

MAINSTREAMING FAIRNESS

“Policy Appraisal and Fair Treatment”

*A summary of a consultation process around
“Policy Appraisal & Fair Treatment”*

June 1997

Introduction

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"¹. Accordingly, CAJ has worked actively over the years to ensure that the government introduces, and then abides by, effective legislative and other measures aimed at tackling discrimination and promoting equality of opportunity.

In the course of our activities, and particularly in the context of the Employment Equality Review, CAJ 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 These guidelines were issued first in 1990, but a subsequent review led to them being withdrawn and re-issued in their current form at the beginning of 1994. They 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), does not appear to have been borne out in practice. Reports from the Central Community Relations Unit (CCRU), which is the government unit responsible for overseeing the implementation of the guidelines, as well as independent studies by the Standing Advisory Commission on Human Rights, indicate that the guidelines are still little more than an aspiration several years on. Institutions which should be applying the guidelines were found, on occasion, not even to have received copies of them; others clearly found the guidance offered ambiguous or unclear; yet others felt that the guidelines were in conflict with legislation which had to take precedence. CAJ, and many others, began to argue that the commitment to equality aspired to in the guidelines required legislative force if it was to be given practical effect. We also argued the benefits of PAFT both in securing greater transparency of, and greater participation in, the processes of government. It was for these reasons that we were delighted to be involved in an extensive and wide-ranging consultation process which is described in some detail in the following pages.

¹ Article 2, Universal Declaration of Human Rights

Consultative Process

In November 1996, Dr Christopher McCrudden, published a discussion paper on the government's PAFT guidelines, entitled 'Mainstreaming Fairness'. The purpose of the paper was to examine the extent to which, and the methods by which, the PAFT process could be made more effective: in other words, how best to ensure that issues of equality and equity could condition and influence policy making in all spheres and at all levels of government activity. The discussion document produced by Dr McCrudden was an attempt to discuss how, with the necessary political will, practical problems might be circumvented. In a conscious effort to involve people in an effective process of consultation, the discussion paper on occasion proposed specific options and made specific recommendations; elsewhere no conclusions were suggested.

CAJ was asked by Dr McCrudden to act as a conduit for dissemination of the paper and, in his absence on sabbatical in the United States, to coordinate a formal process of consultation with interested parties. The organisation's first step was to seek the assistance of the statutory groups which have responsibility in this area, and we were pleased that the Equal Opportunities Commission for Northern Ireland (EOC-NI), the Fair Employment Commission (FEC), and the Northern Ireland Disability Council, agreed to form an Advisory Group to guide us in the work. In consultation with the Advisory Group, CAJ decided initially to circulate the paper extensively, and well over 500 copies were sent to groups and individuals which might be expected to be interested in the debate. The mailing list included government departments, statutory agencies, academics, trade unions, practising lawyers, the voluntary and community sector, and organisations campaigning around issues of equality and fairness.

It was however thought that mere circulation of the document might well prove insufficient, and that it was important to somehow deepen and broaden the consultative process beyond merely distributing Dr McCrudden's paper. It was therefore further decided that a series of lunchtime discussions should be held to facilitate face-to-face discussion around the issues. Invitations were sent out to over 100 people and five well-attended lunchtime sessions were held. The first seminar involved lawyers, the second academics, whilst the following three consisted of what might generally be called 'PAFT Constituencies'; ie representative organisations of those groups referred to in the guidelines. Complementing these direct consultative efforts, CAJ attended several meetings organised by others (in Derry and other venues) to explain PAFT and the consultative process, and to discuss how equality could be most effectively mainstreamed into government policy. Everyone, whether they were sent a copy of the document by post, or whether attending a meeting on the topic, was encouraged to make a written submission.

By the end of the consultative process, we had received written contributions from over 30 individuals/organisations, in addition to the oral contributions made at a series of meetings which involved several hundred people in total. The list of those who attended all the formal consultative sessions, and those who submitted written material are noted in appendices. CAJ, and the Advisory Group, would like to take this opportunity to thank all those organisations and individuals who took the time to reflect upon the issue and express their views-whether orally or in writing. The Advisory Group was impressed by the breadth and depth of the response, which included the civil service, trade unions, statutory organisations working on equality issues, and a wide range of voluntary and community groups.

One perhaps obvious gap in responses came from the different political parties. Though CAJ staff benefited from informal discussions with people from across the political spectrum, the SDLP was the only political party to comment in writing. This gap is perhaps not surprising, given the fact that in the period of consultation many parties were involved in the talks process and all were involved in work around both the general and the local elections. Dr McCrudden himself mentioned the importance of debating the impact that "mainstreaming fairness" would have on the development of more participatory democracy, and whether this would undermine in any way arrangements for representative democracy. In the absence of formal contributions from party politicians, this issue did not, however, get very extensive consideration. While some concern around this topic arose at one of the lunchtime sessions, and was put forward forcefully in the response from the civil service (in a coordinated response from the Central Community Relations Unit - CCRU), most contributors seemed eager to complement rather than undermine the traditional democratic process. (The CAJ experience of the European District Partnership model certainly seems to suggest that participative and representative democracy can work very healthily alongside each other). However, in subsequent stages of the discussion, it will be important to engage the party politicians more directly than has been possible to date in this debate. The fact that some political parties asked for additional copies, and that individual members of a wide range of parties attended the lunchtime sessions, suggests that there is likely to be a genuine interest on the part of those actively engaged in party politics.

With this exception, however, the range of interest constituency was a very broad one, and the present summary seeks to present the many different views expressed (whether orally or in writing) during the consultation process. As a summary, there is always the danger that individuals may feel they have been misquoted or misunderstood. However, CAJ has taken several measures to seek to avoid this problem. Firstly, we have liaised closely with the Advisory Group throughout the various phases of the consultative process, making available to the members copies of all the submissions for their consideration. Secondly, we have frequently quoted directly from contributors to limit possible misinterpretation. Thirdly, we will be circulating this document widely - to all those who participated in the consultative process, and beyond - with a view to seeking further reactions to the topics raised in the discussion document and this analysis. For those interested in following the debate even more closely, CAJ has decided to dedicate its next edition of the Fair Employment Information Service (an occasional series of bulletins) to the issue of PAFT. The individual submissions made in the course of the consultative process will be reported on in greater detail at that time.

It is important to note that not every contributor expressed an opinion about every issue. Some did; however the majority clearly reserved comment for those issues which they felt to be of most importance. It will also become evident from the summary that certain topics generated more discussion than others. Almost all contributors had an opinion on the groups to be covered by PAFT for example, while some of the more technical issues such as consideration of alternatives clearly did not attract such a level of comment. This may have been due to a lack of resources on the part of those consulted rather than lack of interest. It should be remembered that this process has taken place within a tight framework, around what was a fairly complex issue.

It should be noted however that the role of CAJ 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 thus far, and the genuine desire to see issues of fairness and equity mainstreamed into policy making.

1. Legal basis

In relation to whether PAFT should be placed on a legal basis: the response was clearly in the affirmative. Indeed there were a number of persuasive arguments put forward by a range of organisations.

The organisations which explicitly argued for PAFT to be given a legal basis included: the Equal Opportunities Commission (EOC-NI), the Fair Employment Commission (FEC), the NI Disability Council, Disability Action, NIPSA (the NI Public Service Alliance), UNISON, the Women's Support Network, NIC-ICTU (the NI Committee of the Irish Congress of Trade Unions), the Law Centre, Save the Children Fund (SCF), Belfast Travellers Education Development Group (BTEDG), the NI Council for Voluntary Action (NICVA), the NI Association for the Care and Resettlement of Offenders (NIACRO), and the West Belfast Economic Forum (WBEF).

The Northern Ireland Council for Ethnic Minorities (NICEM) suggested that a compelling reason for the 'legalisation' of PAFT arose in the context of the debate around the newly introduced Race Relations Order. Recently the government refused requests to strengthen Article 67 of the Order, which places a statutory duty on District Councils to promote equality of opportunity between persons of different racial groups. This clause is based upon a similar requirement in the legislation applying to Britain, but in Britain the legislation refers to Local Authorities, which have considerably more power than Northern Ireland's District Councils. As a result there is concern that a whole range of activities, such as health and social services, social security, housing, planning and education, etc would not be covered by the 1996 Order. Government officials however cited, as a reason for not amending the NI Order, the fact that all of these central government and public body functions are covered by the PAFT guidelines. Yet according to the second PAFT report, legislation has primacy over administrative guidelines. Clearly PAFT cannot be subservient to legislation and at the same time a substitute for a legislative requirement. However if PAFT were to be put on a statutory footing, this anomaly would be resolved.

Another forceful argument for putting PAFT on a statutory basis came from the Chinese Welfare Association (CWA). They argued that the current discretionary provisions mean that progress may occur when a particularly sympathetic individual is in place who is committed to issues around ethnic minority communities. However once this person leaves, the CWA can find themselves having to begin the negotiation process again from scratch. With PAFT on a statutory footing it was felt that the rights of the Chinese, and indeed other ethnic minorities, would be less dependant upon the knowledge and understanding of individual civil servants.

Foyle Friend referred to the fact that there is currently no legislation in force in the UK regarding sexual orientation and the protection of rights for those people who are gay, lesbian or bisexual. Since PAFT is the only document to which such people can make reference in trying to combat unfair discrimination, Foyle Friend argued for the placing of PAFT on a statutory footing.

Indeed of all the organisations making formal submissions to the consultation process, only the Central Community Relations Unit (the CCRU - the government unit responsible for overseeing the work on PAFT, and coordinating the civil service response to the discussion document) argued outright against the proposal. This opposition is returned to later in the summary, but it is worth noting here that most of CCRU's concerns are related to the feasibility, or rather the lack of it, in giving PAFT a statutory basis.

alternative view being that the decisions should be reserved for a responsible authority which would itself have a duty to report to parliament.

3. Relationship to other legislation

Dr McCrudden pointed out that the current ambiguous legal status 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. He recommended that this uncertainty 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.

There was general concurrence with this view, the contribution from the EOC-NI being fairly typical. "The Commission agrees with the recommendation that all legislation should be interpreted and administered to the fullest extent in accordance with the PAFT principle." The EOC-NI however went a step further by suggesting that in addition, current legislation should be examined by the monitoring unit responsible with a view to recommending changes where an issue of inequality is identified in *current* legislation.

Another notable contribution on this point came from the FEC. They welcomed the fact that the draft bill, unlike the current guidelines, goes beyond checking against possible discriminatory outcomes as defined in the fair employment, sex discrimination legislation etc. Such an approach would mean that the focus with PAFT moves away from mere avoidance of discrimination, towards proactively trying to reduce inequality.

4. Coverage

(a) Type of impact

Dr McCrudden proposed that 'Material Inequality' should be the focus of a redefined PAFT, and it would be fair to say that this represented the issue about which there was least agreement among the parties consulted.

While some organisations such as the EOC-NI and the Labour Relations Agency welcomed the move, others - notably those representing disabled people and ethnic minorities – assumed that "material inequalities" might be understood to be restricted to financial disparities, and were openly hostile to the idea. (Clearly, some of the contributors made the assumption that "material" meant economic resources; others interpreted "material" as meaning "significant") Obviously, many marginalised groups in society have problems which are not solely (or at all) financial, and several contributors feared that the focus on material inequality might be interpreted too narrowly. This in turn would mean that the specificity of how discrimination operates against particular groups might be overlooked. Would a lack of interpreters for those people facing difficulties with English be covered for example, or lack of access to services for those with physical impairments?

The following contribution from UNISON appears to best capture some of the feeling regarding this issue: "We recognise the criterion of material inequality as a useful one for assessing and measuring impact, but we would suggest that it be broadly defined in relation to social inclusion measures and measures affecting the social well-being of the

This is clearly an extremely important question to resolve and it was, in the view of CAJ, precisely the intention of Dr McCrudden's paper to address in detail how one might embed the concept of mainstreaming fairness into a series of practical measures.

However, several contributors also referred (in their written and oral submissions) to the importance of securing genuine political commitment to the goal of equality. Without political commitment to the goal of equality of opportunity, practical problems in implementation become insurmountable; with such a commitment, they are surmounted. The NIC-ICTU submission, for example, drew analogies with the practical problems that arose in the implementation of government measures such as Compulsory Competitive Tendering and the Private Finance Initiative. Yet in these instances at least, practical problems of implementation were not allowed to stand in the way of what were thought to be important political priorities. Clearly it was the view of many of the contributors to the consultative process that the goal of equality and mainstreaming fairness should be treated no less seriously.

In arguing the importance of political commitment, some individual contributors felt that too much time should not be spent on getting involved with the minutiae of possible draft legislation, at the expense of losing sight of more effective implementation of PAFT. On the other hand, organisations like the Newry-based Confederation of Community Groups pointed out that presently many government initiatives including PAFT and TSN seem to remain aspirational only and the practical mechanisms of how to translate them effectively into practice are ignored.

2. Responsibility

In relation to overall responsibility for PAFT, Dr McCrudden recommended that this should remain with the Secretary of State, and that he or she should be given powers to ensure that public bodies comply with their duties under a revised PAFT. The Law Centre had no problems with the current divisions between the Secretary of State and CCRU, whilst the NI Disability Council felt that overall responsibility should stay with the SoS and in future he/she would have a duty to ensure that public bodies conform with their responsibilities.

The EOC-NI felt that an independent unit should be responsible for monitoring PAFT-preferably located in the Central Secretariat. In order to provide for meaningful monitoring, this unit should be given sufficient power to challenge decisions made at all levels of government. In addition, it should be provided with sufficient resources to carry out a full programme of screening, monitoring and training of those responsible for PAFT implementation.

Disability Action felt that responsibility should lie with the SoS on the grounds that the CCRU lacks the status and power to insist on procedures being implemented by other arms of government. The effect at present being to nullify much of the impact of PAFT and condemn it to the status of an 'add on' to other policy procedures.

The FEC also felt that it was preferable that overall responsibility remain with the SoS though they pointed out that it may be worth considering alongside this issue the advantages of various options as to who should make the ultimate decision on an appraisal/impact assessment. If this decision was reserved for Minister(s), should some other body be given the task of laying an annual report before parliament? The

various groups, rather than to a narrowly-defined economic definition. Thus, for example, cultural equality and access is important as well as access to jobs and services and has a material aspect. Other aspects of material inequality include education, training and social and health services."

The critique offered by other contributors, was even more fundamental. Several lawyers raised the legal problems which would ensue around definitions of "material" and "significant". Several of the academics consulted thought that it was politically unrealistic to suggest equality of outcome as a possible goal. Even amongst those who supported the goal, some saw it as an incremental exercise and not one which was either easily or quickly attainable. Tom Hadden & Paul Gorecki in their submissions, for example, argued that clarification was required regarding the overall policy objective of any new legislation. They felt that equality of opportunity is not the same as equality of outcome and any effective PAFT measure needs to be clear as to its primary goal and not fudge this issue. Others, however, alluded to the fact that this is an issue with PAFT as it is now, and not in any sense dependant on where we go in future with it. Thus the guidelines are about monitoring the impact of government policies and are therefore about bringing about change of some description. Furthermore, they are intended to complement TSN (the expenditure priority of Targeting Social Need) which in its turn aims to reduce unfair social and economic differentials. Accordingly, while one might disagree with Dr McCrudden's proposals regarding how to secure better outcomes - and there is bound to be lively debate about such an issue - the fact that PAFT is about trying to improve outcomes and bring about change is not really at issue.

(b) Groups included

The discussion paper outlined three possible options. Firstly, the current groups mentioned in the guidelines could be retained, with the same requirements applying to all. (The current guidelines seek to secure equality of opportunity regardless of religious belief, political opinion, gender, marital status, having or not having a dependant, ethnicity, disability, age or sexual orientation). The second option was that a much smaller number of social groups would be covered by the legislation, but that the same protections would apply to all the groups. The third option was to have a two-tiered approach, with different requirements applying to different groups. No specific recommendation was made as to which option was preferable. Again, this point appeared to produce quite a range of views.

For example the EOC-NI felt that a central issue for any PAFT assessment should be the impact of policies on individuals on the basis of gender, while the FEC felt that the material inequality between the two communities (religious/political) should have primacy. Disability Action strongly argued (as did the Northern Ireland Disability Council) that the groups currently included be maintained, since this would promote an inclusive equality based framework. A two-tier system should be ruled out on grounds that it would be invidious to determine which groups may or may not deserve the attention of a process geared at promoting equality or social inclusion.

Similar sentiments were expressed by the BTEDG, who felt particularly that in a two tier option for assessment of equality impact, Travellers might end up in the tier with the lesser requirements for action. BTEDG argued that in the past emphasis on equality in social policy and its impact has tended to be focused on the 'two communities' and that the needs of Travellers and other minority ethnic communities have tended to be marginalised. NICEM, CWA and SCF argued along similar lines with SCF saying "we would not support any attempt to reduce the number of groups included under the

guidelines. Our concern is that this would result in a hierarchy of equality, which we believe, is unjustifiable". On the other hand, both NIPSA and the Law Centre favoured the two tiered approach as being more realistic, and more likely to ensure effective implementation of a mainstreaming approach.

One option Dr McCrudden appears not to have considered is that PAFT should actually be extended to cover a wider number of groups, yet this was proposed on a number of occasions. UNISON proposed that the criterion should be that of material inequality: if *any* social group can show that it suffers from inequality, then it should be able to avail itself of the requirements operating. Others argued that the listing of groups be treated as indicative. NIACRO felt that ex-prisoners should be included, whilst "missing" issues cited by others included - language, national origin, the long-term unemployed, asylum seekers and refugees. One option canvassed was that "social inclusion" be taken as the focus of a redefined PAFT.

Paul Gorecki (NIEC) argued for a regular review of the groups included against specific group selection criteria. This would determine if the groups considered disadvantaged still remain so. His justification for such a review is that at the present time, the disadvantaged groups covered by PAFT refer to a substantial proportion of the population and "if everybody is included, nobody is included". However, not every policy will have potentially adverse effects for every group and preliminary screening should identify the likely potential for specific groups members (see para 6).

(c) range of actions

The issue here is whether a revised PAFT approach should apply to all the programmes, plans, policies and projects of all public bodies, as well as to proposed legislation, primary and secondary. Again in this case Dr McCrudden made no specific recommendation but suggested that the range of actions covered should perhaps be decided in conjunction with the range of groups included. In other words, the broader the range of groups covered, the narrower the range of actions included, whereas the narrower the set of groups covered, the wider the type of actions covered.

The Law Centre put forward a model which suggested having three different levels of PAFT analysis. Thus, a full PAFT analysis would entail gathering of specific statistical information, a detailed review of existing statistics, external and public consultation, and the publication of a PAFT report. The second level of PAFT analysis would entail a detailed but less rigorous review of the statistics already in existence, consultation with specific groups, and production of a short policy note. Finally there could be a short and simple review which would not entail public consultation or full publication, though findings would be made available on request. As well as objective criteria to decide on which category of review is undertaken, the Law Centre suggested published guidance as to the form and content of each type of review. Also, the taking of decisions as to which type of PAFT analysis is appropriate in particular cases would be made by a publicly accountable body and decisions would be notified to appropriate statutory agencies enforcing or monitoring equality issues. In addition, an annual report would publish the decisions subjected to PAFT analysis in each of the three categories.

Disability Action said that: "Publicly funded projects all take place within a policy and programme framework. In our view, it might be better to concentrate impact assessment at policy and programme levels primarily on the assumption that, if done adequately, projects will fall into line behind an assessment impact. The delivery of projects needs to

be equality proofed, but that might involve a somewhat different process concentrating more on systems than on impact. Restricting the level at which impact assessments are carried out may make it more possible to ensure that all policy and programmes are subject to screening for a full impact assessment at the very least. This is not to say that equality proofing of projects would not in itself be an enormous task, but it could be carried out through a different mechanism, for example quality standards imposed as conditions of funding."

Other contributions on this topic came from NIPSA, who agreed with Dr McCrudden that the groups covered and range of actions should be linked, and the FEC, who cited the model proposed in Nigel Hutson's SACHR paper, whereby it was suggested that full assessments be limited to policies of major impact, while partial assessments occur on other occasions. The FEC also suggested that given the newness of the proposed initiative, it would probably be preferable that details of implementation such as this be set out in regulation or a code accompanying primary legislation.

(d) Public Bodies

Regarding the nature of the public bodies which should be made subject to PAFT, Dr McCrudden recommended that a revised PAFT should apply to all those public bodies specified from time to time in the Schedule to the Fair Employment Act 1989. This would include Local Authorities, Northern Ireland Departments, United Kingdom departments operating in Northern Ireland, and existing Non Departmental Public Bodies (NDPBs) and Next Step Agencies. In reality, this largely reflects the current situation, though Local Authorities is a major sector not presently subject to PAFT. The argument for including them seems strong and it appears logical to apply the definitions already used in related legislative texts.

There was little disagreement regarding this issue. The NI Disability Council went further, however, by suggesting that those organisations, particularly in the voluntary sector, who are funded to a substantial degree by government departments and agencies should also be covered by some of the principles of PAFT.

5. Alternatives and mitigation

Few contributors chose to comment explicitly on these sections of Dr McCrudden's discussion document, though this of course might suggest that they had no particular objection to the proposals made. Dr McCrudden argued that any PAFT analysis must show evidence of having considered whether any reasonable alternatives existed by which one might still meet the policy objectives, and yet mitigate any foreseen adverse impact. The justifications in making final choices should also be subject to public scrutiny.

The argument about the need for transparency was commented upon elsewhere at different times by many of the contributors. There are clearly times when the civil service is confronted with contradictions between competing government policies. The very process of PAFTing new or revised policies would, it was argued, allow the contradictions to become a matter for greater openness and public debate. The alternative appears to be that the civil service determines the appropriate weight to be given to contradictory policies, and public accountability is accordingly very limited.

6. Screening

This involves identifying those actions which should be considered for a full PAFT analysis. Three possible approaches were outlined in *Mainstreaming Fairness* as being possible, that is - (1) Lists of identified actions, and thresholds could be stipulated, or (2) a more open test of 'significance' could be specified which would require interpretation and case-by-case application, or (3) an open test could be specified, with guidelines being made available from time to time in a Code of Practice.

CCRU noted that in screening, the establishment of relevant subjects and a threshold for significant resource implications would be the most effective mechanism from an administrative standpoint. The FEC suggested that preliminary screening of potential impacts should take place at a preliminary stage, with not all actions needing a full PAFT analysis. This view was shared by the EOC-NI who stressed the need for screening to be carried out by a publicly accountable monitoring unit. Their submission stated that: "It is agreed that probably not all actions and impacts would need to be fully assessed under PAFT. However, there needs to be full transparency on screening decisions."

This view was endorsed by a number of organisations including Disability Action and the NI Disability Council. The comments reported on earlier from the Law Centre (regarding the range of actions to be covered) are relevant in this regard also.

7. Scoping

Dr McCrudden recommended that the scope of a PAFT impact assessment should be established in each case. The proposer of the action would consult the relevant statutory equality body (eg EOC-NI, FEC) early in the PAFT process. Irrelevant or insignificant impacts could then be screened out. He also argued that published guidance on scoping would require effective consultation and participation.

This issue did not generate a great deal of debate. However a number of statutory agencies did indicate their approval of, and declared their willingness to be involved in, this process. NIPSA suggested that agreed guidelines about scoping be included in a public Code of Practice so as to minimise subsequent challenges or complaints about the process from interested groups.

8. PAFT reporting/decision making

Currently, the CCRU makes an annual report on the operation of PAFT. Early reports were subjected to extensive criticism, but each annual report has been better than the last, and a good model is gradually being established. The importance of regular and good reporting was stressed in the document *Mainstreaming Fairness*, with a view to ensuring that decisions relating to issues such as alternative actions would be open to public scrutiny. Dr McCrudden also proposed the public consideration of such reports by relevant statutory agencies such as the EOC-NI/FEC. While this suggestion was welcomed, there was concern that adequate additional funding be provided by government, given the current budgetary constraints faced by such bodies. This of course raises the question of the level of financial resources government is willing to devote to the issue.

Paul Gorecki raised the question of "the costs of increased regulation" and suggested that they will be substantial if PAFT is placed on a statutory footing. He, quite rightly, suggested that such costs would need to be monitored and included in any subsequent evaluation. This however begs the question as to how one might effectively compare such costs to the costs of non-compliance with PAFT's equality provisions, which at present seem to derive, in part at least, from insufficient regulation. At one consultative meeting, it was proposed that "pre-evaluation" measures - such as a good consultative process with the groups likely to be affected - should be treated by the Department of Finance and Personnel in the same way as they currently treat post-evaluation - ie they recognise its importance by setting aside a certain % of the budget to cover the costs involved.

There was also agreement that the findings of the PAFT report and the review should be central to determining whether or not a decision should proceed, and if so with what modifications. This way, full disclosure of the weight given to 'PAFT' considerations would ensure confidence in the process.

9. Monitoring and auditing

The general feeling here was that it would be difficult to see how any equality policy could be measured or tracked without adequate monitoring. UNISON drew an analogy with the importance given to monitoring in equal opportunity legislation. Concern was also expressed regarding the need to ensure that results be made public, and be reviewed on a regular basis, while being done in such a way as to avoid any risk of "gridlock". Again, the fact that annual reports are already being provided by the CCRU is an important contribution to the process of monitoring and auditing; the challenge seems to be how to build on these initiatives and make them more effective.

10. Consultation and participation

This was an issue about which almost all contributors expressed an opinion, and indeed one which in many senses goes to the very heart of the PAFT debate. Clear concern was expressed at the current lack of consultation surrounding the decision making process in Northern Ireland in general.

However as the Chinese Welfare Association pointed out in their submission, even where consultations take place at present, they can still be woefully inadequate. As an example, the CWA pointed to the recent attempt by the NIO to consult with the Chinese community over the proposed Race Relations legislation. While the CWA welcomed a translated version of the Consultative Document, lack of advance consultation resulted in the translation being inappropriate. As a result, the document could not be read or understood by the majority of Chinese people living in Northern Ireland. Some 400 copies of the translated document were then deposited with the CWA, who had to undertake to circulate (at considerable expense) a percentage of these. However, because of the poor translation, the document was effectively useless in raising awareness of the issues among the community. A failure to consult in advance led to an ineffective process and a serious waste of public resources.

Clearly this kind of exercise represents the antithesis of the kind of consultation envisaged by Dr McCrudden, or those who submitted views to CAJ. Indeed it was possible to identify three issues which seemed to concern most contributors.

- that consultation should take place from the planning stage right through the process of policy formation, implementation and ultimately on an ongoing basis thereafter.
- that those consulted should be representative of PAFT groups; and that,
- sufficient funds be provided.

It should be pointed out that consultation was envisaged not as occurring for its own sake, but rather as a way of helping to ensure that alternatives be considered which could lessen or indeed reverse any adverse impacts. It was also felt that full consultation would lead to increased confidence in the decision making process. In one discussion with various groups representing the different PAFT constituencies, it was argued that resources effectively spent on consultation would avoid waste at later stages in policy formulation and implementation. Indeed, it was argued, that effective consultation - in and of itself - could be a powerful tool in empowering excluded groups and constituencies.

CCRU's response on this element of Dr McCrudden's report was noteworthy for the extent to which it differed from the other submissions. It felt that the disadvantages of extensive consultation had been underplayed in the discussion paper and was clearly concerned at the "risk to representative democracy of highly motivated lobby groups". As noted elsewhere, this juxtaposition of representative versus participative democracy is perhaps not fair; there certainly appear to be increasingly numerous examples of their complementarity – see particularly the work of the various District Partnerships within the context of the European Peace and Reconciliation Programme.

11. Resolving conflicts; accountability; monitoring of the PAFT system; training; and type of legislation

The remaining chapters did not elicit detailed response from many contributors. Regarding **conflicts**, those who expressed a view on this issue, tended to favour an independent commission for resolving conflicts. This suggestion was examined in some detail in the paper which was written by Nigel Hutson and published by SACHR as a contribution to the debate around the Mainstreaming Fairness document. Several contributors stressed the need for the commission to have effective representation and participation of NGO interest groups. On **accountability**, Disability Action proposed that in addition to judicial review, either the Parliamentary Commissioner for Administration or a Select Committee of the House of Commons, or both, be charged with an oversight role. NIPSA suggested the involvement of the Ombudsperson. Regarding **monitoring the PAFT system** generally, UNISON argued that this be done on a more regular basis than is done currently, but few others commented on this. Several submissions commented on the general importance of **training** and the need to do more educative and consciousness-raising about the existence and potential of PAFT, if we are to secure greater equality of opportunity. As to the **type of legislation**, few commentators wanted to engage in the specific legal detail. The vast majority of contributors chose to focus on the need to have strong PAFT legislation, rather than the specific form that it should take.

General commentary

Given the wealth of agreement around many of the topics discussed in Dr McCrudden's paper, it may be worth commenting initially upon those submissions which raised areas of strong disagreement.

The key submission in this regard is that from the CCRU which expressed reservations about many of the suggestions made in the discussion paper. Among the concerns raised in the civil service comment was the issue of the costs likely to be incurred, and the risk of 'gridlocking' if actions were made subject to constant assessment and review. However, while CCRU raised the issue of the costs which would be incurred if PAFT were more effectively implemented, several other contributors talked of the often ignored social costs of inequality, both in terms of direct payment of benefits and the indirect costs of lost revenue. And as to the practicalities of the various suggestions, the civil service was clearly not alone in worrying about how agreed principles of equality could be put into operation without creating unnecessary and counter-productive administrative burdens. Several contributors addressed the issue, though many concluded that in reality effective implementation depends on having sufficient political commitment. NIC-ICTU's comment that major policies such as CCT have been introduced without creating gridlock seemed to strike a chord with other commentaries. There seemed to be some consensus that since equality provisions are a stated priority of government, the challenge for civil servants, politicians, and other interested parties lies in making something like PAFT work, rather than in listing the practical difficulties which potentially stand in the way of its effective implementation.

Very different issues were raised in the submissions from Tom Hadden and Karin Eyben who were concerned about segregation and divisions in Northern Irish society. Professor Hadden wondered how policy impact analysis could "include the equally important policy priorities in respect of choice as to separation and sharing and community reconciliation". Professor Hadden also attended one of the lunchtime sessions and indicated at that time that he is currently undertaking work around how this might best be done. There was some suggestion at that time, and in subsequent writings, that he fears that PAFT might be divisive and run counter to a policy of sharing. It will be interesting to see the results of this work. However, it may be worth noting already here that CAJ's experience to date of working on PAFT with a variety of groups across different communities and sectors, is that it is pre-eminently suited to breaking down many traditional barriers.

Indeed, as the consultation process itself also showed, PAFT offers the exciting potential of building alliances both across the traditional communal divide and across a broad range of other divisions within our society. For groups working with people with disabilities, or the ethnic minorities, or people of differing sexual orientation, PAFT is about sharing since it challenges their marginalisation within society. Even with regard to one of the sharpest divisions in society - the communal divide - joint initiatives currently underway suggest that PAFT is providing the practical cement which allows groups to work together regardless of their otherwise different experiences and aspirations. Indeed, PAFT seems to allow a route by which we do not have to choose between fairness or sharing, but can in fact pursue both goals simultaneously and work to ensure "fair shares" for all.

Conclusions

This paper has highlighted the key points of consensus and disagreement in response to the Mainstreaming Fairness document. It would be fair to say that, overall, there was an extraordinary level of consensus around key elements of the discussion paper (the few exceptions to this trend are commented on above). For example, the vast majority of those who commented in detail on the paper clearly supported the placing of PAFT on a statutory basis. This feedback came consistently from the various statutory groups tasked with combating discrimination, trade unions, and the broad range of voluntary and community groups consulted. There was also a very strong consensus around the values of having both a transparent and a participative process. Mixed reactions were more common with regard to the value of introducing the concept of "material inequalities" and the best way of dealing with the groups to be covered by the PAFT process.

The next stage in this process will lie with Dr McCrudden who intends to review his proposals regarding PAFT in the light of the feedback from the consultative exercise. Many individuals and groups indicated a desire to comment during the course of the review but were unable to do so in the timeframe (despite several extensions of the deadline). It is open to them of course, in response to this document still to make their views known regarding the various topics aired here. CAJ is more than happy to transmit any further reactions to Dr McCrudden in the US, as he intends to revise his proposals for publication some time in Autumn 1997.

This is not to say, of course, that work around PAFT comes to a halt until the discussion paper has been reworked, and decisions have been made regarding its legal status. There is, after all, the work of the Employment Equality Review which will shortly be commenting on the status of PAFT; there are court cases pending around interpretation of the guidelines; and there exists a much greater political commitment to PAFT with the change of government (recent interview with Dr Mo Mowlam in the London Independent). CAJ is keen that the momentum generated by this consultation be maintained and to this end, as indicated already, will be producing a PAFT to keep people updated about developments. It is exciting to see the different, and occasionally surprising coalitions which have been formed around the PAFT discussion; it will be important to sustain this momentum and turn it into an effective force for change.

Once again CAJ, and the Advisory Group which oversaw the consultative process around Mainstreaming Fairness (consisting of the Equal Opportunities Commission NI, Fair Employment Commission, and the NI Disability Council), would like to thank all those who contributed to the process in any way.

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June 1997

Appendix One

Written responses received regarding Dr Chris McCrudden's discussion document - Mainstreaming Fairness

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

Appendix Two

Individuals and groups who attended lunchtime formal consultations -

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 (FEC)
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)

This does not include the many people who attended information sessions in Derry and elsewhere.

***A summary of a consultation process around
"Policy Appraisal & Fair Treatment"***

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