

BENCHMARKS FOR CHANGE:

MAINSTREAMING FAIRNESS IN THE GOVERNANCE OF NORTHERN IRELAND

A Proposal

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Preface

The Committee on the Administration of Justice (CAJ) is an independent non-governmental organisation whose membership is drawn from across the whole community. The Committee seeks to secure the highest standards in the administration of justice in Northern Ireland. As a civil liberties group with a broad remit, we operate within the framework of international human rights law which asserts that all rights are to be enjoyed "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (article 2 of the Universal Declaration of Human Rights). Accordingly, CAJ has worked actively over the years to ensure that the government introduces, and then abides by, effective legislation and other measures aimed at tackling discrimination and promoting equality of opportunity.

In this context, the organisation has become increasingly aware of the positive contribution which could be made to the pursuit of equality of opportunity by the government's Policy Appraisal and Fair Treatment (PAFT) guidelines. These guidelines were issued in their current form at the end of 1993 and were intended to ensure that "in practice issues of equality and equity condition policy making and action in all spheres and at all levels of government activity". The guidelines seek to identify a number of areas where there is potential for unfair discrimination or unequal treatment and to describe steps which those in government responsible for policy and delivery of services should take to prevent this happening. The guidelines talk of the need to secure equality of opportunity and equity of treatment regardless of religious belief, political opinion, gender, marital status, having or not having a dependent, ethnicity, disability, age or sexual orientation. The guidelines are meant to apply to government departments, Next Step Agencies (eg Training and Employment Agency, Social Security Agency etc_) and Non Departmental Public Bodies (eg Education and Library Boards, Health and Social Services Trusts), and government departments are encouraged to "use their best endeavours" to secure compliance with PAFT by those performing contracted out services.

Unfortunately, the great potential offered by the guidelines (which are meant to be applied to all new government policies, whenever existing policies are reviewed, and to service delivery in general), has not been borne out in practice. Many began to argue that the commitment to equality aspired to in the guidelines required legislative force if it was to be given practical effect. UNISON, the public service union commissioned work by Dr Christopher McCrudden about the way in which equality strategies could enable their members to inform and shape the decisions which centrally affect their lives. CAJ was delighted to be asked to extend the debate and facilitated an extensive consultative process around an early draft legislative text (November 1996). The breadth and depth of the

response was very impressive (see CAJ report *Mainstreaming Fairness*, June 1997).

What follows is Dr McCrudden's formal proposal about the way forward. It draws extensively on the constructive and helpful contributions made by the very wide variety of groups (see Appendix One) who responded to the earlier draft. This proposal is very timely. On the one hand the UK government has been advised by its own advisory committee, the Standing Advisory Commission on Human Rights (SACHR), of the need to place PAFT on a statutory basis, and this and other SACHR recommendations are currently being considered. At the same time, the UN Committee on Economic, Social and Cultural Rights meeting recently in Geneva recommended that consideration be given "to the requirement that a human rights assessment or impact statement be made an integral part of every proposed piece of legislation or policy initiative on a basis analogous to environmental impact assessments or statements".

We commend the proposal to the attention of government, political parties, broader civil society, and indeed all those concerned to ensure that Northern Ireland puts justice, fairness, and open and participative decision making at the centre of governance.

Martin O'Brien for
Committee on the Administration of Justice

Postscript

Delays in the printing of this document have provided the opportunity to incorporate by way of appendix (see Appendix Two) a number of important testimonies. A pre-publication copy of the report was launched for the various PAFT constituencies which had generously contributed to the re-write of earlier legislative proposals. On that occasion, powerful testimony was provided about the importance of placing the principles and practices encapsulated in PAFT onto a statutory basis. These testimonies reach across the political and sectoral divides in Northern Ireland and gives poignant substance to the demand for fairness, equality and participation. In Appendix Four, Inez McCormack from UNISON, by commenting on some of the origins of the campaign, highlights the fact that creating inclusive and credible change on the ground is urgently needed, and is a necessary pre-requisite for sustainable peace.

MAINSTREAMING FAIRNESS

in the Future Governance of Northern Ireland

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I. Proposals in Outline

- At this important time in the future of Northern Ireland, feasible, practical, inclusive and disciplined mechanisms should be adopted to ensure that the most disadvantaged groups in Northern Ireland society feel themselves stakeholders in the future governance of Northern Ireland, and act accordingly.
- This requires that no public authority should be able to discriminate unfairly, directly or indirectly, against anyone on any ground such as race, gender, sex, pregnancy, marital status, political or other opinion, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, birth, nationality, national origin, or other status.
- Yet, discrimination is only part of the problem. Public authorities should also be required to promote full and effective equality of opportunity between all parts of the community in Northern Ireland in all areas of economic, social, political and cultural life in which the public authority is involved. This is necessary, if equality is to be seen as an inclusive concept -- one applying to all in Northern Ireland.
- If the reality of continuing Catholic disadvantage is to be tackled effectively, public authorities should, in particular, be required to ensure that economic inequalities between the Catholic and Protestant sections of the community in Northern Ireland be progressively reduced. These measures should not be considered to be an act of unfair discrimination. Policies in which social need is targeted will disproportionately tackle Catholic disadvantage but will effectively also address Protestant disadvantage.
- Statements of principle are not enough. The language of non-discrimination and equality is necessary, but it is not sufficient.

- It is not enough for yet another weak, marginalised quango to be established; it is not enough for individuals or groups to have to rely on litigation before the Northern Ireland judiciary to accomplish the task.
- Fairness and openness must be brought into the mainstream of decision-making in all parts of the public sector in Northern Ireland, and put on a statutory basis.
- Public authorities should be put under a duty to create arrangements to ensure that their various functions and responsibilities are carried out with due regard to the need to comply with equality and non-discrimination.
- Within three years, and once every five years after that, it should be the duty of every public authority to review the extent to which its various functions and responsibilities are carried out in a way which furthers non-discrimination and equality.
- Furthermore, as the Standing Advisory Commission on Human Rights and the UN Committee on Economic, Social and Cultural Rights have recommended to the British government, public authorities should be required to prepare an impact assessment of any significant impact that any proposed action by it may have on its ability to fulfil these human rights duties.
- Civil society in Northern Ireland is rich, varied, and highly engaged. Future arrangements for government should reflect and embrace this diversity of political activity, rather than attempt to side-line it.
- Public authorities should be required to enable effective participation by all in Northern Ireland in the formulation and application of policy decisions by public authorities, and should encourage and facilitate such participation by those directly affected by these decisions.
- Public authorities should be required to ensure that such impact statements are made available to the public in good time to enable effective consultation to take place by the public authority with those directly affected by the proposed decision and the relevant statutory equality agencies.
- The impact statement and the results of any consultations on it must be taken into account by the public body in any subsequent decision whether to proceed with the proposed action, and the public body should be required to give its reasons for doing so.
- In short, the existing Policy Appraisal and Fair Treatment system, introduced by the government as long ago as 1994, needs to be made effective. The policy should be put on a statutory basis and become an anticipatory, participatory, and integrative tool for identifying where proposed actions are likely to advance or retard the achievement of the greater equality of particular groups in Northern Ireland.

II. Background to the Proposals

During the 1980s, the British government initiated a process of reconsideration of the adequacy of the government's policies dealing with discrimination and equality between the two communities. In particular, it led to the funding of the Government-appointed Standing Advisory Commission on Human Rights (SACHR) to undertake a substantial investigation of the effectiveness of the Fair Employment Act 1976. SACHR produced an influential report which concluded that substantial reforms were necessary because the Act had proven less effective than was necessary. This in turn led to new legislation being passed in 1989, the second Fair Employment Act. This gave broader powers to the enforcement agency (the Fair Employment Commission), permitted limited affirmative action, and compulsory monitoring, among other things.

SACHR was clear, however, that such anti-discrimination legislation could only be part, though a necessary part, of the process of government addressing the problem of employment inequality. In particular, SACHR recommended that government should build into its policy making an equality dimension. Based partly on this approach, a proposal was put to Parliament during the passage of the Fair Employment Bill, that a general requirement to promote equality of employment opportunity should be imposed on specified government agencies and departments. Though unsuccessful, the proposal contributed to an announcement by government that a non-statutory policy along these lines would be introduced. After several years of continuing controversy over their content, these guidelines (termed the Policy Appraisal and Fair Treatment guidelines, or PAFT) came into effect in 1994. "Equality and equity" it said, "are central issues which must condition and influence policy making in all spheres and at all levels of Government activity ..."

PAFT was an attempt to establish a procedure within Government decision-making by which those principles could be made effective. According to an assessment by Government, "*[t]he aim of the PAFT initiative is to ensure that issues of equality and equity inform policy making and action in all spheres and at all levels of Government activity, whether in regulatory and administrative functions or in the delivery of services to the public. The guidelines identify a number of areas where there is potential for discrimination or unequal treatment and outline steps which those responsible for the development of policy and the delivery of services should take to ensure that, in drawing up new policies or reviewing existing policies, they do not unjustifiably or unnecessarily discriminate against specified sections of the community.*"¹ The groups coming within the scope of the guidelines went beyond the two religious communities, and included people of different gender, age, ethnic origin, marital and family status, sexual orientation, and the disabled. Little detailed guidance was given to departments or other public bodies as to how to accomplish this task.

¹ Central Community Relations Unit, Policy Appraisal and Fair Treatment Annual Report 1995, para. 1.2.

The guidelines were soon embroiled in controversy. They first emerged into public prominence in the context of women's equality. This was largely due to the fact that Unison, the public sector trade union, saw an opportunity to use PAFT as a mechanism for challenging a government policy which was to the disadvantage of its members. The policy which was in contention was the compulsory tendering/market testing of public services in Northern Ireland, a policy which had been operating in the rest of the United Kingdom for some time, but had hitherto not been applied in Northern Ireland. When it finally arrived, and with it the realisation that inequalities were likely to be increased for many members of the union working in services which were targeted for privatization, PAFT seemed to provide an opportunity for negotiations between the union representing the soon-to-be-privatized workforce, and the government.

The union took judicial review proceedings against one of the public bodies which intended to privatize its services. The judicial review was ultimately unsuccessful, but it was a pyrrhic victory for the Government, partly because it was disclosed that the PAFT guidelines had not formally been issued to the public body concerned, and partly because the judge in deciding the case held that, had they been issued properly, the public body would have been required legally to have taken them into account properly, thus appearing to give them a legal status, which had hitherto not been clear. And subsequent judicial reviews appear to take the same position.

In a separate development, the Northern Ireland Equal Opportunities Commission, the statutory agency responsible for enforcing sex discrimination law initiated a formal investigation into the compulsory tendering/market testing policy. The EOC's investigation resulted in a finding that aspects of the tendering programme did more heavily impact on women, and also made heavy use of the PAFT guidelines, making several detailed recommendations for how they should be implemented in the future, again showing how the guidelines could be of use in a legal setting without themselves being law. In January 1997, the then Secretary of State, Patrick Mayhew, refused to implement the EOC recommendations. Surprisingly, in February 1998, the same public body against whom the judicial review was taken claimed that the position of the current Secretary of State, Dr Mo Mowlam, was the same as that of her Conservative predecessor.

Meanwhile, another factor was playing an important role in helping the issue of PAFT to become a major focus of political interest. This was the fact that, during the passage of the Fair Employment Act 1989, government had committed itself to conducting a formal review of the operation of the legislation and other government policy in this area within five years of the commencement of the legislation. Originally, this task was given to the Central Community Relations Unit within the Northern Ireland Office, the government department responsible for Northern Ireland, but responsibility was later transferred to SACHR, which commissioned research into several areas of the operation of government policy, as part of its fact-finding. Prominent among the research was a short but highly critical piece of research on the operation of PAFT, which appeared to show that

PAFT was being largely ignored within substantial sections of the policy making apparatus of government. Increasingly, the focus of political attention shifted from concern about the operation of the Fair Employment Act narrowly conceived, to the effectiveness of the policy which had been seen as a necessary complement to the legislation - PAFT.

The potential for a mainstreaming approach to impact significantly on inequalities and yet increasing evidence of the lack of such impact in practice has contributed to a significant growth of interest in potential reforms to the system. Unison, the union involved in the initial judicial review, commissioned the author to prepare a study on reform of PAFT. A discussion paper was prepared by this author setting out various options, and raising various questions for further consideration. In November 1996, the Committee on the Administration of Justice (CAJ) circulated the paper extensively among opinion formers, trade unions, voluntary groups, lawyers, politicians, and civil servants in Northern Ireland, requesting comments. As part of a process of further consultation among these groups, the CAJ held several seminars as a method of stimulating further reflection, and suggestions.

The report on those consultations noted that the Advisory Group which oversaw the process (that is, the Equal Opportunities Commission for Northern Ireland, the Fair Employment Commission, and the Northern Ireland Disability Council) was "impressed by the breadth and depth of the response." CAJ commented in the same report that its work "as facilitator of the consultation process was made all the more easy by the obvious strength of feeling surrounding the perceived lack of progress with PAFT this far, and the genuine desire to see issues of fairness and equity mainstreamed into policy making."

Significantly, one of earliest responses was in the form of an extensive discussion by one of the researchers within the Standing Advisory Commission on Human Rights. In addition, the Northern Ireland Civil Service responded with a detailed critique. SACHR reported during 1997, making detailed recommendations on a revised PAFT scheme, including that it should henceforth be put on a statutory basis, so as to create an open and transparent model of equality proofing.

III. A Justification of the Proposals

Based on this experience, and taking into account the detailed and helpful comments received on the discussion document, the third part of the paper now considers in detail the model for a mainstreaming approach in Northern Ireland set out in brief in Part I. Draft legislation incorporating these proposals is included in Part IV.

1. Beyond an anti-discrimination approach

One of the ways in which governments in North America, Western Europe, and the Commonwealth have sought to address the position of ethnic groups, women, and other disadvantaged groups has been by developing anti-discrimination law. In all countries of Western Europe, and much of the Commonwealth, such legislation is now in place. The Northern Ireland fair employment legislation is an example of this approach.

In addition, of course, many jurisdictions also have a constitutional provision relating to non-discrimination and/or equality. Unlike traditional anti-discrimination legislation which applies generally to specific types of employment or service provider, constitutional equality and non-discrimination provisions generally apply primarily (if not exclusively) to the actions of the state, across a broad range of state activity. To that extent, they attempt much more than traditional anti-discrimination legislation does to apply equality principles to governmental policy making generally. The Northern Ireland Constitution Act 1973 includes just such provisions. The new Human Rights Act, when it is passed, will also contain a limited anti-discrimination provision based on the European Convention on Human Rights.

Even as anti-discrimination provisions, however, these are seriously flawed. Neither the Northern Ireland Constitution Act, nor the European Convention on Human Rights clearly include indirect discrimination within its coverage. In addition, the European Convention on Human Rights (and therefore the Human Rights Act) do not contain a free-standing anti-discrimination provision: Article 14 is parasitic on the other substantive rights and this means that it is only in the context of the application of these substantive rights that discrimination is prohibited. Since the Convention contains a rather limited set of substantive rights (there is no right to employment, for example), the coverage of the anti-discrimination provision is also pretty limited.

But there is an additional limitation. Constitutional provisions such as these are generally formulated, or are interpreted, as being anti-discrimination provisions. While such legislation is necessary, it is insufficient by itself. It was never intended to be the *only* approach to the tackling of inequalities between these groups. They are, essentially, negative, and thus are similar to traditional anti-discrimination law: they aim to prevent discrimination, rather than positively to promote equality.

The non-discrimination approach is too restrictive. Indeed, there has been a significant shift from this approach in part because the norms themselves were thought unable satisfactorily to deal with the range of minority interests which were thought to be important. This has led to two major developments: first, there have been increasing numbers of bilateral agreements tackling specific minorities issues (particularly in central and eastern Europe). Second, there has been a rethinking of the issue of *general* minorities treaties, and the development of additional international measures focusing on minorities, e.g. the OSCE High

Commissioner on National Minorities, and the Council of Europe Framework Convention on National Minorities. This has occasioned a debate about the appropriate rights which might be accorded to minorities, or to persons belong to minorities. The approach adopted goes well beyond a simple non-discrimination approach.

The question of what standards are appropriate is one of continuing controversy. The nature of the controversy can be illustrated, in certain respects, by the question of how far there is a state responsibility to provide effective equality between majority and minority populations. Under the approach adopted after the Second World War, the answer in international law was relatively straightforward. There was a requirement of formal equality in so far as the human rights of everyone had to be protected, and a requirement of non-discrimination. What amounted to discrimination was (and is) controversial, and to some extent the interpretation of discrimination became closer to a requirement to provide effective equality, but the gap remained.

More recent legal approaches, such as the Council of Europe's Framework Convention on National Minorities have taken a different approach and imposed an obligation to bring about effective equality, not simply an absence of discrimination. Article 4 of the Convention initially begins in the traditional way. It provides in paragraph 1:

"The Parties undertake to guarantee to persons belonging to national minorities the right of equality before the law and of equal protection of the law. In this respect, any discrimination based on belonging to a national minority shall be prohibited."

Where the Convention differs from previous approaches, however, is in paragraph 2 which provides:

"The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities".

Importantly, paragraph 3 provides,

"The measures adopted in accordance with paragraph 2 shall not be considered an act of discrimination."

This might seem at first glance simply to be another example of the adoption of what would be called "affirmative action", but this reading would be mistaken. Previously, affirmative action, at the international level, was generally only permitted as an exception to the non-discrimination principle where it was seen as remedying past discrimination. More importantly, the international approach was to permit affirmative action, not to require it. The Framework Convention

appears to depart significantly from this approach by, first, requiring action to be taken, and secondly, not requiring such action to be for the redress of discrimination.

Interestingly, while this development has occurred particularly in the context of minorities, there have been similar developments in the context of women, where the long-standing approach of concentrating on the eradication of discrimination is now increasingly being supplemented (or replaced) with a strategy concentrating on equality. A full exposition of these developments is beyond the compass of this paper, but a good example of this approach is to be found in the final document of the Beijing Fourth World Conference on Women: Action for Equality, Development and Peace (15 September 1995), which is replete with far reaching pronouncements well beyond the traditional non-discrimination approach, and there are similar developments in several national contexts as well, some preceding Beijing, some following it.

Currently, the PAFT guidelines emphasise the need to avoid unlawful discrimination (both direct and indirect), to ensure that there is no unjustifiable inequality or inequity, and to incorporate a fair treatment dimension into public administration. While arguably suitable for a loose set of guidelines, the breadth and ill-defined nature of these terms is probably inappropriate for a PAFT which is intended to have legally enforceable elements, as is recommended in these revised proposals. There is an important issue as to what goal should be defined, as that which PAFT seeks to achieve.

There are several sources from which a useful standard may be extracted. The first is the Beijing Declaration and Platform for Action. This states as a primary goal that women should attain an "equal access" to resources (e.g. Strategic Objective F2). The second major source is the Framework Convention on National Minorities proposed by the Council of Europe and signed by the United Kingdom Government. This provides in Article 4(2) that the national governments "undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority." Current Northern Ireland fair employment legislation refers to "equality of opportunity" and "fair participation".

It was suggested in the original consultation document that "material inequality" should be the focus of a redefined PAFT approach, for several reasons. First, it would refocus attention away from discrimination. This is advantageous for several reasons. The extended meaning of discrimination in the legislation (which includes the concept of indirect discrimination) has been poorly understood. More importantly, one of the important limitations of the anti-discrimination approach is the limited nature of the concept of discrimination even when defined to include indirect discrimination. An approach based on "material inequality", it was argued, would also enable a clearer base-line for empirical assessment, an important point given the difficulty of empirical assessment of the other concepts such as equity, being somewhat more objective in its meaning. The Secretary of

State would be placed under a responsibility to ensure that material inequalities between certain groups would be progressively reduced.

However, several aspects of the concept of "material inequality" were thought to be problematic by those who responded to the consultation document. First, it implied that the gap must be reduced to zero, and this does not allow for inequalities which are genuinely due to the choice of the apparently less-well-off group. Second, to the extent that the problem of disadvantage of groups other than Catholics should be explicitly addressed (and it was felt strongly by many of those who responded that it should), the concept of "material inequality" seemed unattractive, since the disadvantages which these other groups suffered from went beyond economic inequality. Third, the idea of "material inequality" was felt to be ambiguous: did it mean "significant" or did it mean "economic".

The proposals have, therefore, been significantly revised. There are three key elements:

- First, no public authority should be able to discriminate unfairly, directly or indirectly, against anyone on any ground such as race, gender, sex, pregnancy, marital status, political or other opinion, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, birth, nationality, national origin, or other status.
- Second, public authorities should be required to promote full and effective equality of opportunity between all parts of the community in Northern Ireland in all areas of economic, social, political and cultural life in which the public authority is involved. This is necessary, if equality is to be seen as an inclusive concept -- one applying to all in Northern Ireland. A Bill imposing a duty on public authorities to provide equality of opportunity was introduced by the Labour Opposition in the House of Commons before the general election, supported by the then Shadow Secretary of State, and parties across the NI divide.
- Third, if the reality of continuing Catholic disadvantage is to be tackled effectively, public authorities should, in particular, be required to ensure that economic inequalities between the Catholic and Protestant sections of the community in Northern Ireland shall be progressively reduced. These measures should not be considered to be an act of unfair discrimination. Policies in which social need is targeted will disproportionately tackle Catholic disadvantage but will effectively also address Protestant disadvantage.

Several aspects of the proposals should be noted. First, following part of the terminology in the Framework Convention, the proposal would impose a duty on public authorities to promote "*full and effective* [equality of opportunity]". Second, the term "equality of opportunity" is chosen in order to provide a flexible concept appropriate for all groups. Third, the duty imposed is programmatic and aspirational, rather than in itself justiciable. It is duty-based, rather than rights conferring. The justiciable and rights-conferring elements follow in later provisions. Fourth, the specific provision relating to Catholic/Protestant economic

equality is not an attempt to create a moral hierarchy of interests and should not be understood that way. Instead, it attempts to reflect the political reality that, if these inequalities are not tackled effectively, the likelihood of other inequalities being tackled effectively is also retarded. It is this inequality, and the legacy of exclusion it has brought, which feeds the conflict from which everyone in Northern Ireland suffers. In tackling it, we are placed in a better position to tackle inequalities across the range of equally important identities. Fifth, measures taken to further equality of opportunity would not be regarded as constituting unlawful discrimination.

2. Acceptance of governmental responsibility

Anti-discrimination legislation and positive action initiatives are mostly targeted at the point of service delivery, and employment decisions. Anti-discrimination legislation usually prohibits employers, for example, from discriminating; and positive action initiatives are often attempts to stimulate employers also to take action (beyond simply not discriminating) which would contribute to tackling these inequalities. The focus in the Northern Ireland Fair Employment legislation is the same: the individual employer or other respondent.

The formal mechanisms for the enforcement of the constitutional guarantees also usually involve complaints by individuals or groups who are aggrieved at an alleged breach of the constitutional provisions. Such enforcement usually involves litigation in either the ordinary or special constitutional courts. Where it involves challenges to legislation, this is almost invariably limited to challenges immediately prior to the coming into effect of the legislation, or litigation challenging the legislation after it has come into effect. Thus, although they are at the constitutional level, they share many of the aspects of traditional anti-discrimination law.

There is growing concern in many countries, including Northern Ireland, about the extent to which these traditional mechanisms of securing non-discrimination are adequate. The general conclusion of what implementation studies there have been is to emphasize the limited extent to which countries make anti-discrimination norms effective in practice. This has led, in turn, to the development of additional mechanism to ensure greater compliance.

In particular, there have been attempts to develop policies which bring the weight of government to bear more directly. Traditional anti-discrimination law involves government, of course: the government, in most cases, initiates the legislation, and provides enforcement mechanisms, and usually binds itself to act in accordance with the legislation in its actions as employer, or as the state, for example. One issue which is currently generating debate is the extent to which government can intervene and use its influence and power more directly. One example which links anti-discrimination law with the more direct use of governmental power is the use of government contracts and grants to require the

private sector which deals with government to introduce equality policies. There is now significant experience of the operation of such policies.

More recently still, however, there have been attempts to combine these two approaches, by requiring that government and public bodies should attempt to weave policies of equality and non-discrimination into the fabric of decision-making across *all* spheres of government -- in short, to "mainstream" fairness issues in public policy. This is a particularly important issue if the problem is defined, as it increasingly is, as involving not only the problem of "discrimination", but the larger issue of unacceptable inequalities affecting women and particular minority groups, whether caused by discrimination or not.

Why does mainstreaming differ from traditional anti-discrimination approaches? Because, it concentrates attention on government decision-making, it concentrates on government proactively taking equality into account, and it does not concentrate primarily on discrimination as the problem to be resolved. Mainstreaming approaches are intended to be anticipatory (rather than essentially retrospective, or relatively late insertions into the policy-making process), to be extensively participatory (rather than limited to small groups of the knowledgeable, a point I shall return to subsequently), and to be integrated into the policy-making of those primarily involved (rather than external add-ons perceived to be external by policy makers).

Why does mainstreaming differ from having a constitutional equality provision? Does a constitutional equality or non-discrimination provision render a mainstreaming approach unnecessary? The answer is clearly "no". In most jurisdictions, it is true, there is a significant amount of internal (and sometimes external) legal advice which governments have available to them in drawing up proposals for legislation, and in the drafting process itself, in order to ensure that the provisions are constitutional. In addition, in some jurisdictions, there is extensive consideration of constitutional requirements in the legislative debates, and in some cases select committees of the parliament (or their equivalent) are involved in assessments of constitutionality.

Such additional mechanisms tend, however to be (and to be seen as being) external to the policy making of those centrally responsible for particular areas. Where interventions take place, they tend to be relatively late in the policy-making process. They tend to involve relatively enclosed groups of legal experts and parliamentarians. They tend to be relatively formal and limited, reflecting the (usually) negative constitutional provisions in issue. Mainstreaming is not inconsistent with such approaches. Indeed, it might be thought that mainstreaming provisions are natural extensions of these approaches, but they do not do the same thing as mainstreaming, which is, to repeat, to require equality issues to be integrated into the policy-making of those primarily involved (rather than external add-ons perceived to be external by policy makers). Indeed, several of the jurisdictions which have recently introduced "mainstreaming" mechanisms (Canada, in particular) also have strong anti-discrimination provisions at the constitutional level.

There are several sources from which the idea of mainstreaming has emerged. One source is the European Commission's Third Action Program, which stressed the importance of integrating equality issues into government decision-making. Most recently, the European Commission has become involved in attempting to develop such approaches further. "Mainstreaming" is central to the Fourth Action Program on Equal Opportunities (1996 - 2000). Equality issues should be integrated into the decision making of the Commission and of Member State governments. A group of Commissioners, chaired by President Santer, has produced a communication on mainstreaming of equality in all appropriate Community policies.

The European Commission was also instrumental in having the idea of mainstreaming adopted as a major policy for future action at the Fourth United Nations World Conference on Women, which took place in Beijing in September 1995 (for example in Strategic Objective H.2, which calls for the integration of gender perspectives in legislation, public policies, programs and projects). As regards Northern Ireland, Europe has attempted to integrate equality concerns within the framework of the Peace and Reconciliation initiative.

There are several other examples of "mainstreaming" policies, some in existence, some in embryo. In Britain, there are requirements to "equal opportunity proof" policy proposals for their gender effect.

Equivalent mechanisms are either being considered, or have been adopted in other countries. Such an initiative had been in place in the Netherlands for some years. In Sweden, the Equality Affairs Division of the Ministry of Health and Social Affairs is responsible for ensuring that gender issues are considered in the formulation of government legislation and other policies prior to discussion by Cabinet. Luxembourg has established an Inter-Ministerial Council to attempt to ensure that ministries take account of equal opportunities in policy making. In Ireland, the National Economic and Social Forum has recently produced a report on equality proofing issues.

Outside the European Community, there are also significant developments. In Canada, mainstreaming has recently been adopted by the federal government, and draft guidelines are currently in preparation. In Australia, a novel way of assessing the impact of government policies has been to produce a "women's budget statement" each year to accompany the budget proposals. In New Zealand, guidelines for gender impact analysis have just been published. The Council of Europe has established a committee to consider the issue of mainstreaming.

There is also substantial evidence of such approaches in situations other than where equality is the purpose of the policy. For example, in the area of *environmental* policy (both under United States and European Community law, for example), "environmental impact assessments" must be prepared for major projects. Equivalent requirements are also operated by several of the international

financial institutions. The concept is relatively simple, however complicated it becomes in practice: to require those putting forward a proposal to assess what its adverse impact would be on the environment, and whether that adverse impact could be lessened, or removed.

So too, there is experience of attempts to mainstream other policies in government. Since the 1980s, in particular, *regulatory* impact assessments have often been required throughout British and American government, as have occasional attempts to require cost/benefit analysis to be conducted of proposed projects, or to require compliance cost assessments of regulatory proposals. The difference between these relates both to the techniques, and the focus of the assessment required. For the moment these need not concern us. The point of the example is simply to demonstrate that attempts at mainstreaming of other policy preferences are not at all uncommon.

Underlying all these attempts at mainstreaming is a common perception: that unless special attention is paid to a particular policy preference, that policy preference will become too easily submerged in the day to day concerns of policy makers who do not view that particular policy preference as central to their concerns.

The motivation for mainstreaming fairness and equality lies not only, therefore, in the perception that anti-discrimination law, positive action initiatives, and even traditional methods of constitutional protection of equality) are limited, but also in the perception that questions of equality and non-discrimination may easily become *sidelined*.

A specific agency, or other enforcement mechanism, dedicated specially to equality issues may be viewed as satisfying concern about inequality, yet have little effect on the large decisions of government which have the greatest impact on the life chances of women and minorities. Mainstreaming, by definition, attempts to address this problem of sidelining directly, by requiring all government departments to engage directly with equality issues.

3. Importance of impact assessment

An important technique has been developed to make the idea of mainstreaming effective in practice. Most of these countries have required that some form of "impact assessment" be carried out as part of the process of considering proposals for legislation or major policy initiatives. Put simply, the idea of an impact assessment involves an attempt to try to assess what the effect of the legislation or policy would be on particular groups, such as women or minorities.

Mainstreaming should, thereby, encourage greater *transparency* in decision-making since it necessitates defining what the impact of policies is at an earlier stage of policy making, more systematically, and to a greater extent, than is

currently usually contemplated. And, to the extent that mainstreaming initiatives can develop criteria for alerting policy makers to potential problems before they happen, the more likely it is that a generally reactive approach to problems of inequality can be replaced by *proactive* early-warning approaches. Current government policy in many countries in the area of equality has often been criticized as tending to be too reactive to problems which might well have been identifiable before they became problems.

In what circumstances should government be required to initiate an impact assessment? PAFT currently applies to the "policy proposals, including legislation, other initiatives and strategic plans for the implementation of policy and the delivery of services" (para 6). Currently, there is somewhat more evidence of detailed PAFT analysis at the level of the delivery of services than at the stages of policy development. Currently, a PAFT analysis is required irrespective of the degree of impact found or suspected.

Nor, under the existing guidelines, there does not appear to be a clear mechanism for "screening". ("Screening" involves the attempt to restrict the type of action which is considered for a full PAFT analysis.) However, without some form of screening, large numbers of actions would be assessed unnecessarily, with the risk that actions which have significant adverse impacts will not be adequately considered. Screening of actions which have significant impact on material equality between the relevant groups should take place at a preliminary stage.

The more difficult question is how to accomplish such screening. Three main approaches were canvassed in the Consultation Document: (i) lists of identified actions, and thresholds could be stipulated, (ii) a more open test of "significance" could be specified which would require interpretation and application case-by-case, or (iii) an open test could be specified with guidelines being made available from time to time in a code of practice.

The revised proposals address this point directly by putting forward a considerably streamlined procedure. On the basis of the comments received, the revised proposals opt for the second approach. There would be a duty imposed on every public authority to prepare a statement of any "significant" impact that any proposed action may have on its ability to fulfil its non-discrimination and equality of opportunity duties. In other words, the duty to prepare an impact assessment would arise when a significant impact is identified, initially by the public authority itself. A formal impact assessment would not, therefore, be required in every circumstance, but public bodies would need to keep the issue in mind in preparing proposals. When a significant impact is seen to arise, it would then embark on the impact analysis. Failure to draw up an impact assessment when one was required would, however, be judicially reviewable.

The consideration of alternatives is a further crucial element in making a PAFT system effective. It is implicit in the current PAFT guidelines, where the approach to justification of disparate impacts is based on the "necessity" of the particular

approach adopted. Such an approach can only be adequately carried out if alternative approaches, which have a less adverse impact, are considered as well.

Evidence of the consideration, by the proposer of the action, of the impact of reasonable alternative ways of meeting the objective should be demonstrated in the PAFT process. Clear evidence of the consideration of the impacts of alternatives should be apparent in impact assessments, and the realistic consideration of the impacts of reasonable alternatives should also be evident. Justifications should be given if these reasonable alternatives have not been accepted.

The consideration of the mitigation of adverse impacts is intertwined with the consideration of alternatives. Mitigation can take three different forms: avoidance (e.g. using an alternative approach to reduce the adverse impact), reduction (lessening the severity of the impact) and remedy (such as compensation). The mitigation of impacts should be considered during the PAFT process. Details of mitigation and its implementation should be included in the PAFT report itself.

The preparation of a report detailing the results of a PAFT impact assessment is obviously a crucial element in any satisfactory PAFT process. Currently, little guidance is given in the PAFT guidelines on what such a report should contain, and there have been wide variations in practice, in content, in completeness, and in accuracy.

The current PAFT guidelines approach the issue of monitoring from a limited perspective. They state: "When the development of new policies and services suggests that they could have a differential impact ..., or where the review of existing policy indicates a differential impact ..., and there is insufficient information to determine if it can be objectively justified, Departments should consult Central Secretariat, who will advise on monitoring in the light of data availability and resource considerations" (para 20). This approach to monitoring is too restricted. Monitoring should be regarded as an integral part of the PAFT process so that experience can be built up over time of how accurate the predictions of impact have been. Without monitoring of actions taken, and their actual effects, no experience of the adequacy of the PAFT process over time is possible.

Monitoring of action impacts should be undertaken. Action on monitoring arrangements should be specified in the PAFT report. The proposer should be required to take ameliorative action if monitoring demonstrates the need for it. The results of such monitoring should be compared with the predictions in the PAFT impact assessment. The results of this monitoring and auditing should be published.

In future, PAFT reports should meet prescribed content requirements. Internal administrative checks should be established to prevent the release of inadequate PAFT reports. Checks on the content, form, objectivity and accuracy of the information presented should occur before publication of PAFT impact

statements. PAFT reports should describe the action proposed, the group affected, forecast impacts, indicate their significance, consider alternatives, consider mitigation, and include discussion of subsequent monitoring. Information held by other governmental authorities about the impact or type of action should be made available to the proposer.

Under the revised proposals, therefore, it would be the duty of every public authority to include in every impact statement information on:

- the aims and purposes of the proposed action
- any significant impact that in its view the proposed action may have on its ability to fulfil its non-discrimination and equality of opportunity duties
- alternatives to the proposed action, which may achieve the aims and purposes of the proposed action but may be *less* likely to have an adverse effect on its ability to fulfil these duties and which may achieve the aims and purposes of the proposed action but may be *more* likely to have the effect of enabling it to achieve better compliance with these duties; the justification for the rejection of any alternatives identified
- proposals to mitigate any unavoidable impact of the action which would be likely to have an adverse impact on its ability to fulfil these duties, by recourse to accompanying social and economic measures
- a description of mechanisms to monitor the impact of the action, following its introduction.

4. Participation by affected groups

An important feature of PAFT experience to date in Northern Ireland is the extent to which groups inside and outside the mainstream political process have used the PAFT process to become involved in influencing governmental decision-making. Put simply, the results of the consultation process on the Consultation Document reflected a clear concern by those affected by proposals to be fully integrated into the policy making process. Mainstreaming, it was thought, should not only be a technical mechanism of assessment within the bureaucracy, but an approach which encourages the participation of those with an interest. As things stand, the capacity of groups to participate at their own initiative is severely limited; good decision-making should require policy-making activity to seek out the views of those potentially affected by the decisions. Unlike more traditional mechanisms of consultation, however, it does this by requiring impact assessments of a degree of specificity which establishes a clear agenda for discussion between policy makers and those most affected. We can see, therefore, the inter-linked nature of the two crucial features of mainstreaming: impact assessment, and participation.

One of the most far-reaching "by-products" of mainstreaming is, therefore, the development of a crucial link between government and "civil society", encouraging greater *participation* in decision-making by marginal groups, thus lessening the democratic deficit.

There are various methods by which such mainstreaming could take place, but it is arguable that all would require significant input of information and analysis of the impact of proposed policies from sources external to government. Non-governmental organizations such as community groups, pressure groups, and unions may wish to assist in supplying such information. This is not to say, of course, that the involvement of such groups is unproblematic, raising issues of the competence of such groups in this field, due to lack of information and lack of resources. In principle, however, a major argument in favour of mainstreaming is that it may contribute to increased participatory democracy -- what the European Commission currently terms "civil dialogue".

Currently, PAFT requires an assessment of the impact of policies on people of different religious belief or political opinions, men and women, married and unmarried people, people with or without dependants (including women who are pregnant or on maternity leave), people of different ethnic groups, people with or without a disability, people of different ages, and people of differing sexual orientation.

There are several arguments in favour of this broad-based approach. There is a clear need to avoid distinctions being introduced which would make effective implementation more difficult. An example would be where PAFT required an analysis of the effect of a policy on the basis of gender, but not on the grounds of disability, where the adverse impact could best be seen as applying to women with disabilities. A broad based approach is also likely to gain greater support, at least in principle, within the administration because it would be seen as not privileging any one type of equality over others, no granting of a moral hierarchy in terms of different inequalities. A growing interest in, and expectation of, PAFT as an important mechanism to enable them to be heard has grown up amongst community groups serving those groups mentioned in the existing PAFT guidelines. It is necessary to consult amongst groups affected to identify the impacts which a proposed action may have. Participation in the process by the groups affected is more likely to result in a greater sense of ownership of the result by those involved, and thus greater consensus on the action proposed. Policies which do not involve the people intended to be beneficiaries will often prove ineffective and wasteful of resources.

Providing mechanisms for such consultation and participation assumes that interested individuals and organizations will choose, and be able to participate. This assumption may or may not be correct. Without assistance, groups may feel unable to contribute effectively. If they do not contribute, then the major benefits following from participation will fail to materialize and participation procedures will be likely to be taken over by those who already have access because of their

expertise or political power. Thus there is a danger that the powerless and inarticulate may be the very groups unable to participate effectively. Financial assistance to public participants from public funds should be provided for.

The revised proposals adopt an inclusive approach. Public authorities would be under a duty to endeavour to create the conditions necessary for the effective participation of all persons in Northern Ireland in cultural, social and economic life, and in public affairs. In particular, public authorities would be required to bring forward measures and procedures to enable effective participation by those directly affected in the formulation and application of policy decisions by public authorities, and would be required to encourage and facilitate such participation. More specifically, where a public authority has prepared an impact assessment, the public authority would be required to ensure that this impact statement is made available to the public in good time to enable effective consultation to take place by the public authority with those directly affected by the proposed decision. In addition, the Fair Employment Commission for Northern Ireland, the Standing Advisory Commission on Human Rights, the Commission for Racial Equality for Northern Ireland, the Disability Council, and the Equal Opportunities Commission for Northern Ireland would be consulted, where relevant, and might make their views public, at their discretion.

5. Legal basis

Hitherto, mainstreaming policies have usually been envisaged as operating as (at most) internal guidance within Departments (and, possibly, external reassurance), rather than as something which is legally based. Should there be a statutory requirement on government departments (and other public bodies) to provide equality of opportunity in the exercise of all their responsibilities? There are already British precedents for having a statutory basis for the similar compliance cost assessment procedure.

There may be thought to be some advantages in retaining the present approach, under which PAFT is based on no firm legal basis, but rather on very general guidance from the Central Secretariat of the Northern Ireland Office. These advantages could be said to consist in: the desirability of voluntary compliance, the avoidance of judicial involvement, and the retention of extensive Departmental discretion in the interpretation of the guidance. On the other hand, there are indications that these supposed advantages are illusory. In practice, the theoretical advantages associated with a largely informal discretionary system based for the most part on voluntary compliance have not materialized. A more formal approach may already be developing, because of the impact of the Unison judicial review case, and the Formal Investigation by the Equal Opportunities Commission for Northern Ireland into compulsory competitive tendering.

Further arguments in favour of developing a more formal and less discretionary system may be summarized as: permanence and evidence of commitment; the

lessening of uncertainty as to what the requirements actually are; the provision of a firm basis for public participation; and the availability of enforcement mechanisms. Lastly, it is probably worth noting that the trend in the area of environmental impact assessment has been that where such requirements began as voluntary internal guidance, the trend is for them now to be placed on a statutory basis.

The PAFT system should in future be based on clear and specific legal provisions. The legal provisions should be sufficiently unambiguous in application to avoid other than infrequent litigation. PAFT requirements should be clearly differentiated from other legal provisions.

The current ambiguous legal basis of PAFT has contributed to uncertainty as to how far, if at all, PAFT is relevant in the interpretation of statutory provisions, whether primary or secondary. This uncertainty should be removed so that enactments passed or to be passed would be interpreted and administered to the fullest extent possible in accordance with the PAFT principle.

Currently, the PAFT guidelines leave the decision whether or not to approve a particular action to the Minister without specifying what weight, if any, should be given to the PAFT report. In any revised PAFT system, it should be made clear that the findings of the PAFT report and the review should be a central determinant of the decision on the action proposed. The decision, the reasons for it, and the conditions or modifications attached should be published. These reasons should include an explanation of how the PAFT report and review influenced the decision.

If a revised PAFT is to be given a statutory basis, there is a further issue regarding the more technical question of what the form of the legislation should be. How much should be in the form of primary legislation as opposed to regulations? The bare bones of the scheme should be in primary legislation, with a power in the Secretary of State to bring forward regulations to fill out the details. This would permit swifter adjustment in the light of the early reviews suggested above, than if all the details were in primary legislation.

6. Importance of clear lines of responsibility and accountability

There are dangers in "mainstreaming". In particular, it may result in the over-fragmentation of equality policy, especially if it were to become an alternative to traditional anti-discrimination and other equality mechanisms. If *all* public bodies have responsibility, there is the danger that *none* will regard it as an important part of their function. There needs, therefore, to be some centralised responsibility within government to ensure that mainstreaming is consistently applied, according to common standards.

Currently, overall political responsibility for PAFT lies with the Secretary of State for Northern Ireland, while day to day administrative responsibility lies with the Central Community Relations Unit in the Central Secretariat of the Northern Ireland Office. However, as the Annual Reports on PAFT indicate, substantial discretion is given to Departments and other bodies to which PAFT applies as to how to put their PAFT responsibilities into effect. This has contributed to widely varying methods, leading to confusion, inconsistency, and (in some cases) unacceptably low standards of conformity with the PAFT objectives.

Despite all of the arguments for mainstreaming, one should not overlook the fact that building such a requirement into civil service decision-making will require considerable cultural change. Apart from practical issues, there is the problem of departmental exclusiveness, and collective responsibility, both features which can be seen as important features of, for example, the traditional Northern Ireland civil service tradition. Mainstreaming may well cut across the working practices (and even, potentially, the ethos) of the civil service bureaucracy. This means, therefore, that a strong ministerial commitment to mainstreaming is absolutely crucial and must drive the new approach to be taken by departments and other public bodies.

There is now, rather belatedly, some training of those responsible for PAFT in the Northern Ireland government departments. Training should be made an important part of the process for initial implementation of a revised PAFT system. This should apply across the public service (including non-departmental public bodies, next step agencies, etc.) and training materials, which should be made public, should be prepared for such seminars. Training should also be considered for those groups outside the public service which are most likely to want to participate in the PAFT process.

Where a regional administration is concerned, there are further problems arising from the constraints which central government may put in place relating to major areas of policy-making. Whereas mainstreaming encourages context-specificity, and flexibility of response by regional government, central government may wish to require homogeneity, and the avoidance of inconsistency across regions. An equivalent problem arises in the European context, where member state governments may have little *discretion* as to policy in certain areas, for example agriculture, due to European Community requirements. In the Northern Ireland context, therefore, it will be important that mainstreaming is the responsibility of all departments and public bodies deciding on policies which are expected to be applied in Northern Ireland, not just the responsibility of NI departments.

Currently, PAFT applies to Departments and Next Step Agencies. Departments are required to use all appropriate means at their disposal to ensure that Non Departmental Public Bodies comply with PAFT. Departments are also to "use their best endeavours, consistent with legal and contractual obligations, to secure compliance with PAFT by those performing contracted out services on their behalf" (para 8). PAFT does not appear to apply to local authorities directly.

A revised PAFT should apply to the widest possible range of public authorities. The helpful approach taken in the Human Rights Bill, currently before Parliament, should be adopted in the statutory PAFT context. This would include local authorities, Northern Ireland Departments, United Kingdom departments operating in Northern Ireland, and existing NDPBs and Next Step agencies.

The accountability of the public body undertaking a PAFT analysis is unclear under the existing PAFT guidelines. There is no provision under the existing guidelines for either internal or external mechanisms of formal accountability. The Central Community Relations Unit of the Northern Ireland Office plays an advisory and co-ordination role but is not seen as making public bodies accountable in any formal sense. Judicial review has, however, proven to have the potential to be a formal mechanism of accountability, although its limits and effectiveness have yet to be established.

The omission of any formal mechanisms of accountability needs to be addressed in any revised PAFT system. It has been suggested above that internal methods of review should be developed to ensure the adequacy of PAFT reports, and that the statutory equality commissions should play a role in commenting on the adequacy of the PAFT reviews as well. It is suggested that judicial review should remain as a primary mechanism for reviewing the procedural requirements of any revised PAFT system.

Whilst it has earlier been suggested that there should be a system of monitoring and audit of specific actions, this is inadequate unless there is also a system for the regular monitoring of the operation of the PAFT system as a whole, with provision for it to be amended to incorporate feedback from experience. Currently, PAFT is supervised by CCRU, but this has not proven a successful method for regular effective monitoring, partly because of its weak position in the Northern Ireland civil service bureaucracy.

Provision should be made for a formal, regular review of the operation of the PAFT system. This review should be conducted by an independent, external review body. An external review of PAFT was conducted by the Standing Advisory Commission on Human Rights as part of the Employment Equality Review. To facilitate such a review, there should be a more effective system for the collection of information by the Central Secretariat of the Northern Ireland Office.

Under the revised proposals, it would be the duty of every public authority to make appropriate arrangements with a view to securing that their various functions and responsibilities are carried out with due regard to the need to comply with its non-discrimination and equality duties. An annual report would be laid before each House of Parliament with respect to the measures and policies adopted to advance that duty. Within three years of the coming into effect of these proposals, and once every five years thereafter, it would be the duty of every public authority to review the extent to which its various function and responsibilities are carried out with due regard to need to comply with these duties.

IV. Proposed Statutory/Constitutional Basis for Revised “Policy Appraisal and Fair Treatment” Mechanism

General principles

Article 1

1. Government in Northern Ireland shall have a duty to promote democracy, openness, accountability, equality, justice, fairness, and respect for internationally agreed human rights standards.
2. These principles form the basis of the following Articles and shall inform their interpretation.
3. So far as it is possible to do so, primary legislation and subordinate legislation must be applied and operated in a way which is compatible with this and the following Articles.

Unlawful discrimination

Article 2

1. It shall be unlawful for a public authority to discriminate unfairly, directly or indirectly, against anyone in Northern Ireland on any ground such as race, gender, sex, pregnancy, marital status, political or other opinion, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, birth, nationality, national origin, or other status.
2. The obligation to comply with paragraph 1 above is a duty owed to any person who may be adversely affected by a contravention of that paragraph, and any breach of that duty is actionable in Northern Ireland accordingly.
3. In an action brought by a person under this Article, whether or not damages are awarded, the court may grant such injunction as it considers to be proper in all the circumstances restraining the defendant from discriminating unlawfully.

Equality of opportunity

Article 3

1. Public authorities shall promote full and effective equality of opportunity between all parts of the community in Northern Ireland in all areas of economic, social, political and cultural life in which the public authority is involved. In particular, public authorities shall aim to ensure that economic inequalities between the Roman Catholic and Protestant sections of the community in Northern Ireland shall be progressively reduced.
2. It shall be the duty of every public authority to make appropriate arrangements with a view to securing that their various functions and responsibilities are carried out with due regard to the need to comply with the duties set out in paragraph 1.
3. An annual report shall be laid before each House of Parliament with respect to the measures and policies adopted to advance the duties set out in paragraph 1.
4. Without prejudice to paragraph 2, within three years of the coming into effect of this Act, and once every five years thereafter, it shall be the duty of every public authority to review the extent to which its various function and responsibilities are carried out with due regard to need to comply with the duties set out in para. 1
5. The measures adopted in accordance with paragraphs 1 and 2 shall not be considered to be an act of unfair discrimination prohibited in Article 2.

Participation

Article 4

1. Public authorities shall endeavour to create the conditions necessary for the effective participation of all persons in Northern Ireland in cultural, social and economic life, and in public affairs.
2. In particular, public authorities shall bring forward measures and procedures to enable effective participation by those directly affected in the formulation and application of policy decisions by public authorities, and shall encourage and facilitate such participation.

Policy Appraisal and Impact Statements

Article 5

1. It shall be the duty of every public authority to prepare a statement of any significant impact that any proposed action by it may have on its ability to fulfil its duties under Article 2 and 3 ("impact statement").

2. It shall be the duty of every public authority to include in every impact statement information on:

(1) the aims and purposes of the proposed action;

(2) any significant impact that in its view the proposed action may have on its ability to fulfil its duties under Articles 2 and 3;

(3) alternatives to the proposed action,

(a) which may achieve the aims and purposes of the proposed action but may be less likely to have an adverse effect on its ability to fulfil its duties under Article 2 and 3, and

(b) which may achieve the aims and purposes of the proposed action but may be more likely to have the effect of enabling it to achieve better compliance with its duties under Articles 2 and 3;

(4) the justification for the rejection of any alternatives identified in paragraph 3;

(5) proposals to mitigate any unavoidable impact of the action which would be likely to have an adverse impact on its ability to fulfil its duties under Article 2 and 3, by recourse to accompanying social and economic measures; and

(6) a description of mechanisms to monitor the impact of the action, following its introduction.

Consultations

Article 6

1. The public authority shall ensure that an impact statement is made available to the public in good time to enable effective consultation to take place by the public authority with those directly affected by the proposed decision.

2. The Fair Employment Commission for Northern Ireland, the Standing Advisory Commission on Human Rights, the Commission for Racial Equality for Northern Ireland, the Northern Ireland Disability Council, and the Equal Opportunities Commission for Northern Ireland shall be consulted, where relevant, and may make its views public.

Duty to Take Appraisal and Consultations into Account

Article 7

The impact statement and the results of any consultations on it shall be taken into account by the public body in any subsequent decision whether to proceed with the proposed action.

Duty to Give Reasons

Article 8

Following a decision to proceed with the relevant action, the public body shall publish the decision together with its reasons for doing so.

Powers to Make Regulations

Article 9

Without prejudice to previous provisions, Government in Northern Ireland shall by regulations make such provision as appears to it to be necessary or expedient to ensure that public authorities comply with their duties under this Act.

Appendix One

Written responses received regarding Dr Chris McCrudden's early discussion document - Mainstreaming Fairness (November 1996), and summarised in the report of the consultative process (June 1997). For copies of either or both documents, contact CAJ.

Barnardos
Belfast Travellers Education Development Group
Central Community Relations Unit (on behalf of government)
Chinese Welfare Association
Commission for Racial Equality (London)
Community Relations Council
Confederation of Community Groups (Newry)
Department of Foreign Affairs (Dublin)
Disability Council
Equal Opportunities Commission
Karin Eyben
Fair Employment Commission
Foyle Friend
Paul Gorecki (Northern Ireland Economic Council)
Prof. Tom Hadden (QUB)
Labour Relations Agency
Law Centre
NI Association for the Care and Resettlement of Offenders
NI Council for Ethnic Minorities
NI Council for Voluntary Action
NI Disability Council
NIC-Irish Congress of Trade Unions
NI Public Service Alliance
The Royal Hospitals
Save the Children Fund
Social Democratic and Labour Party
Standing Advisory Commission on Human Rights
UNISON
West Belfast Economic Forum
Womens Support Network

Individuals and groups who attended lunchtime formal consultations (1997) –

Nick Acheson (Disability Action)
Les Allamby (Law Centre)
George Bennett (EXTERN)
Suzanne Bradley (FEC)
Patricia Bray (North West Forum for People with Disabilities)
Sandra Broghan (NICEM)
Tony Canavan (CCRU)

Brice Dickson (University of Ulster)
Niall Fitzduff (Rural Community Network)
James Grant (Foyle Friend)
Tom Hadden (Queens University)
Will Haire (Department of Economic Development)
Seamus Heaney (North West Community Network)
Billy Hutchinson (Upper Springfield)
Nigel Hutson
Colin Irwin (Queens University)
Mary Larkin (EOC)
Gemma Loughran
Al Mackle (SACHR)
Caitriona Magennis (NIACRO)
P. A. Maglochlainn
Seamus McAleavey (NICVA)
Noelle McGrenery
Joan McKiernan (EOC)
Eleanor McKinght (Chinese Welfare Association)
Eithne McLaughlin
Fiona McMahan (NUS/USI)
Chris Moffat
John Morrison (Queens University)
Duncan Morrow (University of Ulster)
Marie Mulholland (Womens Support Network)
Maureen Mulligan (Disability Council)
Paul Noonan (BTEDG)
Eoin O'Broin (West Belfast Economic Forum)
John O'Hara
Seamus O'Hara
Ian O'Neill (FEC)
Pat Osborne (Disability Council)
Harry Reid (NIVT)
Joanne Vance (Women into Politics)
Robin Wilson
Patrick Yu (NICEM)

**Individuals and groups who attended the launch (February 1998)
of Mainstreaming Fairness - A Proposal**

Ray Bassett (DFA)
Mel Byrne (Craigavon/Banbridge Community H&SS Trust)
Evelyn Collins (EOC)
Ciara Convie (Chinese Welfare Association)
Bob Cooper (FEC)
Gerry Crossan (Labour Relations Agency)
Timothy Cunningham (CAJ)
Gabriel Doherty (NICEM)
Pamela Dooley (UNISON)

Brian Ferguson (UNISON)
Dolores Ferran (NI Housing Executive)
Barry Fitzpatrick (University of Ulster)
Susan Good (SE Education and Library Board)
Harry Goodman (FEC)
Grace Henry (Help the Aged)
Ciaran Kearney (Falls Community Council)
Paddy Kelly (Children's Law Centre)
Eileen Lavery (FEC)
Denise Magill (SACHR)
Thomas Mahaffy (UNISON)
Deepa Mann-Kler (NICEM)
Theresa Moriarty (Irish Labour History Society)
John Morrison (Queens University)
Harry McConnell (Disability Council)
Inez McCormack (UNISON)
Vinnie McCormack (CAJ)
Jim McCusker (NIPSA)
Anne McKeown (BIFHE)
Patricia McKeown (UNISON)
Angela McKing (NICEM)
Ellen McKnight (Chinese Welfare Association)
Paul Noonan (Belfast Travellers Education & Development Group)
Max O'Brien (Disability Council)
Sean Paul O'Hare (Falls Community Council)
Quentin Oliver (NICVA)
Joyce Saadat (Philippines Association)
Joan Smith (EOC)
Francis Stone (Falls Community Council)
Mike Tomlinson (Queens University)
Charlie Walker (UNISON)
Patrick Yu (NICEM)
Selina Yu (NICEM)

Appendix Two

Making PAFT work – launch of draft legislation to mainstream fairness *Dukes Hotel, 25 February 1998*

Delays in the printing of the foregoing text have enabled us to incorporate below the testimony proffered at the launch of Dr McCrudden's proposals to the PAFT constituencies which had contributed to earlier stages of the debate.

Introduction - Maggie Beirne (CAJ)

***“We believe this debate goes to the heart of developing
a more just and fair society in Northern Ireland”***

I would like to welcome you to the launch of a proposal which is intended to give effect to the ideas encapsulated by PAFT, and to mainstream equality in the government's agenda.

We have a panel of speakers to briefly speak on PAFT and equality proofing, and what this has meant in the different kinds of work they have been doing. They come from the very different perspectives and constituencies of interest that many of you here today represent, and they will give some insights into the genesis of the debate.

The invitations to this launch were targeted particularly on those many constituencies which would benefit from equality being at the heart of the government agenda – groups working on issues around gender, race, disability, sexual orientation, religion, political and other divisions within our society. We believe this debate goes to the heart of developing a more just and fair society in Northern Ireland, and we are delighted that you were able to attend the launch. After a number of short presentations, Dr McCrudden will introduce his proposal, and explain how he has tried to respond to the many issues and concerns that people have raised in the course of the consultative process.

Our first speaker is Barbara McClenahan, a UNISON member, who will talk about some of the problems which gave rise to this debate about PAFT. Her experience as a worker indicates how important it is that we turn this debate into something which is relevant to people's lives and which empowers them to influence the decisions that affect them.

**Barbara McClenahan - UNISON member
Catering Assistant, Lagan Valley Hospital**

“We have campaigned for such fair treatment for nearly 20 years. It had been secured as a government policy, but the first time we tried to use it, the government went back on its own policy”.

My name is Barbara McClenahan and I have been a Catering Assistant in the Lagan Valley Hospital for 21 years. For most of these years I was a public service worker but two years ago I, and over 300 of my colleagues, were privatised. My public service employers were not the best employers in the world.

As a woman part time worker I was on low pay and the lowest grade. However, I was led to believe that I had some rights, including the right to be treated fairly and the right to equal opportunities. That turned out to be an incorrect impression and in 1995, when we were being forced through market testing, we demanded our rights to fair treatment. We asked for PAFT to be applied to the process. We pointed out that women, Catholics and Protestants, from some of the most disadvantaged areas of Lisburn and Downpatrick; our colleagues with disabilities; and our few members from ethnic minority groups, were likely to suffer discrimination, if the protection of fair treatment was not used to protect us. You know from this report that our employer refused. We sued them because we believed a great wrong was being done to us. We lost on a technicality and were sold off to Compass. Less than a year later we were involved in one of the most bitter disputes in Northern Ireland, because what we had predicted came true. We had been left without the protection of fair treatment and a new employer began attacking our remaining rights.

The strike and court case in 1995, and the long dispute in 1996 and 1997, were fought by us, not just for our group but for all our colleagues facing the same fate. At the time there were more than 20,000 of us on the brink of privatisation. We lost, but we made a difference for everyone else. The reason my union commissioned "Mainstreaming Fairness", which brings us all here today, is that we have campaigned for such fair treatment for nearly 20 years. It had been secured as a government policy but the first time we tried to use it, the government went back on its own policy.

Today the company we worked for is pulling out. The Trust is pushing us through the process again and so far has not applied PAFT. It claims that the new government takes the same view of the EOC report as the previous government did. This report and its draft Bill can make a difference in our communities between discrimination and a decent future. We will do everything we can to secure it.

Joanne Vance - Women Into Politics

“The guidelines also ensure that, if followed, the outcomes of decisions would be fairer, more just, less contentious and better value for money as well”

My name is Joanne Vance and I work with a project called Women into Politics. We are one of four partners in an initiative called Making Women Seen and Heard. I suppose the working title could be "Making the PAFT Guidelines Seen and Heard" as well. One of the key elements of the project was to make PAFT more visible. It was an exercise in promoting equality itself. What we wanted to get out of it was a discussion on how we could use PAFT to enhance decision making, and thereby to make the whole process more participatory, inclusive and fair.

We tied it into the European Peace and Reconciliation Programme, and we decided to run an action research project in the 12 counties involved (six in Northern Ireland and six in the border counties of the Republic). We knew that the PAFT guidelines had been written into the European Programme, and we wanted to make that as relevant as possible to the women on the ground. When I say “we” - we wanted to make sure that we also were as inclusive as possible. Accordingly, we set up an Advisory Committee to ensure that women from all the different marginalised groups mentioned in the PAFT guidelines were included in the setting up and the running of the project from the outset. We organised this action-research by putting foras on the ground in six locations - some were cross border, some were in the heart of mid-Ulster, Ballymena, and Belfast.

We brought women from various different constituencies - trade unions, community, women's, ethnic minorities and disability rights backgrounds. We put them together in a room to discuss the issues affecting them. How had the Peace and Reconciliation Programme been useful to them and their organisations? We provided information about the PAFT guidelines - and a number of very interesting things happened. It was interesting because, for the very first time, many of us saw women from different interest groups sitting down together and exploring the common issues of concern that they had, but also listening and trying to understand what it was like for another person who they had had very little knowledge about before. We then took the PAFT guidelines and tried to use them as a type of a tool to understand how to make fairer decisions. PAFT was very well received by the women. The first comment was why they hadn't heard of them before; and then - how they can be used, and when and where have they been used previously. We used examples like the case Barbara has just spoken about to show that the guidelines have been used in the past. The women felt that surely these guidelines should be put onto a much firmer footing and they all agreed that the use of PAFT was a challenging and very important thing.

The other very interesting thing was that the women could see how the PAFT guidelines could be used when challenging government decisions that were of an unfair nature. They saw that decisions did not have to be simplistically a 'yes' or a 'no', but the use of PAFT provides a fairer investigation about certain dilemmas and decisions that affect our lives. The guidelines also ensure that, if they were followed, the outcomes of decisions would be fairer, more just, less contentious and better value for money as well. Many women took the PAFT guidelines away to their own organisations and said they want to use these in their own circumstances to make themselves fairer - to look at the way they make decisions and to look at the way they interact with other groups. In a way they wanted to "PAFT" themselves and their own work.

We are launching the report on 9th March: WATCH THIS SPACE!!!

Andy Snoddy - Castlereagh District Partnership Board

"Everyone will say they believe in fair treatment, but it is PAFT and TSN that actually give us a mechanism to start to measure if we are actually delivering fairness. That is the importance of PAFT for me"

Before I start, I think you should understand how the District Partnership Boards are made up. There are nine councillors, nine from the voluntary and community sector, some trade unionists, some business people and some from the statutory agencies. As a result they are very diverse mixture of people from all sorts of different constituencies. Our function was to distribute £1 million of European P&R money in Castlereagh.

Although the Partnership had PAFT and TSN written into the guidelines, it is fair to say that most of us did not know what PAFT and TSN actually were. We spent some considerable time debating them and trying to get our heads around them. However, I have to say that without PAFT it would have been impossible to distribute this money in any sort of fair or objective way. Using PAFT and TSN, we were systematic in analysing what the problems were in the Castlereagh area in order to determine objectives and prioritise things we should be supporting. If we had not had PAFT and TSN, we would have had different interest groups from the voluntary sector, communities and Councillors etc., arguing for their pet projects and their particular areas. It was the guidelines that kept us on the straight and narrow.

It was very interesting that the University of Ulster evaluation of the work of the District Partnerships actually recommended that the CAJ checklist on PAFT should be incorporated into all Partnership programmes. The checklist itself did not come from

university or academia, but from a group of trade unionists who are all members of District Partnerships, and who sat down and debated how we were to be fair in distributing this money. Everyone will say they believe in fair treatment, but it is PAFT and TSN that actually give us a mechanism to start to measure if we are actually delivering fairness. That is the importance of PAFT for me.

Margaret Dunlea - Disability Action

“Most of the time legislation is intended to tackle something that has already happened. Where I see the importance of PAFT is the fact that it is a positive and preventative measure.”

I have some knowledge of PAFT but precisely how it is being effectively or ineffectively used for people with disabilities to date, there is no major evidence that I am aware of. I will therefore set the scene in terms of the constituent body of people with disabilities in Northern Ireland currently, and how I would see that putting PAFT into legislation would make the guidelines more effective.

In terms of people with disabilities, most people in the audience will probably know the statistical information. The most recent government surveys were commissioned around 1989. The last of the reports was produced recently and states that there are 201,000 adults with disabilities in Northern Ireland and about 14,600 children. If we look at that 201,000, 75,000 are deemed to be of working age. Even if we consider that the effect of some peoples' disabilities means that they are not actively seeking work, we are still talking about a body of people of working age somewhere around 30,000.

The legislative process that has been around so far has not actually done anything much to address the particular needs of that group of people. For example, the whole philosophy that underpinned the post-welfare state, and certainly the Beveridge report, was that of active citizenship within a framework of entitlement or rights. Obviously, Disability Action is very much a rights-based organisation. However, what actually emerged was a system of needs-based legislation which was all about arranging services for disabled people and 'doing to them' rather than guaranteeing them rights.

All of you would agree with me that disabled people still face discrimination in all aspects of their daily lives e.g. the perennial problem of physical access to the built environment, access to information in formats that are suited to their particular needs, choice of housing in an area, access to social life and public transport etc. - all of these interlink with people's ability to be included in society.

It is interesting that William Hague in November 1994, when he was Minister for Disabled People, and when this whole debate about a Bill of Rights versus legislation was going on, announced measures to tackle discrimination against disabled people. He made statements such as "*greater employment opportunities are at the heart of enabling disabled people to be fully active as members of society*" and "*it is wrong that disabled people are excluded from areas of life that the rest of us take for granted*" and "*in effect when they were producing this legislation the measure are designed to tackle the discrimination that exists against people with disabilities*". This sets the scene.

The difficulty with something like the Disability Discrimination Act is that for the first time it is possible to justify discrimination. In fact what you are talking about most of the time is that the legislation that is there is intended to tackle something that has already happened. Where I see the importance of PAFT is in the fact that it is a positive and preventative measure. If I may borrow from Maggie's notes about PAFT, it seeks, "*to ensure that government's policies are not discriminatory*". In essence, it is gauged in a positive way rather than a negative way. Presently, you are having to fight for something that has gone wrong, rather than preventing it happening in the first place. With PAFT, there is an onus on government to consult with the constituents that they deal with.

Finally, I happened recently to be at a course which was geared at issues around equality and sport, and there was a saying of Martin Luther King's quoted which is very apt for today's discussion;

*"Legislation cannot change hearts and minds,
but it can stop the heartless".*

Obviously that is the importance of legislation and the importance of putting PAFT on a legislative basis.

Maggie Beirne

Unfortunately Billy Hutchinson was invited but is not able to attend. He sent his very sincere apologies and said he would very much have liked to have been here. He was at an event CAJ organised in December on TSN and PAFT, and was a very active participant. He asked that I read a message on his behalf.

**Billy Hutchinson –
Community Worker, West Belfast**

“PAFT establishes a system within which government is obliged openly to consult with those most affected by the decisions to be taken. This both allows for more open government and reduces the sense of the disadvantaged competing with the disadvantaged”.

The government is actively considering how it can more effectively put issues of equality and equity at the heart of its decision making processes. Anyone who does not think that this needs to be addressed urgently, clearly has not realised the extent of serious poverty that exists in Northern Ireland. Even a specialist committee of the United Nations in recent findings criticised the extent to which there were increasing gaps in the UK between rich and poor, and went on to specifically describe the levels of poverty in Northern Ireland as “unacceptable”.

It is a key government policy commitment to effectively skew resources towards reducing this level of deprivation, but as yet this policy remains little more than a vague hope. Moreover, it is important in targeting resources at the most needy, that we recognise that there are many ways that disadvantage can show itself. Attention tends to focus on the unemployment differential - that is the level of inequality between the two main traditions. However, there are a whole range of groups outside the mainstream of government decision making: women, the elderly, young people and people with disabilities being obvious examples. Given the range of disadvantage, it is important that government does not create a hierarchy of inequality between these different groups which would only lead to competition amongst them.

The government has available to it a mechanism for addressing these various forms of inequality, but has to date failed to put it into practice. The Policy Appraisal and Fair Treatment guidelines recognise the many different forms of inequality which exist in Northern Irish society, and provides a structure for addressing and eradicating them. PAFT establishes a system within which government is obliged openly to consult with those most affected by the decisions to be taken. This both allows for more open government and reduces the sense of the disadvantaged competing with the disadvantaged.

I endorse any initiative to give PAFT a statutory basis and welcome the proposal from Chris McCrudden which will hopefully facilitate a debate around how best this might be done.

**Terry Enright –
Vice Chairperson, Springfield Development Trust**

“There is a necessity to strengthen PAFT in a way which will improve the quality of life for our people, will build a whole togetherness, and will have everybody thinking and believing that they have a share and stake in what is happening in the North of Ireland”.

The Springfield Development Trust represents an area of about 11,500 people. A number of years ago we came together with people from the Shankill to bring about a plan for social and economic regeneration. That plan was consistently based on fairness and equality, and us sitting down and talking.

I said to Chris that I ploughed through all the stuff last night and it is excellent. What has been needed and what has been missing is the necessity to make PAFT statutory so that people cannot walk away from it. People like ourselves very often work so hard to bring together people, to build whole infrastructures and to bring about changes in inequality of life of our people. And then, at the end of the day, someone will say, "no we're not doing it" or "there is no money there for it and for yourself". Although our experience has been good in terms of dealing with statutory agencies, at the end of the day sometimes it seems to the community and voluntary sector, that the trust is all going one way and not coming back again.

I gave Chris an example where we have a good development officer who was putting in an application. In the middle of it was all this stuff on PAFT policy. I told her this was very good. She said that she mentioned PAFT in everything. However, at a meeting last night I was trying to get a lot of people to come here and I was giving a brief explanation of what PAFT is, and she said that she never actually knew what PAFT was. She had just put it in as a matter of course. To many PAFT had become a way of life: it had become something that does not happen.

What I would very much like to see is a strengthening of the thing because it is a way of bringing people together. It is a way of bringing the two main traditions together and all the other people in - Patrick Yu would speak of the multi-ethnic society we have in the North of Ireland. This involvement and participation is really important, especially for those people who are pushed to one side like Travellers etc. That cannot or should not happen anymore. People have to take responsibility in and for government. The main thing is for communities and for people who work in all of these sectors to be part of the decision making process. This was not there in the past.

MBW helped and encouraged us to set up a grouping called the Greater Belfast Community Network, which was people coming together to share experiences and to help build infrastructures. We worked at this for years, we built relationships, and then finally we wanted to set in place a whole staffing structure to carry it out. MBW staffing changes meant that it all went to the wall and we are now fighting a rearguard action. What about all the work we have done and this great idea? Instead a hatchet job was done, talking about the lack of a need for a trade union type organisation representing communities. We are fighting at the moment, and are demanding that these people listen to us because this has been shown to work. It is essential for us to get to this stage.

With regard to the necessity of monitoring, Chris's proposal suggests that this take place about every five years. However, I think a shorter period is necessary because when I spoke at our local community forum last night, people said five years was far too long. The whole experience of fair employment was that it was a problem because there were no goals and timetables. Therefore, there is a necessity to strengthen PAFT in a way which will improve the quality of life for our people, will build a whole togetherness, and will have everybody thinking and believing that they have a share and stake in what is happening in the North of Ireland.

Maggie Beirne

On behalf of all of us, I would like to thank Terry very much for coming today. When I was thinking about this event yesterday, I felt that some of the issues can sometimes seem so abstract. However, these presentations show how the equality and fairness agenda goes to heart of the conflict here. People are suffering as a result of that agenda not being addressed. I think part of what we are trying to say is that this is a constructive way forward. Here is an agenda around which people of very different backgrounds, and very different opinions, can come together and share their concerns around inequality and move us ahead to a fairer society. Again, I would thank all the panellists, but particularly Terry.

Would anyone like to add a different dimension on things that have come from the panel?

Patrick Yu - NICEM

PAFT is an important instrument to protect ethnic minorities in Northern Ireland. To put it this way: PAFT is the skeleton of the body and TSN is its flesh. Therefore PAFT and TSN are two sides of the same coin, and it is this extremely important combination which is so useful in addressing equality issues.

Although the race relations legislation was introduced in August last year, institutional racism is still the daily life experience of ethnic minorities. In order to place the duty of

equality proofing fairly and squarely into the decision making processes, the policy and law-making of all public authorities (in particular those who are exempted from race legislation), PAFT should be placed on a statutory basis. The Northern Ireland Council for Ethnic Minorities (NICEM) supports the proposals in this regard.

Paul Noonan (BTEDG)

Following on from what Patrick, I would like to give a specific example relating to Travellers. The DOE claimed that their proposed new legislation against camping had been PAFT-proofed: we have to take their word for that, but if PAFT was on a statutory basis, we could challenge them to see the evidence of how they had reached that conclusion.

DOE also set up a working party over two years ago to look at the whole situation of accommodation for Travellers, and to review it in order to assess how effective provision has been to date. In that working party, we believe that they did not effectively consult with Travellers or Traveller support groups. PAFT will enable us to challenge that situation.

Ciaran Kearney (Falls Community Council)

I would strike one note of caution. I think PAFT and TSN offer a lot of optimism for people in marginalised groups, but the British government under Labour has now introduced a programme of Welfare-to-Work and it is not going too far as to describe it as almost a 'crusade' for them. I am concerned that, particularly with the New Deal initiative, the dogmatic approach of the government will sweep to one side the measures such as PAFT which would make these initiatives impact more fairly on the most needy.

Appendix Three – Benchmarks for Change

Dr Chris McCrudden

Benchmarks for Change:

If not this, what?

If not now, when?

The text of Dr McCrudden's speech is not reprinted here in full since it was to a large extent an exposition of the proposed legislation itself and a report-back on the extent to which it had proved possible to incorporate the various contributions received. There were however a number of points made in his speech which are not necessarily touched-upon elsewhere in this paper.

- These proposals provide a set of benchmarks for change against which the government's response to SACHR's recommendation for a statutory basis for PAFT can be measured. Any government response that does not respond positively to and indeed build upon the unanimity of purpose that has evolved in the course of the consultative process around this issue will be seriously flawed. A positive government response would, however, have very widespread support.
- My proposals derive from what is clearly a widely shared commitment to the concepts of equality, participation (especially by the most marginalised in society), impact assessment, transparency of decision making, and accountability. While not everyone will be in perfect accord with every detail of the attached material, there is a clear consensus that it is these principles which must be put into effect in any eventual legislation. Accordingly, the proposals constitute an explicit test of the credibility of any government initiatives in these areas.
- Northern Ireland's civil society – epitomised at this very launch – is rich, varied, and highly engaged. Future arrangements for government must reflect this reality, since this dynamic for change and involvement is vital to the underpinning of a fairer and more peaceful society.
- The point which Terry Enright reported from his local community forum about the need not only for change, but for goals and timetables which would allow us to measure change (or the lack of it) and take action accordingly, is a very important one.
- Equality of opportunity needs to be put onto a statutory basis in a way which provides measurable outcomes of participation and impact, and this proposal is a concrete suggestion of how that might best be done. Action now to reduce inequalities in our society is urgently needed.

Appendix Four: The Challenge of Change

Inez McCormack for UNISON

These principles and this coalition create a context within which sustainable peace can truly take hold. The onus is now on government to match these standards of generosity and vision by building on this alliance and its positive agenda for change. Only thus, will our future be different from the past.

At the launch of this proposal, Barbara McClenahan said of UNISON members: “We have campaigned for fair treatment for nearly 20 years. It had been secured as a government policy, but the first time we tried to use it, the government went back on its own policy”. In this period, there has been much rhetoric and a number of initiatives: yet these have failed to deliver measurable and inclusive change for those who most need it.

Accordingly, in 1996, UNISON commissioned Dr Chris McCrudden to apply his experience and skill to a critical examination of the potential for fair treatment offered by the government’s PAFT guidelines. We believe that the proposals to mainstream fairness being put forward in this paper, provide effective benchmarks to test existing and proposed new equality mechanisms and have the capacity to create measurable change. They support a process of necessary change by establishing effective standards of participation and inclusion in the decision making which affects people’s lives.

Dr McCrudden has helped make the word PAFT a verb: “to PAFT something” means to tackle inequalities in society by involving people (especially the most marginalised) directly in the decisions affecting their lives. In doing this, he has helped us recognise that the process of PAFTing enables people to take responsibility for their own future, and thereby become agents of their own change. I have seen how the process of working together, within a culture of justice and fairness, provides the basis for respect among people who might otherwise be alienated from one other, or from society more generally.

This paper is very timely. The peace process provides a rare opportunity to initiate and build upon this dynamic for change that, while effectively addressing, also transcends the traditional barriers that divide this society. Dr McCrudden’s work has empowered various constituencies of the disadvantaged to produce, and then put into practice, tools of change which directly address their own inequalities and alienation. In the process of doing this, people have also exercised great generosity and imagination in addressing the needs of others. A broad coalition of interest has come into being as a result of the CAJ consultative process. This initiative provides irrefutable evidence that principles of fairness, participation, and inclusive change, are not, as they are so often portrayed, and as they have so often been in the past, issues which of necessity divide people. Instead, these principles and this coalition create a context within which sustainable peace can truly take hold. The onus is now on government to match these standards of generosity and vision by building on this alliance and its positive agenda for change. Only thus, will our future be different from the past.

