

CAJ's submission no. S275

Response to the Lord Chief Justice's Office on
Sentencing Guidelines Priority Areas

December 2010

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.

Miss Beverly Hall
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15 December 2010

Dear Miss Hall,

Thank you for the invitation to the Committee on the Administration of Justice (CAJ) to participate in the consultation on the priority list of areas for sentencing guidelines, issued by the Lord Chief Justice's Office. As you will know, CAJ is an independent human rights organisation with cross-community membership in Northern Ireland and beyond. It was established in 1981 and lobbies and campaigns on a broad range of human rights issues. CAJ seeks to secure the highest standards in the administration of justice in Northern Ireland by ensuring that the Government complies with its obligations in international human rights law.

We welcome measures aim to increase the transparency of the sentencing process and the accountability of the judiciary as they perform this function. Although sentencing received only a minimal mention in the Criminal Justice Review, it should be considered an important part of building confidence in the criminal justice system in Northern Ireland. Public confidence in sentencing in Northern Ireland has been negatively impacted by controversial decisions in a number of high-profile cases¹ and there is clearly confusion around how judges reach sentencing decisions.

The 2001 Halliday Report, which looked at sentencing in England and Wales, outlined five principles considered key to sentencing. These were proportionality, consistency, freedom from improper discrimination, transparency, and human rights compliance. The Halliday Report also considered that sentencing needs to show efficiency, effectiveness and

¹ See for example *North's top judge defends career criminals' sentences* by Barry McCaffrey, *Irish News*, 27 October 2010. Sentencing decisions made in relation to those prosecuted for the murders of Gerard Devlin 2008, Harry Holland 2009 and Francis O'Neil 2010 also inspired criticism from the public.

economy. CAJ welcomes the opportunity provided by the Lord Chief Justice's consultation to transfer these same principles into action.

The process

While the present consultation letter acknowledges that the question of whether a Sentencing Guidelines Council should be created is a matter for the Northern Ireland Assembly, there are concerns that the work being carried out by the Lord Chief Justice's Office may be abandoned or ignored subsequent to the related Department of Justice consultation which is presently underway. The Department of Justice consultation merely acknowledges the work being carried out by the Lord Chief Justice and indicates that one of the options considered by the consultation is: 'a mechanism for sentencing guidelines based on measures being introduced by the Lord Chief Justice'. Although the Lord Chief Justice consultation letter states that the proposals by the Lord Chief Justice are 'independent' of the DOJ consultation, we would welcome clarity on the relationship between the proposals outlined by the Department of Justice and this consultation. This issue has also been raised in our response to the present DOJ consultation relating to sentencing.

Equality

We welcome the comment in the consultation document which expresses that the views of section 75 groups are sought, however, the letter suggests that the onus is placed upon the section 75 groups to highlight the areas which may affect them. A consultee list was not included with the consultation so it is difficult to comment whether further consultation with certain section 75 groups may be needed. Although the Lord Chief Justice is not a designated public body required to monitor and assess equality impact, it is important to bear in mind the impact of sentencing on a range of equality grounds, and in particular young male defendants who are over-represented in the justice system. Moreover, significant thought should be given to the ramifications of sentencing on those with caring responsibilities and dependents.

Areas of sentencing which require new guidance for the judiciary

The list of priority areas will, according to the consultation, be 'the most serious and most prevalent'. Although the document states that the Lord Chief Justice consulted with judicial colleagues as to the offences that should be on

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the provisional list of priority areas, it would perhaps have been helpful if the document showed why the proposed areas were chosen.

Considering the recent decision in the case of Eamon Coyle, who received a three-year sentence for the manslaughter of his grandfather, and in light of the media and public attention subsequent to the sentencing, we argue that there would be benefit to clarifying the sentencing guidelines for murder and manslaughter. As noted above, such incidents have implications on public confidence in the judiciary and the criminal justice system in general. Given that the issue of drug abuse is prevalent in our society and has wide-reaching consequences, CAJ suggests that drug-related offences be included on the priority list. We suggest that such guidelines should emphasise the need for support mechanisms and non-custodial measures as much as possible. In relation to the provisional priority list, it would have been helpful to include a definition of environmental crime.

Application of the new guidance

Although this may appear to be a pedantic point, there is some confusion around the language of the document and it would be helpful to clarify if the guidelines will be the same as guidance judgements? The confusion lies in the fact that on page three of the consultation letter there is reference to ‘a guideline *or* guidance decision’ yet the same paragraph also states ‘the guideline *and* guidance judgements’.

There is no indication as to how the courts will identify appropriate cases in which to develop guidelines or the kind of selection criteria used to choose cases. There is also a question over the process that will be used by the Lord Chief Justice to decide which areas should be addressed in a guideline judgement and which will be addressed via the commissioning of a Judicial Studies Board workshop. Our primary concern is that the latter method is seemingly reliant on voluntary attendance at the workshop, which may limit its impact.

It should be established how the guidance will be used by judges. Bearing in mind the *UN Basic Principles on Independence of the Judiciary*, the need for judges to be able to tailor a sentence for an individual offender for a particularly crime against a particular victim, is crucial. CAJ highlight the potential for this flexibility to be subsumed by rigid sentencing guidelines. We would welcome clarity on whether the use of guidelines will follow established practice. Similarly, it would be beneficial to indicate if any monitoring or

review mechanisms are to be created to evaluate the development and use of the sentencing guidelines. CAJ advocate that such a mechanism is key for ensuring that guidelines are proportionate, consistent and appropriately utilised.

Finally, the development of sentencing guidelines should have at its core, human rights, as well as the objectives of proportionality and the use of effective non-custodial alternatives.

Yours sincerely,

Jacqueline Monahan
Criminal Justice Programme Officer