

No emergency, no emergency law

CAJ was invited recently to meet with the new Independent Reviewer (appointed by government) of the Justice and Security Act 2007. At the time the Justice and Security Bill was proceeding through parliament, CAJ expressed concern at the innocuously entitled “powers” section. This section moved provisions from Part VII of the Terrorism Act which applied specifically to Northern Ireland, and which the government had committed to repealing, to an alternative legislative source (see Just News, January 2007).

We also expressed concern that bestowing such powers on the army removed the scrutiny offered when they are exercised by police. This measure is a retrograde step. We argued that this move was unacceptable and that while CAJ had always been opposed to emergency legislation and the powers contained therein, the case for their retention was even less valid in a period of normalisation and moves to build widespread confidence in policing.

The visit of the annual reviewer prompted us to revisit and refresh our memories on the powers contained in the Act. In general, the legislation seems to be a virtual reenactment of emergency law 14 years after the initial ceasefires. CAJ’s position is that emergency law was invidious during the conflict and only served to prolong the conflict through abuses of the rule of law. Clearly having this legislation in place at this stage of the peace process is more problematic. Specifically, the rule of law requires that reasonable suspicion should be at the heart of power to stop and search and that arrest powers should only be used in relation to the reasonable suspicion of commission of offences. If PACE requires explanation to police officers as to the exercise of powers, the more vaguely formulated powers involving wider discretion should surely also require explanation and clarification.

The stop and question power (s. 21) is extremely wide, it does not require any suspicion concerning the commission of an offence. While the power can only be exercised while on duty, there is no mention of uniform or how a person being stopped can ascertain who is stopping them. In our view, these wide powers are a recipe for harassment and history shows that they can lead to the creation of “suspect communities”. They are also typically likely to result in resistance to questions which then may, by way of subsection (3) lead to the commission of an offence; a case of law generating crime.

The arrest power (s. 22) at least requires reasonable suspicion that an offence is, has been or is about to be committed. However, even under the old emergency law, the arrest power could only be invoked where the offence was an emergency law offence (i.e. what we would understand as a “terrorist” offence). Under this legislation no qualification whatsoever of the term offence is given. Simply “any offence” can lead to arrest without warrant for 4 hours. This is a truly remarkable power and was never attempted during the conflict. It is hard to see how it is justifiable at this stage. Subsection (2) – along with subsection (5), whose meaning is unclear – provides the kind of wide justification which leaves any possible legal challenge to the arrest virtually impossible. The arrest power also confers a consequent power to enter and search “any” premises without warrant to carry out an arrest.

The power of entry (s. 23) is again typically wide and vague leaving too much discretion to the army. There is no requirement for authorization if obtaining it is not “reasonably practicable” This is entry without warrant and therefore without any independent judicial authorization. If the search is for munitions or transmitters it is governed by schedule 3 of the Act. This potentially allows all those in the house to be kept in one room for up to 8 hours – this is house arrest. It also provides wide search powers not just of the premises but also of the people on the premises. Similar arguments generally apply in relation to the powers to examine documents, road closures and taking possession of land.

The review mechanism - as has proved to be the case in the past - is an insufficient safeguard. CAJ therefore reiterates its the position that the powers all need to be entirely discarded and removed.

Contents	
No Emergency, no emergency law	1
The right to life and dealing with the past	2
What the Bill of Rights should look like	3
OPONI: A year into office	3
CEDAW UK examination and report	4
UN Committee on the Rights of the Child criticises Government’s record on children’s rights	5, 6
Can we break the Inverse Care Law?	6, 7
Civil Liberties Diary	8

Investigating the right to life and dealing with the past - what does the European Convention require?

In its submission to the Consultative Group on the Past, CAJ examined the requirements of the procedural aspect of the right to life contained under Article 2 of the European Convention on Human Rights, as set out in key decisions of the European Court and monitored by the Council of Europe's Committee of Ministers. CAJ would suggest that if Northern Ireland is to engage in a meaningful process to deal with the past, any mechanism proposed by the Consultative Group must be compliant with Article 2 as a minimum standard. To comply with Article 2 the requirements are those set out in ***Jordan V UK***, namely independence, effectiveness, promptness and transparency.

Recent speculation in the media has suggested that the Consultative Group might recommend some alternative, independent mechanism to replace the current mechanisms and individual legal remedies available to families in lieu of a more coordinated method for dealing with the past. In asking whether any mechanism constituted to replace current bodies/ processes would be Article 2 compliant in the absence of all relevant statutory powers available to what it would replace, the European Court has never been prescriptive about how the investigative obligation under Article 2 ECHR should be fulfilled. The European Court stated in ***Jordan*** that

"...The essential purpose of such investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility. What form of investigation will achieve those purposes may vary in different circumstances..."

However, ECHR jurisprudence suggests that any mechanism constituted, to fulfil the requirements of Article 2 must, as a minimum, have the features identified in that case i.e. it must be independent, effective, prompt and transparent.

A proposed mechanism complying with Article 2 and allowing for voluntary family participation could provide an alternative to families who wish to participate. CAJ would not oppose such a mechanism, but would stress that any family wishing to participate be afforded support ensuring their full participation. In the past, CAJ and other human rights organizations have questioned the Article 2 compatibility of existing mechanisms for dealing with the past - for example, it cannot be said that the Historical Enquiries team of the Police Service of Northern Ireland is sufficiently independent, reporting as it does to the Chief Constable of the PSNI. Likewise, there are questions as

As we await the report of the Eames/Bradley Consultative Group on the Past, in this and forthcoming issues of Just News CAJ will reflect in more detail on the themes addressed in its submission to the Group. This month we look further at the issue of compliance with Article 2 of the European Convention on Human Rights.

to whether the Office of the Police Ombudsman is sufficiently effective given its inability to look beyond the activities of the police. So an alternative mechanism may be capable of meeting some of these concerns - we will have to wait and see the final detail of what is proposed.

The question may arise as to whether the procedural requirements of Article 2 can be met by a mechanism aimed at securing maximum disclosure in the likely absence of prosecution and in the interests of reconciliation and broader settlement. Legal criteria indicate that 'the interests of reconciliation and broader settlement' cannot operate to dilute the requirements of Article 2 where those requirements apply and can be enforced. European Court jurisprudence indicates in particular that Article 2 will be violated where action is taken which would undermine the public's confidence in, and support for, the rule of law and for preventing any appearance of the authorities' tolerance of or collusion in unlawful acts.

Our conclusions point to the fact that a number of criteria need to be met in the context of Northern Ireland. First, any new arrangements cannot over-ride existing rule of law processes and agreements already entered into. Thus, for example, families should not be railroaded into a transitional mechanism and prevented from requiring an inquest to be held for example. Families should also be able to insist that the police keep a file open pending new information or evidence. Similarly, the Cory and other inquiries should not be discontinued notwithstanding concerns about expense.

The key will be whether an alternative truth recovery mechanism has the capacity to discover more "truth" than currently existing arrangements such as police investigation, inquest or public inquiry. From a human rights point of view, the attitude of government, its agencies and agents will be a very important variable. Is there a willingness to stop prevaricating and fighting the need to open up and be transparent about its role in the conflict? Is there a willingness to answer questions as to how high up the command chain decisions were taken on policies and practices that appear to breach the rule of law? Will the Stalker/Sampson and Stevens Inquiries be opened to public scrutiny? And will the government legislate for any new investigative mechanism to have sufficient authority to access the information it requires to draw conclusions in an independent way? These are all legitimate criteria to apply to whatever recommendations flow from the Consultative Group on the Past.

What the Bill of Rights should say

There are three main elements to the Bill of Rights project as mandated by the Agreement:

- Any new rights are to be 'supplementary' to the ECHR – we are not entitled to replace the Convention but must consider whether any 'additional rights' are appropriate
- Any 'additional rights' must reflect the particular circumstances of Northern Ireland drawing as appropriate on international instruments and experience
- The 'additional rights' must also reflect the principles of mutual respect for the identity and ethos of both communities and parity of esteem

The debate so far persistently ignores this third element of mutual respect and parity of esteem. As it would be illegitimate for government, for instance, to ignore the requirement for regard to international instruments and experience so it is illegitimate for anyone to ignore the requirement that any 'additional rights' must reflect mutual respect and parity of esteem.

Personally, (and I am writing purely in a personal capacity) I am not an advocate that everything here should be seen though 'two community' spectacles. But no one may ignore the Agreement's words. So Agreement compliant 'additional rights' should relate to two community issues such as flags and emblems, parades and (possibly) culture, language and identity. One might come to the conclusion that such are adequately covered by ECHR and that 'additional rights' could do more harm than good: the principle that should underscore the entire debate 'Do no harm'. This does not preclude the Commission pressing for a more encompassing Bill of Rights but any such proposals are not proposals mandated by the Agreement.

I feel the entire debate has been misdirected these ten years. We should consider whether Agreement compliant 'additional rights' could help us to resolve our two community tensions: a 'we the people moment' that could mark the end of the troubles and give us all aspirations for a better way forward. Surely that is the proper role for the Bill of Rights envisaged by the Agreement?

It is not a narrow, limiting task to craft a Bill of Rights in adherence to the Agreements terms. It would unlock what the Agreement is about. The debate should not by any means be confined to the two communities. Resolution of the two community issues is not the prerogative of those in the two communities alone: it is a task of participation for everyone.

Neil Faris

Business sector representative on the Bill of Rights Forum

OPONI: A year into office

Al Hutchinson, the current Police Ombudsman, took over from his predecessor on 6 November 2007. As his 1-year mark in office is fast approaching, a quick appraisal of the momentum set by Mr. Hutchinson is in order. While the overlap of the tenures of the previous Ombudsman, Nuala O'Loan, and Mr. Hutchinson's start date makes it harder to assess Hutchinson's leadership entirely independently for 2007-2008, it is important to keep in mind that he has had almost a year in office on his own. Nonetheless, a meander through the Office's website and taking information from the latest Annual Report gives us a glimpse of the tone set by Hutchinson so far.

In terms of complaints, the 2007-2008 Annual Report of the Ombudsman reveals that the Office received 2,970 complaints, involving 5220 allegations, in the last year. Of these, 1,332 or 45% were referred for formal investigation. 851 investigations were completed and closed during the year, but 76% of complaints formally investigated - the vast majority - were closed with no recommendations given by the Ombudsman, due to insufficient evidence. Only 18% of complaints investigations were closed with specific action recommended, and 6% of complaints were substantiated but no specific action was recommended. The Annual Report indicates that the number of complaints made against police officers fell by 10% in 2007-08, which by all counts is a very good sign. Yet, the blot is that an overall decrease in the number of complaints did not yield greater success in complaints investigations. Of course, there may be a variety of reasons for this, but it is a worrying sign that such a wide margin of complaints investigations are producing virtually no results.

Judging from what is on the website, so far, the level of reporting is low. Since Mr. Hutchinson took over, one new investigative report has been issued, about three research reports, and the Annual Report states that eight 'Regulation 20' reports have come out this year, but none are on the website. Compare this amount with 10 research reports produced in 2006, and almost monthly 'Regulation 20' reports from 2001 to 2005. 'Regulation 20' reports provide summaries of the Ombudsman's investigations on critical matters such as the use of firearms by the police, fatal traffic collisions in which police are involved, and deaths in police custody. It is a grave oversight that the latest Regulation 20 reports are not immediately made available on the Office's website.

Clearly, there are gaps in the work being projected by the Office, as well as the good work being done. It is hoped that Hutchinson will provide the leadership needed to address these gaps.

Devika Prasad, CAJ volunteer

Women's Rights in the spotlight

The UK was examined on its 5th and 6th periodic report to the UN Committee on the Elimination of Discrimination Against Women (CEDAW) during the 41st session which took place at the United Nations in New York in July 2008. CEDAW is an international United Nations human rights instrument which comprehensively addresses women's rights. It is often described as an international Bill of Rights for Women. States' compliance with the obligations set out in the Convention is monitored and states are examined periodically by the CEDAW Committee. A UK delegation, headed by Barbara Follett and including representatives of the devolved administration in Northern Ireland, was questioned for over five hours on its progress towards meeting the obligations set down by the Convention. The Committee's conclusions confirm that in many areas government has done little to advance women's equality with men.

A number of Northern Ireland NGOs, the Northern Ireland Human Rights Commission and the Equality Commission for Northern Ireland contributed shadow reports drawing attention to main areas of concern. Representatives from the Northern Ireland Women's European Platform and the Northern Ireland Council for Ethnic Minorities attended the hearing. A dominant theme in the Committee's questioning and in its concluding recommendations was the uneven application and monitoring of the Convention across the jurisdictions of the UK. The Committee was also highly critical of the UK in a number of other respects - its failure to promote the Convention and the Optional Protocol; the promotion of gender neutral policies and legislation which contribute to the perpetuation of women's inequality; the persistence of gender segregation in the workplace; inadequate funding of women's NGOs; the prevalence of violence against women in the UK and the lack of progress in addressing this.

These are all issues highly relevant to Northern Ireland but the Committee also focused on a number of Northern Ireland specific issues. Prior to the examination, the CEDAW Committee issued a set of pre-session questions to government which included request for information on how the UK was ensuring the Convention was being implemented equally in the context of devolution. They also asked what steps had been taken to ensure action on the implementation of UN Resolution 1325 and information on abortion in Northern Ireland. All these issues had featured in the recommendations after the previous examination in 1999. Inadequate or no information on these questions was provided in the government's written response and the delegation faced rigorous questioning during the hearing.

Concern at the lack of progress made on these issues is clear from the observations of the Committee. It notes the continuing under-representation of women in political life in Northern Ireland and calls for the 'full implementation' of

Security Council Resolution 1325. It expresses concern about the failure to extend the 1967 Abortion Act to Northern Ireland stating that the illegal status of abortion had resulted in 'detrimental consequences for women's health'. Reflecting its disappointment at the lack of progress regarding conditions pertaining to women in prison in Northern Ireland it urges the government to provide separate women's facilities.

The UK government is responsible for ensuring that the necessary steps are taken to address the Committee's concerns. The decision by the Committee to require the government to report within a year on some issues requires immediate action from the devolved administration in Northern Ireland and from Westminster and should help ensure a focus on CEDAW and therefore on women's rights. The Committee has requested that this twelve month report should detail the steps taken to implement its recommendations to incorporate all provisions of the convention in new equality legislation planned in the UK, including the single equality legislation in Northern Ireland.

It also requires the government to submit, in the same time frame, information on progress in developing and enacting a comprehensive national strategy for the implementation of the Convention throughout the UK. The government has been asked to report on what concrete measures have been adopted to increase public understanding and knowledge of the Convention and the Optional Protocol. In addition, it has asked the government to ensure that the Convention and the Committee's observations are 'an integral part of educational curricula' including for legal education and the training of judges and lawyers. The concluding comments of the Committee also encourage the use of special temporary measures, including quotas, to accelerate women's equality with men.

The Committee clearly considers a key factor in ensuring progress is by increasing awareness and knowledge of the Convention, particularly across all sectors of government. Actions plans to implement the Gender Equality are being drawn up. This is just one example of where the the CEDAW principles and obligations could be fully applied.

More information about the 41st CEDAW Session including all the official and NGO documents are available on the website of the Office of the UN Commissioner for Human Rights- <http://www.2.ohchr.org/english/bodies/cedaw/cedaw41.htm>

Dr Ann Marie Gray
Senior Lecturer in Social Policy
Policy Director of Access Research Knowledge, UU

UN Committee on the Rights of the Child criticises Government's record on children's rights

As reported in the September issue of Just News, 2008 has indeed been a busy year for the UK at the United Nations. It has been a year of reckoning for the UK government and the devolved governments in relation to their compliance with international human rights standards, not least their record on children's rights. In September 2008 the UK government and the devolved administrations were subjected to close scrutiny by the UN Committee on the Rights of the Child on progress made in implementing the UN Convention on the Rights of the Child since the previous examination held in 2002. On 3rd October 2008 the UN Committee issued over 120 'Concluding Observations' or recommendations in a comprehensive and hard-hitting report.¹

Having ratified the UN Convention on the Rights of the Child in 1991 the UK government thereby agreed to participate in a cyclical process of reporting and examination. This is the fourth report² the UK government has submitted to the UN Committee on the Rights of the Child, a committee of 18 independent human rights experts set up to monitor governments' compliance with the UN Convention on the Rights of the Child. The UK government fielded a delegation of over 30 senior government officials for this examination – it included senior personnel from the NI Depts of Health social services and Public Safety Education and the Northern Ireland Office.

In line with the UN Convention on the Rights of the Child and its holistic approach to the child, one of the most valuable aspects of the UN Committee's set of recommendations is its breadth – it covers the whole range of rights including civil and political, social, economic and cultural and addresses all aspects of all children's lives. This enormously broad scope for commentary by the Committee makes it an extremely useful mechanism through which to raise children's rights concerns in Northern Ireland and is one which the Children's Law Centre and Save the Children have utilised to the maximum effect. Along with other colleagues we engaged heavily in the reporting and examination process. We compiled an alternative report in consultation with a wide range of NGOs and voluntary organisations.³ This report, which we submitted to the UN Committee in March 2008, was endorsed by over 40 organisations and individuals. We hosted and participated in visits by UN Committee members, provided oral evidence at a pre-session meeting with Committee members, attended the examination as observers and facilitated a group of young people to also attend.

Key issues affecting children in Northern Ireland which the Children's Law Centre and Save the Children highlighted to the UN Committee in both our submission and our extensive engagements with Committee members included:

- the need for strong and separate protection for children's rights in a Bill of Rights and the incorporation of the UNCRC through the Bill of Rights as a minimum protection for children's rights
- the failure by government to make the Children's Strategy the delivery tool for the UNCRC
- the fact that the Children's Commissioner enabling legislation is not Paris Principle compliant
- the failure to afford the same protection from assault to children as to adults, the introduction of Taser weapons and their potential for use against children
- the introduction of ASBOS
- the failure to raise the age of criminal responsibility from 10 years as previously recommended by the UN Committee
- the high levels of persistent poverty, inadequate and inappropriate mental health services for children and adolescents
- inequalities in the education system embodied in academic selection
- the ongoing breaches of their right to education for vulnerable children including those in the youth justice system, children with special educational needs, looked after children and Traveller children.

It was extremely positive to see how many of these issues, which have particular significance for children in Northern Ireland, and which emerged through our consultation with a wide range of organisations working with children and young people, were subsequently picked up on by the UN Committee and included in their recommendations.

Reiterating its previous calls on government to 'bring rights home' to children through the incorporation of Convention rights in domestic law, the UN Committee pointed to the unique opportunity presented by the development of a Bill of Rights for Northern Ireland and urged government to "incorporate into (the Bill of Rights for Northern Ireland) the principles and provisions of the Convention e.g. by having a special section... devoted to children's rights". The need for strong protections for children's rights in a Bill of Rights by, as a minimum, incorporating Convention rights into the Bill of Rights, and having a dedicated section on children's rights in it, has long been a call from children and young people's organisations campaigning on the Bill of Rights; this position has been endorsed by over 190 diverse organisations and groups. We now look forward to the Northern Ireland Human Rights Commission, in line with its obligation to adhere to and promote international human rights standards in all its functions, to give full effect to this recommendation in whatever proposals on the Bill of Rights in puts forward in December of this year.

In relation to the proposed introduction of Tasers and their potential to be used against children, the UN Committee urged the government to "put an end to the use of all harmful devices on children".

continued on page 6

continued from page 5

Commenting on this recommendation Paddy Kelly, Director Children's Law Centre stated "*the onus is now firmly on the Government, the Northern Ireland Policing Board and the PSNI to act in compliance with their international obligations. The UN Committee has been firm and clear with regard to the use of Tasers against children, these harmful devices should never be used against children*".

Of real concern for the UN Committee was the extent of persistent poverty in Northern Ireland, with over 20% of children living in persistent poverty, impacting upon "... *infant mortality rates, access to health and education, as well as everyday quality of life for children*". It recommended that the Government move ahead with legislation aimed at achieving the target of ending child poverty by 2020; legislative moves should be coupled with the development of measurable indicators.

Highlighting the significant inequalities which exist in the education system in Northern Ireland as a result of academic selection, the UN Committee was unequivocal in calling on Government to "*put an end to the two-tier culture in Northern Ireland by abolishing the 11+ transfer test and ensure that all children are included in the admission arrangements in post-primary schools*".

Responding to the UN Committee's report Sheri Chamberlain Programme Director Save the Children Northern Ireland stated "*The UN Committee's concluding observations are an important means of holding governments to account. If the Northern Ireland Executive and Assembly are serious about addressing continued violation of children's rights, and complying with their duties under international law, they must respond in full to the recommendations made by the UN Committee*".

We have already begun a process of follow up on the UN Committee's concluding observations with the Executive and Assembly and with the relevant government departments and agencies and would urge other NGOs and voluntary organisations, if they haven't done so already, to take the time to read the Concluding and raise those recommendations relevant to their area of work with Government. Children's Law Centre and Save the Children will be running a number of workshops during November 2008 on the UNCRC and the lobbying potential presented to NGOs by this set of concluding observations – for further information contact

sara-boyce@childrenslawcentre.org or 90-245704.

Sara Boyce

Children's Human Rights Advisor

Children's Law Centre/Save the Children

Footnotes

1 The UN Committee's Concluding Observations can be found at <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>

2 The third and fourth UK government reports were consolidated due to a backlog in the examination process. This report can be found at http://www.allchildrenni.gov.uk/uk_report_final-2.pdf

3 The NI NGO Alternative Report submitted by the Children's Law Centre and Save the Children can be found at www.savethechildren.org.uk/en/docs/NI_NGO_ALTERNATIVE_REPORT.pdf

Can we break the Inverse Care Law?

Almost 40 years ago a GP in a Welsh mining community enunciated the Inverse Care Law:

'The more a community needs good medical care, the less likely it is to receive it.'

The GP, Julian Tudor Hart, was not despondent – the Inverse Care Law could be broken. Tudor Hart wanted to see a more democratic NHS, with local communities, health service workers and trade unions coming together as a powerful force for change.

Here in Northern Ireland, the Inverse Care Law still holds us in its grip, seemingly overpowering our equality legislation, our human rights safeguards, and our Government's policy to target social need. I agree with Tudor Hart, though, that the Inverse Care Law is a human construct, not a law of nature – we can break it if we really want.

If you read official publications about our Health Service, you will see little or no evidence of the Inverse Care Law; "patients" are counted and analysed as if we live in an equitable, homogenous society – not one that is highly diverse, and experiencing gross socio-economic inequalities. But earlier this summer the Belfast Health and Social Care Trust published '*A report on patterns and trends in the use of hospitals in Northern Ireland, 1998/9 – 2006/7*'; I was the main author.

This report began to show the striking differences in how hospital services are used by people of different gender and age, and by people from different geographical areas; and it showed stark differences when indicators of economic deprivation were taken into account. Our report showed a 'pro-rich' bias in the use of elective hospital services (the services which a patient accesses after a GP referral to a consultant's outpatient clinic). There has been substantial investment in hospital services since 1998/9, but the inevitable conclusion from our report is that people from deprived areas benefited least from this investment – even though it is people from these areas who have the greatest health needs.

The Minister for Health and the Department of Health must now be persuaded to take corrective action.

We need a new monitoring and research programme, supported by the Department of Health, to continue and extend this type of analysis – otherwise our report will not only be the first of its type, it will also be the last.

continued on page 7

continued from page 6

- We need more analysis of the impact of specific hospital policies on access, most obviously the current policy on dealing with patients who fail to attend for outpatient clinic appointments, without giving notice of cancellation. There is evidence that patients from deprived areas are much more likely to default, and there is a risk that such policies could unwittingly exacerbate access differentials.

- We need innovative pilot projects in deprived areas, aimed at early identification of disease, and earlier referral for specialist hospital services – drawing on evidence of best practice.

- We need training for doctors on issues of social and cultural diversity, including the implications for consultation and communication with patients.

We also need to make sure that resources are provided to support these changes, and to fund greater use of clinical services by people from poor areas once access barriers have been overcome. The Department of Health's Regional Capitation Formula is key in determining how resources are spread across Northern Ireland – a point acknowledged in 'Lifetime Opportunities', the Government's anti-poverty strategy finalised in 2006. Lifetime Opportunities recognised that there was much greater risk of poor health in areas of multiple deprivation, and that cycles of inter-generational deprivation were linked to poor health and early death. In relation to the Regional Capitation Formula, there was an undertaking that:

"The revisions to the Formula resulting from the latest research will further increase its sensitivity to need and will skew even more resources toward the most disadvantaged areas." (my emphasis)

By coincidence, the Department published a consultation report with their proposed changes to the Formula earlier in the summer; the consultation period closed in September. In my view the revised Formula would still not be sufficiently sensitive to need, and the proposed changes would in practice skew resources away from the most disadvantaged areas.

Increasing sensitivity to need

The Department of Health claim that there is no evidence that people from deprived areas have a significantly higher level of unmet health care needs – the conclusion is based on a flawed piece of research recently commissioned by the Department. It ignores extensive evidence of inequities in the use of elective services elsewhere in the National Health Service; and it ignores a 2003 report by Deloitte and Touche, commissioned by the Northern Ireland Research and Development Office, which found substantial evidence

of unmet need. Deloitte and Touche went so far as to recommend that the acute services element of the Regional Capitation Formula should be adjusted for this shortfall in the use of acute services by people in deprived areas. And, of course, my own report on patterns and trends in the use of hospital services between 1998/9 and 2006/7 showed dramatic evidence of unmet need.

Skewing even more resources to disadvantaged areas

During the consultation exercise, the Department of Health failed to present any statistical evidence that the proposed updates to the Capitation Formula would skew even more resources towards the most disadvantaged areas – or any evidence to show exactly which areas would gain resources, and the scale of those gains. This failure was compounded by the Department's deliberate decision to withhold this information when I requested it in accordance with the Freedom of Information Act. Bizarrely, the Department of Health attempted to justify non-disclosure on the grounds that local representatives (politicians, presumably) might use this information when forming views about the proposed changes to the Formula. Consultees were supposed to concentrate on general principles and the complex statistical methodology, and we were not to worry about the financial implications – which are much easier to understand!

Just after the consultation period closed, the Department did send me some other information which showed the impact at deprivation decile area – as I feared, and contrary to the commitment in Lifetime Opportunities, areas in the most disadvantaged would lose substantial resources. The Department claims that this is justified by wider changes in population age and gender patterns. I still maintain the Department is wrong (and I will be meeting their representatives later in October), but even if the Department is right, the Department should have openly acknowledged the potential impact on deprived areas at a much earlier stage, and set out their justification. Instead we have had a consultation exercise and a spurious Equality Impact Assessment which simply ignored the true impact of the Department's proposals.

The Inverse Care Law works in an insidious way. Information can be a very powerful tool for exposing and challenging its effects – but conventional analyses will not help. And corrective action must follow, including, as I have emphasised, fundamental steps to improve resource allocation. Tudor Hart was right – local communities, health service workers and trade unions, working together, can be a powerful force for change.

Evan Bates
Independent Consultant

Civil Liberties Diary

2nd September

Irish Minister of State for Children Barry Andrews says no final decision has been made on whether to hold a referendum on children's rights. This is seen as a move away from previous commitments made by Taoiseach Bertie Ahern that a referendum would take place.

Northern Ireland's Lord Chief Justice accuses unnamed public figures of figures of "misconceived and misguided" criticism of judges who grant bail to people accused of serious crime.

3rd September

The Equality Commission is to probe the role of employment agencies in recruiting migrant workers. The review will check the pay and conditions available and will examine claims that highly qualified workers are filling unskilled jobs.

Newry and Mourne District Council rejects official report from the Local Government Auditor that it had acted in a discriminatory manner by barring FAIR from using the council's community centre in Newtownhamilton in 2002.

4th September

Jonathan Vance Kane wins a fair employment case with the assistance of the Equality Commission against Waterways Ireland. It was judged that the all-Ireland body should have held an open recruitment for the post in question rather than merely accepting staff transferred to it.

5th September

The Policing Board approves the chief constable's decision to acquire and use Tasers, despite concerns about the results of an EQIA not yet being available.

9th September

Mark Haddock, a former police informer and UVF member who is at the centre of collusion investigations, requests that he be shielded from public view when he gives evidence in court. He has also abandoned plans to apply for

pre-release home leave due to fears for his personal safety.

Women's rights activists launch a campaign calling for the 1967 Abortion Act to be extended to Northern Ireland. Speakers included Anna Lo, Bernadette McAliskey, Dawn Purvis and representatives from the family Planning Association. The move follows a proposed amendment to the Human Fertilisation and Embryology Bill by Labour MP Dianne Abbott to extend the 1967 Act to Northern Ireland.

10th September

A 17 year old Nigerian girl who gardai believe was trafficked into the Republic of Ireland to work in the sex industry has gone missing while in the care of the Health Service Executive.

The Equality Commission admits that it will take years for it to solve the religious imbalance of its work force. Though the Commission has in place an affirmative action plan Protestants remain under-represented.

18th September

Relatives of victims of the Omagh bomb welcome news that British Prime Minister Gordon Brown will order a review of intelligence material after claims in a TV documentary that the bombers phones were tapped. They have called on the government to do "the right thing" and surrender all recordings and transcripts of phone conversations of the Real IRA bombers monitored by GCHQ listening centre at Cheltenham.

Amnesty International General Secretary Irene Khan reiterates her criticism of Ireland's alleged facilitation of rendition flights through Shannon and has questioned proposals to merge the State's human rights bodies with other bodies.

The Chairman of the Police Federation criticises the Policing Board for its conclusion that the human rights of injured police officers had been adequately protected during a riot. The disturbances in Ardoyne in July 2005 led to 105 officers sustaining injuries.

24th September

The Irish government announces it has decided not to issue a directive to schools on the wearing of the hijab in classrooms. The statement says that the current policy of allowing schools to decide their own uniform rules was "reasonable, works and should be maintained". The Irish Council for Civil Liberties accused the government of "dodging the issue".

25th September

Mr Justice Morgan dismisses a request for judicial review from PSNI Chief Constable Sir Hugh Orde. He had challenged Coroner John Leckey's decision to request the files of the investigating officer into the killing of Pearse Jordan in 1992.

30th September

Mr Justice Morgan announces he will await the outcome of a report from the UN Committee on the Rights of the Child before deciding whether to impose an immediate ban on the use of Taser guns in Northern Ireland. Ms. Fiona Doherty, representing the unidentified child in whose name the challenge is being brought, claimed police officers on the ground would not know the potential medical impact on different sections of society.

Compiled by Mark Bassett from various newspapers



Just News welcomes readers' news, views and comments.

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Correspondence should be addressed to the Editor, Fionnuala Ni Aoláin, CAJ Ltd.

*45/47 Donegall Street, Belfast BT1 2BR
Phone (028) 9096 1122*

Fax: (028) 9024 6706

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