

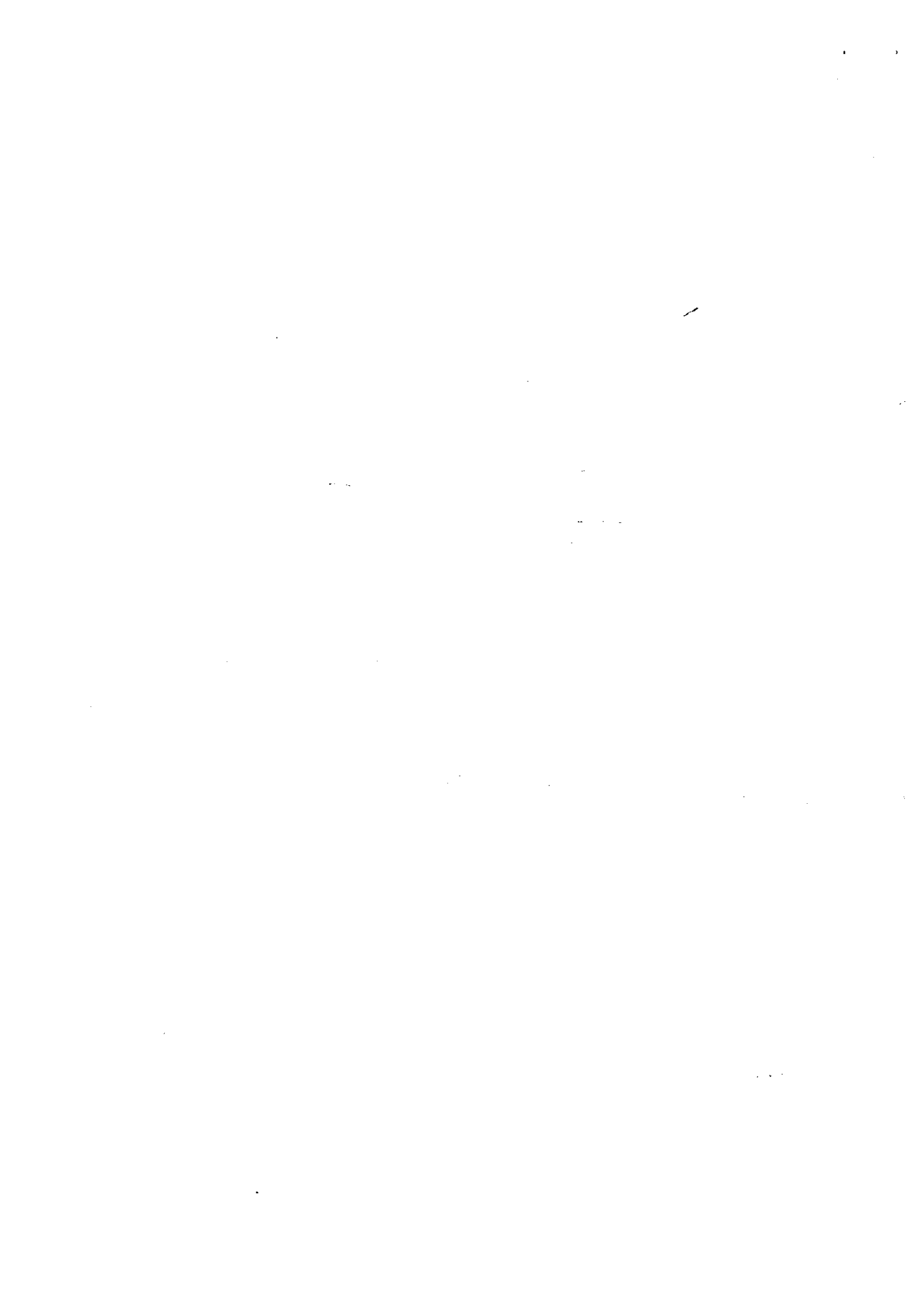
Fair Employment For All -

**Commentary on research commissioned by the Standing
Advisory Commission on Human Rights (SACHR) for the
Employment Equality Review**

**by the
Committee on the Administration of Justice (CAJ)**

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Further Commentary on Employment Equality Review from the Committee on the Administration of Justice (CAJ)

(October 1996)

The Committee on the Administration of Justice (CAJ) would like to record its appreciation of the immense effort carried out to date by the Standing Advisory Commission on Human Rights (SACHR) for the Employment Equality Review. We were pleased when the government decided to assign the Review from an internal government department to the body which has statutory responsibility for advising it on issues of discrimination. While we have points of criticism, both with regard to the findings and with regard to the consultative process (see on), we feel that the serious research commissioned, and the various consultative initiatives, have emphasised the importance that should be accorded to this topic in public discourse. We look forward with great interest to learning what conclusions the Commission comes to on the basis of all the material gathered.

CAJ made a long and detailed submission to SACHR in February 1996 (which was produced in a published format in May 1996 under the title: Fair Employment for All). That submission made some 35 recommendations. The organisation has taken the occasion of the publication of all three volumes of SACHR's research, and the extended deadline for consultation, to look back at our recommendations to see what changes, if any, are now needed. The following document can therefore be viewed as an addition to our initial submission. The paper is divided into two portions: firstly, we address the SACHR research directly, and secondly, in a conclusions segment, we draw upon the research more generally to review our own recommendations and comment on the directions we hope SACHR, and in due course, the government should take.

SACHR's Research Findings:

1. Volume I: Fair employment law in Northern Ireland - debates & issues

Chapter One: The Development of Fair Employment Legislation in Northern Ireland

This chapter is an interesting historical overview for those who are coming to the debate around fair employment for the first time. Unfortunately, CAJ felt that, as an opening chapter for the review's research, it missed an important opportunity to place the whole review process in the broader political, social and human rights context. The authors of the chapter, who were also editors of the volume, said: "Our aim in presenting this collection of papers is not only to stimulate debate, but also to

clarify issues and lay the groundwork for improvement". However, emphasising in the opening words the controversial and complicated history of the debate seems an unhelpful beginning to such a constructive endeavour. Furthermore, this opening approach seems to set the tone of the piece. Our own feeling, on the basis of SACHR's own research, is that many of the issues which were controversial in the past - affirmative action, goals and timetables, registering and monitoring - are no longer so in the same way. The chapter perhaps focuses too much on the situation in the 1920s and then again in the 60s and 70s, and not enough on the evolution of the debate since the mid 1980s on. References, for example, to the Downing Street Declaration, and to the Framework documents, could have recorded the solemn and joint commitment made by the British and Irish governments to the protection of rights and the principle of equal opportunities and, by implication at least, to strengthening initiatives in this area.

Our own contention is that issues of justice and equality are central to the conflict in Northern Ireland. Accordingly, efforts to tackle fair employment and to end political and religious discrimination in employment are important in progressing the agenda for peace.

Chapter Two: The Merit Principle and Fair Employment in Northern Ireland

CAJ found this to be a challenging and thorough consideration of the merit principle. The advantages of the principle are set out as well as the disadvantages. However, the author concludes that the concept of "merit" should not be used per se, because of its ambivalence, and instead he suggests that the concept be dissected into its component parts - eg redistribution, openness, "innocent third parties", overriding legitimate expectations etc. CAJ did not directly address the merit principle in its own submission. However, learning from this research about the variety of possible meanings that could be placed on the term, and studying the report on the submission from the Confederation of British Industry (p.25, Volume III) which says that the merit principle is "paramount in recruitment and selection", we would suggest that the terminology be clarified. It may well be that the 'strict job relatedness' model to merit which the author identifies as the most rigorous approach to the principle is in fact widely followed by NI employers partly as an insurance policy against action by the Commission or Tribunal. While transparency in recruitment is to be welcomed, the CAJ (pp30-31 of our submission) has warned that an over-bureaucratic approach may not contribute to either equality of opportunity or fair participation but may indeed create new inequalities based upon 'essential' and 'desirable' criteria, which might, for example, actually discriminate against the long-term unemployed. On the other hand, if merit is to have some formal role in the pursuit of fair employment, the author's fourth model, based on 'capacity to produce results', would appear to be the most flexible and in keeping with a significant role for affirmative action measures.

We were therefore convinced by the argument that the merit principle could be usefully dissected into its important component parts, and we feel that, once clarified, the "merit principle" poses no obstacle to recommendations regarding affirmative action initiatives.

Chapter Three: The Concept of Fair Participation

This research also proved interesting and technically challenging. The case is clearly made that, if fair participation is to be retained in the Act, it should be properly defined, and the Code should develop this with real examples. Clearly it is not helpful to have an undefined concept be the measure by which employers must diagnose workforce problems and determine affirmative action measures. Nor is it acceptable that the Commission's criteria should only be the subject of personal discussions between the Commission and individual employers. Indeed the FEC appears to have suffered itself from the uncertainty surrounding the lack of definition of fair participation. It may even be that some aspects of the FEC's approach towards fair participation give inadequate weight to the position of women in the labour market, a point made also in Volume III, chapter Six. We have in mind here the use of the age range of 18-34 as a factor in the fair participation analysis, and the preference of the FEC to undertake investigations into medium-sized employers with a minimum rate of male employment. These issues would indicate the need for close liaison between equality agencies. CAJ welcomes the emphasis in this chapter upon the pursuit of redistribution as an objective of the legislation. However, we are also anxious to ensure, both in terms of the Fair Employment Act itself, but also in terms of the Act's relation to other equality regimes, that the objective of equality of opportunity (eg in relation to the "chill factor" in workplace harassment) is maintained, and indeed enhanced, as a strategic objective of the FEC.

Chapter Four: The Case-Law of the Fair Employment Tribunal

This overview of FET case-law was very informative, and is a further argument for making such material more publicly available. Firstly, the analysis of cases showed how few indirect discrimination cases have been taken to Tribunal. Presuming such cases do exist (though there may need to be some more empirical research into this issue), CAJ is reinforced in its belief in the importance of encouraging new approaches to more strategic efforts (and indeed to a more intrusive definition of indirect discrimination, consistent with European Union standards). Secondly, there is no case-law on affirmative action or pro-active measures: this supports a demand for statutory definitions and for clear guidelines in the Code of Practice. Thirdly, examples are given of issues (such as the definition of indirect discrimination mentioned above, and also the scope of the section 42 certificate) where the Fair Employment Act is out of step with other equality legislation. Fourthly, the general approach towards interviews and procedures taken by the FET probably reinforces the strict job relatedness principle which larger employers appear to apply. Fifthly, a strong case is made both here and in Volume II, chapter Five, for greater protection against victimisation, including the possibility of exemplary damages.

CAJ's own assessment of the review is that the Tribunal appears to emerge as a sensitive and relatively progressive institution. In our own findings, we suggest a number of ways in which its work might be further enhanced. We understand that there is an understandable desire on the part of many to push mediation rather than litigation as the way forward. Clearly mediation has its place, and has often proved very effective, but there are also occasions when mediation is not appropriate. The judicial process needs to strike a balance between on the one hand, the settlement of individual disputes and, on the other, the pursuit of 'public interest' objectives, which complainants themselves are determined to see achieved (see Volume III,

chapter Five). Hence the articulation of principles and the setting of precedents perform vital functions for the FEC and employers, as well as for both actual and potential complainants. If there is to be real change, complainants cannot be unduly pressurised into accepting compensatory remedies, and a more strategic approach must be facilitated.

Chapter Five: The Practice and Procedures of the Fair Employment Tribunal

Again, this is a very technical chapter with a number of interesting ideas. The author reinforces the case made in the previous chapter for the potential to award exemplary damages, and for a framework within which the impartiality of Tribunal members can be assured (see also CAJ report pp 37-38). The "undue complexity" in relation to time limit is identified, and it is suggested to harmonise the three to six month periods - ideally opting for the longer period. Indeed in the light of these observations and those found in Volume III, chapter Five, concerning the tremendous obstacles encountered by complainants, including time limits themselves (4% of potential complaints are not registered because they are out of time, see Volume III, chapter Five, p.128), it is arguable that a more flexible test of "reasonable practicality" should be included in the legislation.

The author subjects the practice and procedure of the FET to analysis in the light of the requirements of the European Convention on Human Rights. As might be expected, the CAJ finds this a valuable perspective. Nevertheless, we would not wish to support the analysis made here rather briefly, but at some length in the author's seminar presentation, of the FEC as a legal aid body, subject to a human rights obligation to support claims purely on the basis of perceived 'merit' itself. To some extent, the FEC has been able virtually to monopolise support for complainants due to reasonable, but in the context of other equality agencies, generous resources. This situation should not, however, detract from the essential characteristic of all the equality agencies, which must be to act as strategic bodies pursuing the public interest in their statutory objectives. The answer to the author's important analysis is to provide legal aid in Tribunal cases, as the CAJ recommends (p. 37), rather than to distort the function of the FET, and indeed hinder the development of a strategic role. Rather CAJ (p.30), supported by SACHR's findings (volume I, chapter Three, volume III, chapter Six), would wish it to pursue its strategic role more not less vigorously in future.

Chapter Six: Exempting Equality - Section 42 of the Act

CAJ makes the case that section 42 of the Fair Employment Act should be repealed. This chapter, whilst falling short of advocating outright repeal, provides a damning critique of the way the section currently operates. There are clearly no grounds for the continuation of section 42 in its current form and CAJ would urge that the section be repealed.

Chapter Seven: A Comparative Review of the Law on Equality of Opportunity

This chapter provides a very interesting analysis of equality of opportunity legislation in other jurisdictions and the lessons for Northern Ireland. While the authors report that in several jurisdictions pro-active anti-discrimination measures have engendered controversy, one is led to conclude that employment equality will be long delayed without such measures.

The difficulty created by the absence of clarity regarding affirmative action in Northern Ireland is highlighted in a current legal case involving Short Brothers PLC. The company adopted a modified selection process for redundancy wherein length of service was accorded less priority than previously. The reason for changing the procedure was due to the Shorts workforce historically having been predominantly Protestant. This meant that a greater proportion of Protestants would satisfy the length of service requirement and greater proportion of relatively new Catholic recruits would be made redundant. At the Tribunal level it was determined that modification on these grounds amounted to a "special reason" justifying departure from a previously agreed selection procedure. However, it is our understanding that this decision is currently being challenged in the Court of Appeal. If the challenge to the Court of Appeal succeeds, it will point up very starkly the inadequacy of the current affirmative action provisions, and will clearly dissuade employers from taking affirmative action measures, other than the three very narrow measures protected within the current legislation.

The experience of other countries suggests that reform created by simply attacking direct discrimination will only be piecemeal. Instead, measures are needed which promote equality of opportunity alongside the pro-active anti-discrimination measures already in place.

Chapter Eight: Matters for Consideration

We were disappointed that this critique did not take the opportunity to sum up the various recommendations for change, comment on the international principles relevant to the debate, summarise what seemed to be working well, and indicate the areas still needing to be resolved. Our own conclusions, for example, from a study of this volume, was that there seems to be some consensus that while the legislation is in need of some attention, a major overhaul is not required. For example, there seemed to be agreement that:

- the definition of affirmative action and that of fair participation be clarified (our own proposal is that they should be defined to indicate that the function is to secure a more equal participation of Protestants and Catholics within the workforce and in all aspects of employment in NI, as opposed to merely securing fairness in a procedural sense);
- affirmative action measures be extended (our proposal is that they be extended to cover any bona fide affirmative action measure taken in furtherance of an affirmative action plan designed to secure fair participation within a particular work place);

- the legislation should be amended to ensure that measures aimed at active recruitment amongst the long term unemployed are protected from indirect discrimination suits ;
- the Code of Practice be amended to reflect legislative changes and especially improved opportunities for affirmative action.

One comment which particularly concerned us in this chapter was the reference to the national security exemption, wherein the author says that "If the certificate was issued in good faith and in the firm belief on the evidence that there might be a security risk (even if subsequently found to be untrue) then no discrimination on any grounds would have happened".

2. Volume II: Policy Aspects of Employment Equality in Northern Ireland

CAJ found this volume to be particularly interesting in that it brought forward a lot of new and interesting data which had not been available to us in preparing our submission. We believe that this new data confirms rather than undermines our feeling that issues around employment and fair employment need to be urgently addressed. As with the Smith and Chambers analysis in the 80s, this data provides a useful addition to the information base which needs to act as a benchmark against which change can be measured in future reviews.

Chapter One: Employment, Unemployment and Equality of Opportunity

This chapter outlines the extent of the unemployment problem, showing how Northern Ireland has consistently had the highest unemployment of any region in the UK. In 1990 there were 22.6 claimants for each vacancy in NI whilst the figure was 9.6 for the UK as a whole.

As Chapter Two (Vacancies, Access to Employment and the Unemployed: Two case-studies of Belfast and Londonderry) points out however "employment creation on its own is implausible as the major mechanism for the reduction of unemployment... employment gains do not necessarily mean decreases in unemployment". Various reasons are put forward as to why this is the case - it seems that negative stereotypes of the unemployed are alive and well. These stereotypes generally portray the unemployed as bad risks, lacking work discipline, lazy, unreliable etc. One interesting finding was that employers preferred recruiting from the active unemployed ie those engaged in some kind of work while unemployed, including those "doing the double", since this was seen by many employers as showing initiative on the part of the claimant.

This chapter outlines some reasons why the unemployed may refuse jobs, including the "spatial factors" (ie chill factor) involved, and also points out that one of the difficulties is the kind of work being offered to the unemployed. This tends to be in areas like tourism/hospitality which offer low wages, poor terms and conditions of employment, and job insecurity. The authors argue that essentially the work that is open to the unemployed in terms of their qualifications, background and experience is precisely the sort of work which offers few prospects and is not very attractive. The authors refer to press/TV headlines like "Jobs coming to Belfast", but as they point out, that doesn't mean the jobs will go to the unemployed. Are the jobs where the unemployed live? Also, high skill jobs do little for local labour markets. Another problem is the growth of part time (mainly female) work whilst those registered unemployed are mainly male. In other words, the registered unemployed are competing with the hidden unemployed! These findings need to be at the fore of government's mind when determining how best to address unemployment and the unemployment differential.

The issue of the polarisation of work-rich and work-poor households is taken up in **Chapter 3 (Long term unemployment in West Belfast)**. This chapter draws on some very interesting empirical research.¹ The authors point out that as of January 1995, 57% of claimants had been unemployed longer than one year, and comment on the fact that Gudgin and Breen in their recent study² did not look at the duration of unemployment by religion. Yet the comparisons are quite stark:

In 1991: Catholic/Protestant short term unemployment ratio was 1.66:1
and Catholic/Protestant long term unemployment ratio was 3.08:1

Of the sample examined, 23% of respondents never had a job - that is 75% Catholic, 25% Protestant. Yet the authors show, by analysing questions related to job search and willingness to work, that the myths surrounding the long term unemployed can be challenged: 77% of long term unemployed are looking for work. Catholics had a higher search rate than Protestants for each duration eg for those unemployed for five years or more, 73% of Catholic males were still looking for work compared with 64% of Protestant males. Indeed, the research found that 52% of long term unemployed would take any job at all - 65% of Catholic males, and 35% of Protestant males. This disparity is thought to be due to Catholics traditionally being in less stable employment.

In relation to wage flexibility, Catholic males are more likely than Protestant males to say they will work for less than their benefits - this, it is suggested, is due to higher previous earnings expectations on the part of Protestants. As regards the informal economy, 23% had worked in it in the last year (24% Catholics, 21% Protestant). Nearly 80% of these had earned less than the amount couples on income support for two years are allowed to earn without jeopardising benefits. Protestants appeared to have better opportunities in the informal economy in terms of earnings than Catholics. Nearly all of these findings challenge some of the standard stereotypes

¹ Our understanding of the research base for this chapter is that the sample was relatively small, but was basically representative of the claimant count for the area, with a slight over-representation of women and Protestants. The authors believe that it is unlikely that these biases would alter the main findings of the research.

² CCRU, Research Report 4, 1996

about long term unemployment, and indeed those about some of the 'cultural factors' which are often proffered to explain the unemployment differential. The authors conclude that the chances of the long term unemployed in West Belfast being brought back into employment will only be substantially improved by locating work in the area and ensuring that the long term unemployed get priority in any new employment. These are important findings for government to bear in mind in planning appropriate responses to the needs of the area - and they may have important relevance also for the needs of the long term unemployed across N.I.

Chapter Four (Long Term Unemployment and the Community Work Programme), again, provides some interesting statistics eg in relation to employment and training schemes. 50% of Protestant males who had left a scheme did so to get a job, whilst the figure was 7% for Catholic males, 25% for Catholic females, and none for Protestant females. Again the authors point to negative stereotyping of the long term unemployed by employers eg "must be something up with them". Other employers cited a generally bad feeling about the long term unemployed at interviews, whilst one complained that they "really don't have a lot to talk about". Interestingly 50% of employers would definitely not hire ex-prisoners. One employer currently employing ex-prisoners reported no problems, other employers claimed that their response depended on the offence. In relation to negative stereotyping of the long term unemployed, the authors concluded "The long term unemployed may therefore not be recruited by virtue of being long term unemployed". Significantly, no employer objected to being required to recruit the unemployed as a condition of government assistance. The authors conclude: "individual employers in high areas of unemployment need to be encouraged by government and its agencies to be less pre-occupied with the finer points of a 'balanced workforce' and more supported in their efforts to recruit the unemployed". CAJ's own submission urged that "incentives (most practically, financial) therefore, need to be introduced to encourage employers to recruit from the long term unemployed, and to make such employment an attractive proposition for members of that group. Such incentives might include: paying employers a premium to set up training schemes in particular skills for the long term unemployed; and/or paying employers a proportion of the unemployment benefit which the unemployed person would have received to enable them to recruit directly from the unemployed and to provide those persons with particular training; and/or reducing the employers' national insurance contributions for those newly-recruited from the pool of long term unemployed people".

Chapter Five: Employment Equality, Educational and Training Policy

In this piece of research, the author points out that in the past most studies have tended to focus on adult (particularly adult male) labour markets. This has neglected the experiences of young people, a serious omission, since the transition from school to adult life is important in determining the later life chances of Catholics and Protestants. After examining the historical problems of institutionalised discrimination with respect to eg craft apprenticeships, the author moves on to provide an analysis of the current situation. Essentially he argues that it is not possible to put the blame for Catholic unemployment onto Catholic unwillingness to

invest in human capital, since more Catholics avail themselves of the training system at 16-18 years. This "scheme effect" ensures low levels of Catholic unemployment for the under-19 year olds, but thereafter, a large proportion of Catholic youth finds itself on the dole. In addition to the fact that a lower proportion of Catholics than Protestants gain employment after training, the study identifies problems during training. This is due to the fact that there is a high degree of "localism" in training. According to the report, the implementation of national policy on training has been devolved to individual employers and to community workshop provision. Given the sectarian geography of NI, if there is not targeted investment to increase the number of employers in Catholic areas, this policy could have a disproportionate impact on Catholics.

This chapter should be seen as providing further evidence to reinforce CAJ's position re: the importance of targeted employment in areas of high unemployment and positive moves to help the unemployed. It also touches on an area CAJ has not hitherto examined in great detail, namely government training provisions. The high level of Catholic take-up of training schemes, as the author points out, refutes the claim that by getting more training, young people (especially Catholics) will improve their employability. Clearly, as chapter 4 shows, people want jobs not training schemes. In the previous four chapters, the major problem identified in Catholic areas is not a lack of motivation on behalf of the inhabitants, but lack of jobs.

In the context of education and training opportunities, it is also at this point worth highlighting again the interesting research carried out for the Central Community Relations Unit entitled "An Analysis of Community Differences in the Pilot NI Secondary Education Leavers' Survey" (December 1994). This work examined the differential examination performance between the two communities and found that these could "largely be explained by poorer relative socio-economic status and by the relatively lower proportion of Catholics who attend grammar school".

Chapter Six: The Implementation of the Policy Appraisal and Fair Treatment guidelines in Northern Ireland

We had three concerns about the methodology used for this chapter. Firstly, departments were asked to select their own examples of PAFT implementation, which might have allowed government the opportunity to engage in window dressing. As it turned out, such has been the lack of implementation of PAFT, that departments were not able to turn this properly to their advantage. Secondly, the research was concentrated on interviews with "relevant personnel in departments, agencies and, Non Departmental Public Bodies (NDPBs)" (p128), and no attempt was made to interview those who might be expected to benefit from PAFT. Thirdly, the issues which arose in the SACHR seminar on the topic (a seminar which brought together some of the non-governmental groups active on PAFT, and therefore which might have compensated for the lack of earlier consultation) appear to be little reflected in the final report.

Despite these reservations, however, we were interested to see how accurate were our own findings about the failure of PAFT to take root inside government. In terms of the researchers findings - it appears that even minimal steps such as regular meetings of the Lead Officers group responsible for implementing PAFT are

not happening; nor indeed have the guidelines even been effectively distributed. We were therefore disappointed that the researchers did not come to any definite conclusions about how to ensure appropriate implementation for the future. If anything, their conclusions appeared to favour in-house regulation which will not facilitate transparency, open government or proper evaluation. CAJ and others contend that giving PAFT a statutory basis would allow for more effective implementation and accountability. Unfortunately, the research did not examine this option in much detail, nor indeed rigorously examine alternatives to the statutory approach.

CAJ has urged from the outset that the Employment Equality Review be substantive and not mechanistic. The proper implementation of PAFT would bring about real change and accountability, and SACHR must therefore avoid any temptation to accept less than this. PAFT after all is a government initiative. It is not clear to us why the government would hesitate to put the guidelines on a statutory basis, since this would underline government's continuing, and indeed revitalised, commitment to equal opportunities and fair employment.

Chapter Seven: Targeting Social Need

This is a fascinating study of TSN, and its findings endorse a number of the criticisms and recommendations of CAJ's work. One of the interesting issues looked at is the supposed dichotomy, as described by the Northern Ireland Civil Service, between targeting need and reducing community differentials. There is an impression that concentrating on the latter issue would mean that equivalent needs in Protestant communities would not be addressed. This of course is a false dichotomy. If need is objectively defined, then all those whose level of need deems that they be targeted, will be targeted. Given the socio-religious distribution of disadvantage in Northern Ireland, both Protestants and Catholics will benefit even though proportionately more Catholics will be affected.

However, the authors clearly identify the problem created for the Civil Service in evaluating the policy, namely the lack of any religious monitoring. Thus, for example, the DHSS couldn't assess differential community impacts with regard to the Jobseekers Allowance, as they had no relevant statistics. Problems of implementation are also caused by the stated belief of government departments that all spending targets need. This clearly misses the point that TSN is about skewing resources to those in greatest need. Moreover the Department of Finance and Personnel's contention that TSN could not be assessed in an objective fashion, the absence of any published information, and the opaqueness of public spending planning, make it difficult to see how TSN is supposed to be practically implemented. A suspicion that it is not can be seen in the poor response of government departments to research questionnaires, with DENI failing to respond at all. Moreover whilst programmes such as Making Belfast Work are cited as examples of TSN, they operate on the margins of government policy, with little evidence of effective mainstreaming. Indeed such programmes tend to hide substantial disinvestment in areas of social need - the dramatic cuts in the Action for Community Employment (ACE) scheme being one glaring example of this.

A particularly striking example of the absence of effective implementation of TSN is provided by the DOE's long term Capital Roads projects where 84% of projects are

east of the Bann. With evidence like this, the authors are led to the conclusion that "TSN has not, in our view been a public expenditure priority - rather it is a principle awaiting definition, operationalisation, and implementation." CAJ's conclusions were somewhat similar, but it is important to have this empirical research to ascertain that our assumptions were in fact valid. As with PAFT, we feel that strong government commitment in this domain, could be very beneficial for addressing many of the problems around unemployment and fair employment.

Chapter Eight: The Impact of Public Sector Job Losses on Employment Equality

The focus of this chapter is the effect of recent trends in public sector employment and the community balance in Northern Ireland. The authors note that, apart from construction, the Catholic share of employment is highest in the public sector, most notably in education and health. Changes in public sector employment, for example as a result of compulsory competitive tendering, are likely therefore to have implications for the community balance of employment as a whole. The authors conclude that, so far, for all practical purposes, public sector job losses to date have been equally shared among Catholics and Protestants. They also point out that the Catholic share of employment is not independent of the rate of growth of public sector employment. They argue that this is due to the higher turnover of Protestants, due to their older age profile in the public sector, the younger age profile of Catholics in the applicant pool, and the size of the Catholic employment gap.

Whilst they present well researched and important findings, especially with regard to the importance of public sector employment for Catholics, the terms of reference for the study seem unnecessarily restrictive. For example, the study concludes: "Whether or not the public sector should be used as a vehicle for promoting a more rapid growth in the Catholic share is an issue for policy which is not addressed in this chapter". CAJ hopes that SACHR will be able to come down firmly on the side of the public sector being used as just such a vehicle. Nine years after the last SACHR report, which recommended government should be set a target for reducing the unemployment differential, it is disappointing that these issues which go to the heart of the fair employment debate have still to be effectively addressed.

Chapter Nine: Local Councils' Economic Development Activities

In terms of employment trends, this piece of work confirms the belief that there is likely to be growth in the job gap of Catholic-majority districts. (This is the difference between employment growth and labour supply growth). This job gap will not be as substantial in predominantly Protestant areas. The effect on equality is obvious.

Another interesting point is that economic growth does not always lead to jobs. Particularly in the most deprived areas, jobs may be taken up by outsiders. In most cases, community-led development leads to a higher chance of locals acquiring jobs.

On the issue of local development, one interesting point which emerges is that Council based development may actually widen disparities and not eliminate them. As Protestant-majority areas in the east of Northern Ireland tend to be wealthier, they are able to raise proportionately more money from the rates. This has led to disparities in allocation of EU Structural Funds for local development as they are based on the Councils own spending. Thus, areas like North Down and Lisburn, which are two of the four least deprived District Council areas received more than the NI average of fund allocations per head, whilst three of the five most deprived received less than the average. Another point which emerges is that the use of rates to support economic development will lead only to a redistribution of resources within a Council area. While this may be worthwhile in some Council areas - to achieve redistribution between Council areas, the regional rate would need to be raised.

Chapter Ten: Job Creation in NI - Policies and Constraints

This chapter looks at government job creation initiatives, pointing out that a correlation of job losses/closures with location or local level of unemployment has never been studied. If it were, the authors argue, it might refute the equal Catholic/Protestant assistance claim. The authors also argue that the DED review (1995) was inadequate in that there was no assessment of the implications of TSN, also it avoided the effectiveness of the instruments of economic assistance. In relation to the new guidelines for job creation agencies for the 1990s, the authors argue: "The outcome of the changed guidelines have not been sufficiently evaluated and, without appropriate performance indicators, may not be capable of adequate evaluation. This suggests either an unwillingness to expose the evidence to scrutiny or an unwillingness to collect the necessary evidence. Neither answer is reassuring".

Chapter 11: Overview and Conclusions

This chapter provides a good overview of Chapters 1-4, but CAJ was left with the feeling that it failed to tackle the government about the potential contribution it could make in some of the other sectors studied. SACHR now needs to draw these varied strands together in drawing up its own conclusions. Our own conclusion was that there is still a very serious problem of fair employment to be addressed, that the unemployment differential needs to be urgently tackled, and that efforts to date have been insufficient. Opinions may be more divided as to what needs to be done to complement legislative and institutional efforts to date. There does, however, seem to be an interest in exploring the extent to which government policies in the area of Targeting Social Need and Policy Appraisal and Fair Treatment guidelines could be part of the answer to fair employment. CAJ is not alone in thinking that these two programmes could be enormously beneficial in tackling the unemployment differential, if only they were properly harnessed and resourced.

3. Volume III: Public Views & Experiences of Fair employment and equality issues in Northern Ireland

Chapter One: Public Views and Experiences of FE and EE Chapter Three: Evidence from the NI Social Attitudes Survey

Chapters One and Three of this volume are quite similar in that they both examine what are regarded as the "two tribes" view of fair employment. Chapter Three justifies gauging public views on fair employment, and indeed the views of political parties, by the fact that: "parties cannot lead where their supporters do not choose to follow". What does this mean in the context of fair employment? Absent from both chapters is an outright statement of fact that the fundamental issue of equality is a basic human right. Chapter One, whilst examining in detail the core nationalist and unionist views of the issue, tries to be too neutral; as does Chapter Three. Fair employment should not be examined in the context of competing political ideologies, it should transcend such issues. In Chapter One, the argument is made that in Northern Ireland, unlike in Britain, in relation to race and sex discrimination legislation, the debate impinges on central political questions. This sets the tone whereby SACHR can stand back and act as an independent arbiter between the two 'political' perspectives. This is not really any option given the government's stated commitment to equality of opportunity. Certainly we would argue that, from a human rights perspective, such an approach is clearly undesirable and unacceptable: SACHR needs, and needs to be seen to, opting clearly for an equality approach.

Chapter Two: Change and Continuity in the views of Political Parties and non-party organisations

This is an extremely interesting analysis of the views of the political parties and different organisations with a particular interest in employment and fair employment issues. Interesting references are made to "points of convergence among the parties and other bodies which transcend communal divisions". The authors conclude that while most contributors differ about the extent to which the scope of the 1989 Act should be broadened, none - with the exception of Equality - doubt the need for the legislation. Secondly, they find a compelling level of agreement concerning the centrality of affirmative action to fair employment policy, which is particularly evident in the virtual unanimity of opinion about the need for more concerted and strategic efforts to implement area-based positive discrimination via TSN and, to a lesser extent, by the proposal to place the PAFT guidelines on a statutory basis. Finally, they say there is a consensus about the priority to be lent to the unemployment differential.

Upon closer examination, we feel that some reservations have to be expressed about the reliance to be placed on these conclusions. Indeed, it seems that the political parties have not necessarily come to a convergence of views, but that they have not expressed (or been asked to express) views on the issue much. Silence may mean assent, but this is obviously not always so, and - for example - any attempt to discuss fair employment in the political framework of the Talks could well highlight divergencies again. Still, it does appear to be the case that in general terms, many aspects of the debate have become "part of the political landscape" so

that what appeared radical twenty years ago is now accepted. This certainly allows CAJ to assert that SACHR should be able to proceed with confidence to make far-reaching recommendations which will allow us all to consolidate and accelerate the progress made so far.

Chapter Four: Employer Perspectives

This chapter considered a wide range of employer perspectives, through a combination of a questionnaire and use of focus groups. This begs the question of course as to whether those who represent claimants within the FEC and FET system would have been able to articulate their views more successfully if such resources had been directed at the marshalling of their perspectives.

An initial conclusion is the centrality of the FEC's Code of Practice in most employers' approach to the Act, reinforcing the view that the Code is in need of overhaul in the light of experience of the Act. Aspects of this chapter reinforce the need for greater clarity of concepts- eg the authors provide their own definition of 'fair participation' and judge employer responses on the basis of self-analysis of their position. 80% of those going before the FET were satisfied with the FET but only 50% thought they got a fair hearing - this seems due to the reservations about a litigious approach, which the employers themselves admit they are partly responsible for encouraging. There is a general acceptance that fair participation and affirmative action have taken root. The costs of compliance are acknowledged but not seriously questioned, although some resentment at the perceived competitive advantage of employers in Great Britain and the Republic of Ireland is noted.

A number of issues raised deserve particular attention. Firstly there is anxiety both at the integration of advice and advocacy functions within one agency and, secondly, there is a more general concern that a combination of agencies contribute to more confusion than clarity. There is little point in denying that ultimately it is employers which make fair employment a reality and, if the advice function is devalued by suspicion and antagonism, a crucial aspect of the Act's objectives is being undermined. Nevertheless, the danger of dilution of expertise cannot be underestimated. We have not been able to give sufficient consideration to this issue - it did not arise in our own consideration of the FEC's work - but our initial response is to fear that any strict separation of functions would limit the strategic role we feel the Commission must play. Accordingly, we feel that relatively strict internal demarcation lines within the FEC is a better compromise than the divorce of the Agency's function. The question of a single agency is equally complicated. We suggested in our full submission that SACHR initiate some specific research into the currently fragmented approach to anti-discrimination legislation and programmes.

Chapter Five: Complainants Perspectives

This valuable collation and analysis of complainants' experiences reveals some tantalising glimpses of the make-up of those who complain and equally importantly, those who do not complain of alleged discrimination. One worrying statistic is that only 29% of the complaints come from women. While the authors speculate as to why this should be so, the absence of more concrete information reinforces the CAJ

suggestion that a comprehensive 'labour market profile' of those who complain, and those who do not, is an essential element in the appraisal of the successes and failures of the fair employment system.

The authors survey is largely concerned with the complaints of those already in employment. Nevertheless, it is clear from their statistics that there is about a 50:50 split between those in employment and those out of employment at the time that the act of alleged discrimination occurs. It is encouraging that many complainants are prepared to complain even during the course of employment. However, these findings do not detract from CAJ's view that very many potential complainants will be deterred from complaining and that alternative forms of 'public interest' judicial process must be contemplated. Indeed the weaknesses of a purely individual model of litigation is strongly reinforced by findings that fear of getting a bad name (34%), victimisation (28%) and stress (25%) are the major reasons for withdrawal. It would appear that individuals are required to make unacceptable sacrifices in defence of their rights.

The findings of the chapter endorse the need for legal aid for the Tribunal and a more 'public interest' related model. In our view, our case for access to the Tribunal for the FEC, trade unions and interest groups, and the availability of proactive remedies is greatly strengthened by these findings.

Chapter Six: the Fair Employment Commission

This is a stimulating analysis of the FEC's operations. The emphasis has been a voluntarist approach within the scope of the timetable set down within the Act. The author is clearly suggesting that the time has come for the FEC to broaden its horizons, now that many essential tasks under the existing regime have been successfully accomplished. The author doubts that the 'fair participation' concept is worth preserving. Clearly she is struck by the opacity of the concept but CAJ's view is that the analysis involved in determining fair participation is an essential prerequisite for further action by employers, including the use of affirmative action. However, these anxieties reinforce the need for a clear definition of fair participation.

The FEC is in a unique position amongst equality agencies of being able to call upon vital sources of information from employers. The author's doubts about the need for such extensive s.31 reviews is largely fuelled by her desire to jettison the fair participation concept, so these could be assuaged if the concept is retained and defined better. CAJ welcomes suggestions for more regular reporting of labour market information, particularly that relevant to female employment, which is an issue in need of much greater attention.

The chapter argues in favour of a more strategic role for the FEC, which the CAJ would once again welcome. In particular, it is agreed that the agenda for investigations should be broadened to include issues such as pay, sub-contracting, freelancers, part-time and temporary work. In the light of the impact of these issues on women's employment, a point which the author rightly raises, it would be valuable if such investigations were conducted in liaison with the Equal Opportunities Commission.

CONCLUSIONS

The three volumes provide a fascinating collection of analysis and of empirical data about issues of fair employment. CAJ's own interpretation of the data suggests that:

- there is extensive agreement that the legislation in general terms is working fairly well and needs no major overhaul as a result of the review and that the recommendations CAJ makes regarding **legislative proposals** would by-and-large be acceptable.

- there is general agreement that the key **institutions** overseeing the legislation - the Fair Employment Commission and the Fair Employment Tribunal - are working fairly well and that no major changes need to be introduced immediately. None of the research seemed to contradict CAJ's conclusions that there would be benefits in strengthening the monitoring function of the FEC, that the practice of employer self-reviews be improved, and that the Tribunal's function be streamlined in a number of ways. Detailed recommendations on each of these points have been made to SACHR.

- business, which is often assumed to have reservations about the legislation and institutions around fair employment, appears to have no fundamental concerns needing to be assuaged. On the other hand, it is quite clear that financial incentives will need to be introduced if employers are to actively recruit from amongst the long term unemployed.

- all the research findings seem to underline that there is still a very serious problem of fair employment to be addressed, that the unemployment differential needs to be urgently tackled, and that efforts to date have been insufficient. Government policies for Targeting Social Need and Policy Appraisal and Fair Treatment guidelines could be part of the answer to fair employment. CAJ is not alone in thinking that these two programmes could be enormously beneficial, if only they were properly harnessed and resourced.

Research gaps:

The research commissioned by SACHR, however, does not attempt to provide a comprehensive agenda of all the issues needing to be tackled by the review. In particular, we would like to highlight a few key findings of our own submission which are not necessarily addressed in detail in the research papers. In that context also, we would like to emphasise the importance of placing the work of the review within the broader context of equality legislation and programmes. There were, for example, many recommendations and findings in the 1987 SACHR report which bear re-visiting.

1. CAJ's overriding conclusion was that "the single most important contribution that government can make to ensuring equality of opportunity is to show by its words and its actions that it considers inequality in Northern Irish society to be totally unacceptable. It must accordingly be prepared to put energy and resources into ensuring change". We hope that SACHR will be giving a similarly strong message when it submits its final report on the review. The Commission should be asking that this review process not be a one-off initiative, but that the legislative, institutional and programmatic response to fair employment be a matter for periodic review.
2. Moreover, government should signal their clear commitment to a culture of equality by establishing specific equality goals along with the introduction of appropriate measures, and funding to ensure that these goals can be met within a clearly defined time scale. Goals and timetables are particularly important in those public services where wider representation from all sections of the community is lacking. Regular reports should be made public regarding the extent to which these goals and timetables are being met. Given the fact that SACHR's research did not touch much on this point, we would want to take this opportunity to emphasise again how crucial we feel recommendations from SACHR in this area would be.
3. Change to the unemployment differential can only come about if specific and public goals and timetables are set for the achievement of lesser differentials (See earlier comments - this recommendation is taken from the 1987 SACHR report).
4. Employers should be given every incentive to encourage the pursuit of the government's equality goals (see earlier comments about the financial incentives needed to encourage recruitment among the long term unemployed), and contract compliance measures ought also to be introduced where appropriate. To facilitate this, SACHR will need to seek assurances that contract compliance incentive schemes are compatible with the relevant EC Procurement Directives, and, if necessary, propose appropriate amendments to the UK regulations.
5. The CAJ submission recommended that legislation to prevent religious and political discrimination should be extended beyond the remit of employment and, in particular, should be made to apply to the financial services area, and to the provision of public goods and services. This latter point would be covered if the Policy Appraisal and Fair Treatment guidelines were given a statutory basis - which CAJ, along with a number of others, also recommended.
6. CAJ would like to see a clear strategic role being played by the Fair Employment Commission generally, and in terms of its interaction with the Fair Employment Tribunal. Fundamental to this may be the need to establish a "labour market profile" of those who currently approach these institutions, the issues referred to them, and the level of support in terms of resources and expertise provided.

7. We were interested in the issue which arose from SACHR's research regarding the arguments for and against separating the FEC's advisory and monitoring role. This had not arisen in our own study of the question and we were therefore unsure as to appropriate conclusions to draw. It may be that this important debate could be looked at within the context of the wider examination we suggest regarding the currently fragmented approach to anti-discrimination legislation and programmes. Clearly employers wanted some form of streamlining between the Codes of Practice and the different legislative regimes, and others have argued that some streamlining would reinforce moves towards a wide-ranging equality culture.
8. Apart from section 42, no consideration is given in SACHR's research to legislative exemptions, particularly for teachers, nor was much reference apparently made to this in the submissions received. Yet the Act does require that the exception be kept under review, and CAJ's submission urged that some examination be made of the need, if any, for this continuing exception. It would be interesting to learn from SACHR if they received any representations on this question, and what they intend to do in this regard.
9. Last but not least, we urge that SACHR, when issuing its report give some thought as to how a broader public debate around issues of discrimination can be facilitated. We had some criticisms to make about the consultative process to date - for example,
 - the business sector seems to have been facilitated exceptionally well to ensure that its input is registered. This is excellent, but similarly pro-active efforts were not made to our knowledge to facilitate the widest possible input by unions, churches, the voluntary sector etc. While we did not find the contribution from the business sector to be very different from that of other interested groups, an important educative opportunity was lost.
 - the presentation of research work orally in seminar format was also an important initiative, though the main purpose seems to have been to make interested bodies aware of the findings rather than necessarily take on board, or refute, any criticisms voiced at the sessions.

Despite these criticisms, SACHR clearly sought informed and constructive input into the debate, and we feel that the consultative process enriched our own thinking and the level of debate generally. We believe that the Commission should now put the emphasis on extending the public debate around equality issues, so that it is not seen as a matter for experts but a matter of concern to all in Northern Ireland.

This last reflection leads to us to our final conclusion. It is CAJ's contention that issues of justice, equality, fairness and the rule of law are central to the conflict in Northern Ireland, and must therefore be central to its resolution. Action to address these issues is required now, and should be taken now. Tackling fair employment, and the ending of religious and political discrimination in employment, is one of the ways in which this agenda for peace can be advanced.