

## Up to date with the rights debate


**Developing recommendations for what should be in a Bill of Rights for Northern Ireland is an exciting challenge, and one that CAJ is proud to be involved in. By representing the human rights sector on the Bill of Rights Forum, we hope we can bring expertise and enthusiasm to the task.**

Again, progress has been made in that the Forum has now agreed both to increase general public awareness of its work and identified key marginalised and underrepresented groups to involve in the consultation. The Northern Ireland Office has approved a funding request which will allow this to happen. This may not be as extensive an outreach programme as CAJ and others may have hoped for, but for our part we will continue to raise awareness of and encourage participation in the debate.

The process to date has not always been an easy one. Since we last reported on the workings of the Bill of Rights Forum (June 2007) there have been three further meetings, and some prolonged discussions about how we will make decisions and engage in outreach. As regards decision-making, after much discussion over several meetings as to the level of negative vote required to block consensus, the Forum has now agreed the following:

- There will be a final package on which the Forum will strive to gain consensus.
- A proposal will be included for consideration in the package if there are not more than 9 votes against.
- The Forum will convey its views to the NIHRC on its conclusions.
- The range and extent of views on all proposals will be recorded and reported, including those not in the package.
- The Forum defers determination of how it will consider the proposals, either in their entirety or item by item or both, and the required number of votes for inclusion.

As for outreach, it had been clear that while there were differing views as regards the exact nature of outreach in which to engage, there was near consensus among Forum members on the need to ensure that this process particularly accessed those who had not previously engaged in debates about human rights or a Bill of Rights. While the Chair had asked the Secretary of State for an extension to the timeline set for the Forum, requests for further funding were delayed until clarity was achieved among the Forum on how these funds would be used.



**Annual General Meeting**

**Will take place on  
Wednesday, 24<sup>th</sup> October 2007**

**At 7.30 in the  
Law Centre (NI) offices,  
124 Donegall Street  
Guest Speaker: Nuala O'Loan**

**All members welcome**

We are also happy to report that the Forum has now divided into six working groups to begin discussing issues of substance, namely children and young people and women's rights; civil and political rights (including equality); economic and social rights (including equality); criminal justice and victims; culture, identity and language; and preamble, enforceability and implementation. CAJ convenes this latter group, and is represented on the economic and social rights and civil and political rights groups. We have also been fortunate enough to recruit volunteers to observe all other Working Groups who can keep us up to date with the discussions therein.

Hopefully matters of process have now finally been largely dealt with, and the work of agreeing what a Bill of Rights for Northern Ireland might contain can begin in earnest. We look forward to contributing to these important discussions and will keep Just News readers informed of progress.

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# Public Prosecution Service under the spotlight

**Criminal Justice Inspection Northern Ireland (CJI) recently published its report on the first full inspection of the Public Prosecution Service (PPS). The report, which is available on the CJI website [www.cji.org.uk](http://www.cji.org.uk), runs to some 140 pages and makes 17 recommendations for change within the PPS as well as identifying another 21 issues to address for the organisation.**

CJI began the first full baseline inspection of the PPS late last year when Kit Chivers, the Chief Inspector of CJI, formally delegated his power to inspect the PPS to the Chief Inspector of the Crown Prosecution Service, Stephen Wooler. The inspection was carried out by a team comprising inspectors from the PPS and CJI. The team carried out almost a month of fieldwork visiting each PPS region and speaking to a range of consultees including representatives of other statutory agencies, the judiciary, defence lawyers, political representatives, and NGOs including CAJ.

A key element of the inspection involved the examination of a sample of PPS files. A representative sample of more than 300 files closed during the three months leading up to November last year were examined to determine the quality, independence and fairness of PPS decision making.

The inspection examined a range of issues including the relationship between the PPS and other statutory agencies and in particular the police and the courts. It also looked at the services provided by the PPS to victims and witnesses and the relationships between the PPS and the wider community. The inspection focused on the extent to which the PPS is meeting its aim of providing a fair, independent and effective service to the people of Northern Ireland.

## Giving of reasons

A number of matters which have been of interest and concern to CAJ, and which will be familiar to readers of Just News, were examined. These included the issue of the giving of reasons when

decisions are taken not to prosecute or to withdraw cases. The practice of the PPS up until now has been, in the main, not to give detailed reasons when such decisions are taken. This practice was successfully challenged by CAJ before the European Court of Human Rights in the Kelly v UK and Shanaghan v UK cases. However, the judgement in those cases, where the Court said that the circumstances were “crying out” for a public explanation, related only to cases involving Article 2 of the European Convention – the right to life. It did not apply to the vast majority of cases that the PPS deal with.

During the inspection we found that, although the PPS Code for Prosecutors did allow reasons to be given to the victim upon request, in most cases this was only done in very general terms. We therefore recommended that in future PPS lawyers should (*“save in exceptional circumstances, set out clearly to the victim or personal representative their reasoning for directing no prosecution or withdrawing proceedings.”*) While this policy should apply to all future cases we also recognised that it is in the public interest that it also applies to historical cases and particularly those being investigated by the Historical Enquiries Team. In particular, we reminded the PPS of the potential impact of their decision-making in cases where the state may have been involved: *“[I]n the context of the recent history of Northern Ireland, the import of how the PPS policy on the giving of reasons where a death is, or may have been, occasioned by the conduct of agents of the State is applied to any HET cases cannot be underestimated and will have a significant impact on the confidence of the communities in how the Service applies the rule of law.”*

## Fairness

We also tried to determine the fairness of case outcomes of PPS decisions. We found that there were no systems in place which would allow for the analysis of case outcomes by way of community background or ethnicity. We recognised that the production of this type of information is not something that the PPS can do alone but requires all of the criminal justice agencies working together.

While we did not find any evidence in our file sample that decision making was unfair, we urged the PPS, once the necessary mechanisms are in place, to produce casework outcomes by community background and ethnicity.

### **Independence**

As indicated above, we also inspected the extent to which the PPS is independent, both in terms of its status and its decision-making. Currently the PPS is funded by the NIO but is subject to the superintendence of the Attorney General. This reflects the situation which existed in relation to the old office of the DPP. However, the superintendence of the Attorney General is very different from what might be expected in a normal Minister/Department relationship. This is because it tends to concentrate solely on decision-making as opposed to performance or other managerial issues. This has led to a situation where the government department responsible for funding the PPS does not engage in the normal dialogue about performance which should take place between a funding department and a publicly funded body.

We were also concerned that the legal status of the PPS was unclear. While it is a separate organisation from the NIO for operational purposes, it is essentially a part of the NIO for staffing and budget purposes. We were concerned at this lack of clarity in relation to its status and the disjunction between funding and accountability. We felt that it would be preferable if the PPS could be placed on a sound footing as an independent government department and made a recommendation to this effect. We argued that this would not only give institutional expression to its independence, but also assist management in the PPS to resolve a number of current problems.

### **Equality**

One of these current problems relates to the obligations of the PPS as an employer in the context of Northern Ireland's equality legislation. Senior managers in the PPS, including those with responsibility for recruitment and retention, told inspectors that they were unaware of the composition of their staff. This situation had apparently arisen because the equality information on the PPS staff, once collected, was included in the overall returns of the NIO to the Equality Commission. We therefore requested a breakdown of PPS staff (which was published in the report) and recommended that in

future management regularly obtain such information and take steps to reinforce the principles of equality throughout the organisation.

We found no evidence that PPS decisions were unduly influenced by anyone.

However a common theme in the information which we gathered from those who had dealings with the Office of the DPP was scepticism about whether decision-making by the PPS was genuinely independent. In particular, cases involving allegations of unlawful activity on the part of the state or its agents and high-profile conflict related cases were mentioned. None of these cases featured in our file sample and we of course do not have the power to investigate individual complaints. Our focus was on the current position.

### **Disclosure**

There was also concern expressed about the handling of the disclosure of sensitive material in a small number of high profile cases. We were also aware of a recent judgement which commented critically on the failure of the PSNI to disclose information to the PPS. However, this inspection was focusing on the introduction of the new service across Northern Ireland and we did not have the capacity to examine this matter in any detail. It is our intention however to conduct a separate review of disclosure during 2008.

We recognised that significant progress has been made by the PPS in rolling out its operations across the whole of Northern Ireland but we were also aware that the Criminal Justice Review reported more than seven years ago and expressed the strong view that the roll-out should be completed as soon as possible. We pointed to the opening of regional offices as a major development in the process of establishing public confidence in the PPS and urged that the offices in Derry/Londonderry, Omagh and Newry be opened quickly to ensure the development of relationships between the PPS and communities that might in the past have been estranged from the criminal justice system.

Inspectors felt that a cultural shift was necessary in the PPS to allow greater transparency and a more engaged relationship with the public and with the media. In that context, we feel that the PPS has an opportunity to establish itself as an influential actor and one which matches the recent progress that has been in Northern Ireland as a whole.

*Paul Mageean*  
*Inspector*  
*Criminal Justice Inspection NI*

# Getting the P

**Undoubtedly one of the biggest challenges facing the new Northern Ireland Executive will be negotiating its way around current tight financial constraints. Notwithstanding difficulties around decommissioning and the implementation of the Patten report, the previous devolved administration was working within a context in which public spending was rising. The funding surplus was mainly due to quite a bit of extra “New Labour” cash floating around with Northern Ireland benefiting from the overall increase in public spending across the UK. The present situation surplus is somewhat different, with public spending facing a tight squeeze.**

The next few years are likely to see some seriously problematic chickens coming home to roost when local parties have to actually decide, within their limited budgets, priorities in relation to their spending plans. The simple fact is that there is not going to be enough money to go around and there will be some serious winners and some even bigger losers in the spending process.

## Reviewing Spending

Becoming a “spending priority” is clearly therefore rather important in ensuring that some projects or programmes are delivered. The difficult question however is how this is to be achieved. As we have seen, government will not have much scope to raise its own money – and the Treasury is somewhat constrained in its ability to allocate increased revenue. A more specific constraint is the Comprehensive Spending Review (CSR) put in place by former Chancellor Gordon Brown.

The first aspect to the CSR involves government departments identifying “efficiency enforcement savings” of 3% per annum for the next three years.

Essentially government departments have to look at all areas of government spending, identify areas in which spending could be “trimmed”, and the money gained from the efficiency savings would then be ploughed into front line services.

All this is fine in theory – few readers of Just News would argue with a need for more efficiency within government – except that government departments themselves have to find their own efficiencies. It is of course an adage of government – and indeed life – that turkeys tend not to vote for Christmas. Equally, when faced with the need to make efficiency savings, the experience in Northern Ireland in the past has been for efficiencies to come not out of central government budgets posts, but from the very front line services that should be getting extra resources.

The CSR efficiency savings will be an unpleasant and indeed painful exercise undoubtedly involving cuts in expenditure for agreed programmes and projects. The key will be ensuring however, that those in most need, those who tend to have the weakest voice, do not finish up losers in a project that was meant to actually leave them better off. To this end CAJ wrote in July to all Ministers and submitted a paper highlighting the issues. We sought a reassurance that there would be no direct or indirect impact on those in most need as a result of the efficiency savings.

## Prioritising Spending

The efficiency saving is however only the first part of the process. The next stage involves determining where the extra funds go. Under Direct Rule four criteria were established to determine how the extra resources should be shared out, namely:

- Children and Young People
- Anti-Poverty
- Shared Future
- Sustainability

# Right Priority

Again, in theory, spending programmes that were aligned to these “cross-cutting” themes should feature as priority areas for funding. One of the problems that CAJ has identified with this process however is that there appears to be a lack of any detailed guidance across government in relation to what would constitute each of the four themes. What in practice would constitute an anti-poverty measure?

For example the anti-poverty strategy document “Lifetime Opportunities” makes quite a play about the New Deal programme for unemployed people. It stresses that its measure has been so successful that New Deal will be made mandatory for those people who are unemployed and aged over fifty.

Closer inspection of the data from New Deal however reveals that statistically New Deal plainly fails to deliver for those in most need – in fact New Deal is least successful in those areas that are poorest. According to data from DEL, one would seriously question the wisdom of continuing with New Deal at all. Paradoxically given that the programme is mentioned in the Lifetime Opportunities document, it could be argued that as an anti-poverty measure, it should be a spending priority!

Whether programmes like New Deal are assessed on what they actually do (which would be our view), or whether they are assessed on the basis of what they *claim* to do, remains to be seen. Again, CAJ raised this issue in the paper that we submitted to ministers.

Positively, local ministers responded well to our submission and indicated not only that they shared our concerns but that they would be ensuring that the process delivered for those in most need. However, this is going to be a complex, drawn out affair with competing interest groups – including NGOs, trade unions, civil servants, business leaders and many others all seeking to exert their influence.

## Assessing impact

The experience of such processes in the past has been that inevitably those with the least capacity to articulate their viewpoint – usually those with least access to power - tend to come off worst. It is clear that the fairest and indeed conceptually most effective way of carrying out exercises around the distribution of resources is to apply the Equality Impact Assessment approach. At least in carrying out an EQIA a government will know where its money is going – whether for good or ill.

Minimally, CAJ has always argued that there is an inherent advantage to be gained for any administration in seeking to determine what impact spending will have on the rates of inequality across society. Even governments not necessarily committed to securing greater equality, would surely in our view wish to know whether it is taking place, which is why high-level policies such as the CSR should be subject to equality impact assessment. Unfortunately, the last experiment in devolution was disappointing in relation to the extent to which we were able to determine the “equality impact” of government spending programmes as a whole.

The traditional response from government has always been that such a process would be much too complex. CAJ’s view has consistently been to point out that most newspapers and TV programmes, within hours of the Chancellor delivering his Budget, are able to produce an easy guide to the “winners and the losers”.

Such an exercise is in our view a simple version of an EQIA that has so far surpassed anything that the combined talents of the OFMDFM and DFP officials have produced. Whether the new ministers will have better success in what their officials can deliver in this respect remains to be seen.

# Applying equality in practice

**In terms of the budget process, CAJ has consistently argued for the Equality Commission to get more involved in giving an equality ‘take’ on such debates. It is therefore very welcome that the ECNI has issued an invitation to tender for a project**

*“To produce an economic analysis of the draft NI budget from an equality of opportunity and good relations perspective, to contribute to the Commission’s work to effect change”.*

The ECNI wants the tender to look particularly at the four priority outcomes it has set for this Comprehensive Spending Review, namely:

- the elimination of the gender pay gap by 2015;
- the mainstreaming of equality of opportunity for Travellers in education;
- ensuring that Northern Ireland infrastructural investment be of equal benefit to all;
- improving employment opportunities and reduce poverty for people with disabilities.

CAJ looks forward to seeing the completed tender process, but has some questions as to the priority outcomes selected.

To take the first objective – to eliminate the gender pay gap – several concerns arise. Whilst an eminently desirable objective in principle, the CSR has a limited role in this regard, given that the private sector, which has a larger gender pay gap than the public sector, is not addressed. Moreover, public sector pay is determined at the UK rather than NI level, so it will be unlikely that any local government department can introduce pay arrangements which differ from those in Britain. Even if the local ministers had such authority, the trades unions have opposed any form of regionalization of public sector pay on the basis that those in Northern Ireland would be worse, not better off.

Government efficiency savings, and the cuts that are expected to flow from the Review of Public Administration, might secure a reduction in the gender pay gap, but at an unacceptable cost. For example, one of the easiest ways to reduce the gender pay gap would simply be to axe low paying jobs given that women are disproportionately represented in low paying jobs, so the loss of such jobs, would reduce the gender pay gap. The ECNI would presumably not want (in what economists have called “the law of unintended consequences”) to see a reduction in the gender pay gap at the cost of low-paid women workers.

This example highlights how important it is to give detailed consideration to the real options to be advocated with government, and the value of working closely on such issues with representative trade union, pay review, and other bodies in order to ensure that there are no unintended and adverse consequences.

In a totally different case-study regarding public expenditure decision making - Sport Northern Ireland recently issued a press release announcing that 15 projects they had assessed were moving to stage two of the Elite Facilities Capital Programme. DCAL’s indicative budget figures for the years 2008/09 to 2014/15 included £53 million for the Elite Sports Facilities.

There were 27 original applications and 15 have now been short-listed and invited to present an outline business case of their proposals. Among the successful applicants are Ballyholme Yacht Club, Bangor (sailing), Meadows Equestrian Centre (Portadown), Coleraine Academical Institution (indoor rowing) and Grosvenor Grammar School (fencing).

With the exception of two entries (from Belfast and Antrim Councils for athletics facilities), the proposals appear to relate not merely to “elite” in the sense of high quality, but “elite” in terms of “select” groups/interests.

CAJ intervened some time ago with the Sports Council and others with regard to their tendering process for Olympic facilities; it appeared that the process had overlooked the importance of having tender documents address government’s equality and targeting social need objectives. Only recently, commentator George Monbiot in an article in the Guardian talked about the tendency of the Olympic games to suck money out of communities and into elite sporting facilities that benefited the privileged. Clearly, it seems that this is happening in Northern Ireland.

Of course, this is only one programme. The problem however is that there is no clear assurance that overall resources are being directed at those in least, not most need. In a context in which public spending is being squeezed, serious questions need to be asked about the value of diverting resources to luxury projects that Northern Ireland would appear to be ill able to afford. Under devolution the Executive may not have the resources to do everything, but the setting of priorities becomes all the more important. Local ministers need to recognise that in three or four years time, these are the kinds of questions they might have to face on the doorstep the next time they come looking for votes.

# Making the right to housing real

**On 13<sup>th</sup> June 2007, residents of the Seven Towers in the New Lodge area of north Belfast held a landmark 'Evidence Hearing on the Right to Housing' at the Indian Community Centre. The Hearing marked an important phase in the residents' work with the Participation and the Practice of Rights (PPR) Project.**

The Seven Towers were constructed in the late 1960s and are in a serious state of disrepair. With pigeon waste spoiling the communal landing areas where children play, dampness and mould prevalent throughout the flats, and sewage backflow filling up baths on regular occasions due to inadequate drainage facilities, the Seven Towers residents rightfully complained of their human rights to housing being violated. These issues are compounded by both a lack of accountability of the relevant statutory bodies and the inability of residents to participate in decisions about their housing.

In April 2007, residents began a process of drawing up a human rights baseline in their community to assess whether housing rights were being realized in fact.

Following this baseline, residents then developed local human rights indicators and benchmarks to determine how their housing rights could be improved over a twelve month period. This innovative approach was an attempt by residents to concretely define what 'progressive realisation' of the international right to housing and the right to participation would mean at a local level.

The purpose of the Hearing was to provide residents the opportunity to present their findings and gain expert advice on the validity, or otherwise, of their human rights indicators and benchmarks methodology. An impressive International Panel of housing rights experts was convened to hear the verbal testimonies and consider other submissions. The Panel included Bruce Porter (Director of the Social Rights Advocacy Centre, Canada), Odindo James Opiata (Director of Hakijamii Trust, Kenya) and Leticia Osorio (Centre on Housing Rights and Evictions, Brazil).

The residents' testimonies and evidence were supported and supplemented by a number of organisations including Liam Wiggins (New Lodge Housing Forum), Tim Cunningham (CAJ), Nicola Browne (PPR Project) and housing rights academics and lawyers (Dr Aoife Nolan (QUB) and Prof. Padraic Kenna (NUI Galway)). These presentations managed to give both an historical overview of housing issues in north Belfast and placed the residents' housing rights issues within the wider context of both domestic equality legislation and international human rights standards.

On 3<sup>rd</sup> July 2007, as a direct result of the Hearing, the Minister for Social Development, Ms Margaret Ritchie, visited the residents to receive a presentation on the evidence presented at the Hearing.

The Minister committed her Department to working constructively on the indicators devised by the residents and agreed to receive official reports from the newly established Seven Towers Monitoring Group on progress, or otherwise, of the human rights indicators. The ability to draw the immediate duty bearers into a process which was constructed by residents using a 'human rights based approach' was rightly seen as a significant step forward in the process of redefining the power relationship between the rights holders and the government.

In August 2007, the residents commenced the process of monitoring the human rights indicators and benchmarks. The first indicator was the number of partitions with pigeon waste in the communal landing areas of the Seven Towers and residents had set a benchmark of 100% being clean every month.

In comparative terms, this indicator should be the simplest and most straightforward for the NIHE to deal with. Using photography and report cards residents checked every landing in the Seven Towers and found that 47% of them were not clean of the pigeon waste. While it seems the NIHE had erected 'grills' on the exterior of the buildings to prevent pigeon entry, they had not cleaned the partitions prior to this action. Additionally, and crucially, the NIHE had not even consulted the residents involved in raising the issues, about the erection of these 'grills'. Had they done so, they may have met the first indicator and instilled confidence in the process agreed by the Minister.

The International Panel published their Findings from the Hearing in September 2007. Monitoring, alongside continued campaigning, will continue by the residents. In the words of resident Kerry Haddock, human rights activist and resident of the Seven Towers: "We don't need any more words. We don't need any more visits from officials to tell us what we already know and what we can already prove. Residents of the Seven Towers need action, and not just action on this issue (pigeon waste) but all of the issues the Minister committed to addressing."

If you would like to receive a copy of the 'Evidence Hearing on the Right to Housing' resource pack including the Hearing Report, Findings of the International Panel, First Report of the Seven Towers Monitoring Group and a DVD resource, please contact [dessie@pprproject.org](mailto:dessie@pprproject.org)

**Dessie Donnelly**  
**Participation and Practice of Rights Project**

## Civil Liberties Diary

### 1<sup>st</sup> August

House of Lords rules that an inquiry into the murder of Robert Hamill can go ahead at the earliest possible opportunity. A total of 20 retired RUC officers claimed they would be in fear of their lives if identified and had fought a decision by inquiry chairman Sir Edwin Jowitt's team. The Law Lords said the Hamill tribunal had used the correct test in judging whether officers would be put at risk by appearing unshielded.

### 2<sup>nd</sup> August

PSNI deny using CS spray on a pregnant woman and a disabled teenager in north Belfast. The alleged events followed an altercation near the teenager's home following a report of self harm.

### 3<sup>rd</sup> August

Figures released by the Department of Social Development show that some 120,000 children live in poverty in Northern Ireland.

### 7<sup>th</sup> August

A High Court judge refuses to grant leave for a legal challenge into the murder of LVF leader Billy Wright in 1997. The bid was brought by six serving and former employees of the Prison Service who expressed fears that they could end up in court as a result of the terms of reference of the inquiry.

### 9<sup>th</sup> August

DUP call on the Parades Commission to examine whether future gay pride parades should be restricted after this year's march is accused of containing placards that are offensive to Christians.

### 13<sup>th</sup> August

Charity Age Concern publishes a report warning of a pandemic of conditions like dementia and depression across the UK. They call for more funds to be made available to lessen the hardship this will cause to the elderly.



CAJ currently has a vacancy for Director.

For details of this post see

[www.caj.org.uk](http://www.caj.org.uk)

or email

[recruitment@caj.org.uk](mailto:recruitment@caj.org.uk)

### 16<sup>th</sup> August

Report by Bamford Review of Mental Health and Learning Disability recommends changes to current legislation in the area. It claims the individual's autonomy and is inappropriate for those who cannot make decisions for themselves.

### 17<sup>th</sup> August

The Association of Chief Police Officers of England, Wales and Northern Ireland recommends that system of deleting past convictions be amended to allow some convictions to be retained on a person's record for more than the current 10 years.

SDLP councillor Danny O'Connor apologises for calling a disabled colleague on Larne Council "stumpy". Bobby McKee had a leg amputated.

### 20<sup>th</sup> August

The son of a former RUC reservist, Nigel Lutton, calls on the Police Ombudsman to investigate claims that his father was murdered by a police informer.

### 23<sup>rd</sup> August

Lord Eames and Denis Bradley hold a series of meetings with Lord Stevens in London delving into how the so-called "dirty war" by British forces in Northern Ireland was conducted. Over the past 18 years Lord Stevens carried out detailed examinations into allegations of security force collusion with loyalist paramilitaries.

### 26<sup>th</sup> August

Family of John Slane approach the Police Ombudsman to have his killing re-investigated following the murder in east Belfast of the one time chief suspect.

*Compiled by Mark Bassett from various newspapers.*



Just News welcomes readers' news, views and comments.

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*The views expressed in Just News are not necessarily those of CAJ.*



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**Public Prosecution Service under the spotlight**

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**Getting the Right  
Priority**