on the financial amount of the claim’, the preferred proposals do not reflect this. As stated above, the complexity of a case does not always turn on some assumed monetary value.

Further, CAJ suggests that, if NICTS increases jurisdictional limits with a view to changing court allocation, NICTS should undertake a review of the potential options and the effects they would have on the system as a whole. A number of issues are raised by the proposals, which are not adequately addressed in the consultation document, and we believe that there may be repercussions relating to access to justice and the right to a fair trial, both of which are fundamental human rights.

First, we are concerned about the impact that the proposals may have on legal aid. In particular, the demoting of a case to a lower court and the

application of fixed costs by reference to value could result in insufficient legal aid being provided to deal with the complexity of the case.

Secondly, we are concerned that issues of staffing and resources have not been adequately considered. Although the consultation document states 'we would continue to analyse case volumes to ensure there is ongoing court capacity so court users continue to be offered a high standard of service' (para.4.7) questions persist around the ability of county court judges, in terms of experience and resources, to be able to deal effectively with higher value and complexity cases. The ramifications that the changes in court allocation may have on staffing also need to be adequately weighed. We are concerned that an ad hoc approach to moving staff between courts would not provide a sufficiently robust and reliable system.

Finally, we question whether the approach to case re-allocation is the most appropriate, or only, response to the inaccessibility of the high court. If the high court has too many cases to hear, and if it is too far away for some litigants, perhaps the NICTS should consider high court representation in the west of Northern Ireland. We would encourage NICTS to consider this possibility in the context of future case allocation.

It would appear that an overall review of the system, which considers any unintended and potential implications of resulting change, is required. In this regard, CAJ believes that NICTS should take a holistic view to entire civil court system, with a view of saving money, time and further changes in the future.

In relation to the small claims court, we commend the intention of NICTS to carry 'out a sample survey of small claims court users to engage their views on the appropriate financial jurisdiction' (para. 5.10) and we would welcome the opportunity to review the survey results. However, it is important to bear in mind that the consultation document states that £3000 is 'still within the range of what might generally be regarded as a small claim'. We would argue that £3,000 is far from being insignificant to ordinary people.

Both the access and process may be just as important and impactful for those attending the small claims court as for somebody attending at the High Court. Also, we are mindful that the litigants in the small claims court would not have legal representation. We would therefore suggest that NICTS consider allowing some cases above £1,000 to be heard in the district courts (as is the case for personal injury claims in England and Wales).

In conclusion, CAJ recommends that, if NICTS intends to revise case allocation between the high and county courts, complexity be included as a factor in case allocation. Further, NICTS should consider carefully the effects of any revised court allocation on staffing, resources, legal aid and access to justice. If changes to jurisdictional limits are chosen purely by reference to monetary value, those changes should remain in line with inflation.

Many thanks for permitting us to respond to the consultation and for agreeing to accept it late.

Kind regards,

Jacqueline Monahan, PhD
Criminal Justice Programme Officer