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# *CAJ's response to the discussion paper on Committal proceedings in Northern Ireland 1996*

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# COMMITTEE ON THE ADMINISTRATION OF JUSTICE

***RESPONSE TO THE DISCUSSION PAPER ON COMMITTAL PROCEEDINGS IN NORTHERN IRELAND.***

The Committee on the Administration of Justice is an independent civil liberties organisation and as such, we are obviously concerned that the justice system is structured in a way which ensures that the rights of all those who come into contact with it are protected. We do not believe that the criminal justice system as it operates in Northern Ireland conforms to this requirement and we are therefore eager to engage with any attempt to improve the system with this end in mind. While we agree that increased efficiency in the workings of the system is a legitimate aim, we believe that the protection and vindication of the rights of those who are processed through the criminal justice system should be paramount. Unfortunately, we do not feel this is a view generally shared by the legislators.

We do not attach any great importance to the maintenance of committal procedures as they now stand, but we are reluctant to agree to the removal of one safeguard for those on remand, albeit a limited one, unless we can be assured that an equally or more effective procedure is put in its place. We are not unmoved by the arguments put forward in the paper on the inefficiency of the current system but if we dilute or remove the concept of committal proceedings, we need to be aware that we are responding primarily to concerns of the government and the prosecution rather than the interests of defendants.

The present system, in our view, fulfils three functions which we consider important in safeguarding the rights of defendants:

(a) It allows the defence to challenge a clearly unsound or unfounded prosecution case at an earlier stage than the trial.

(b) It ensures that the prosecution must disclose their case at an early stage, thereby assisting the defence in preparing their case and in deciding whether to challenge the case at the committal stage.

(c) It provides a mechanism which allows the defence and the magistrates' court to ensure that the police and the prosecution are carrying out their tasks as expeditiously as possible i.e. by raising questions at remand hearings about when committal can be expected.

We believe that any new or reformed system should be measured against the above to ensure that it does not dilute the protections afforded to the accused by the current procedure. We also believe that it should be based on rigorous research. As current figures relating to preliminary investigations and mixed committals are not available, the discussion paper is perhaps premature. We would also welcome sight of figures of the number of applications for "No-Bill" declarations in addition to the statistics provided in the paper on the number of successful applications, as a percentage of the number of Crown Court defendants.

In formulating our response to the discussion paper we intend to address the issue using the possible alternatives put forward in paragraph 18 of the document. However two preliminary points arise.

Firstly, we do not consider it a safeguard of any great merit that the DPP will examine all cases before a decision is taken to proceed with the case to the Crown Court. The DPP's office has failed in the past to withdraw a number of questionable cases. This argument takes on greater importance in the context of Northern Ireland.

Secondly, at paragraph 13 of the document the system as it now operates in Scotland is described in some detail placing emphasis on the fact that there is no procedure for submitting that there is no case to answer. However the system in Scotland is of course very different to that which prevails in Northern Ireland and, in particular it is our understanding that in Scotland there is a maximum period prescribed by law which a person can spend in custody. If the NIO is giving serious consideration to diluting the current committal procedure to ensure that inefficiency is removed and the rate of processing cases is increased, perhaps the proposal of a prescribed time limit is one they will consider positively.

***(i) retain the present arrangements.***

We are concerned that apparently the only negative factor associated with the current system exercising the minds of those responsible for the document is the alleged intimidation of prosecution witnesses by defence lawyers. This is in contrast to the other essentially neutral matters which are mentioned as justification for changing the present procedure, such as the relatively small number of accused who avail themselves of the opportunity to orally challenge the prosecution case at this stage.

The robust questioning of prosecution witnesses by defence lawyers is not only a legitimate tactic but is in fact a duty on defence advocates. To suggest, as is done in paragraph 11, that the system should be changed because the defence sometimes "took advantage" of it in order to cross-examine witnesses, in the hope that either they would not turn up at the trial or change their testimony, unfortunately smacks of the prosecution bias that coloured the new proposals on the rules governing disclosure of evidence by the prosecution. It also ignores the fact that these proceedings are governed by a magistrate who will intervene if he or she believes the questioning to be unfair. If witnesses decide to change their testimony or not to give evidence as the result of close questioning by defence lawyers at the committal stage then their credibility must be open to question. It is also true to say that, while there are undoubtedly few cases which end at the committal stage, there are a number which end because of the non-appearance of essential inculpatory witnesses. It is certainly preferable that this should happen sooner rather than later, particularly where the accused is in custody, in order to avoid the injustice of keeping someone unnecessarily in custody and the waste of resources required to bring a case to trial.

It is also questionable, in our view, if the present system does in fact result in the inefficient use of time and resources as is suggested in the paper. If the process is significantly under-utilised, then we can accept the need for an analysis of

alternative models, but we fail to see how the current system is, in light of the under-use, so inefficient. It is apparent that there will still be the need for papers to be provided to the defence outlining the prosecution case, and criminal practitioners suggest that the normal preliminary inquiry hearing lasts only a few minutes.

***(ii) retain the present arrangements, but without the possibility of oral evidence.***

We have already indicated that we do not accept the validity of the argument relating to the "intimidation" of witnesses by defence witnesses. If the sole advantage enjoyed by this system is the avoidance of this perceived problem, we fail to see how it could be acceptable, based as it is on a misconceived premise.

***(iii) permit the possibility of a submission that there is no case to answer, with oral argument though no witnesses : cases transferring directly to the Crown Court.***

We believe that there must exist a mechanism by which the prosecution case can be challenged and their witnesses cross-examined if the defence consider it proper to do so in light of the paucity of evidence presented. This system partly recommends itself to us in that this safeguard remains, albeit in modified form. However, we remain concerned that the advice of the Royal Commission (appendiced to this paper at paragraph 28) suggesting that in serious cases the submission of no case to answer is to be made to the Crown Court, leaving the Magistrates' Court to deal with hybrid and summary offences only, is apparently not to be followed. It is our view that one of the reasons for the small number of cases ended at committal stage is due in some measure to the reluctance of the Resident Magistrates to refuse to allow serious offences to be ended before they reach the Crown court and the consideration of a Crown Court judge. Crown Court judges would not labour under this disadvantage.

This procedure would also have the advantage of retaining a pressure point allowing the defence and indeed the court to request that the prosecution and police ensure that the investigation is expedited to enable transfer to the Crown Court to take place as soon as possible.

***(iv) abolish committal proceedings, cases transferring automatically to the Crown Court, where the "No-Bill" procedure would be available.***

We find the absence of any safeguard allowing the defence to challenge an unsound prosecution case to be unacceptable. This would in effect mean that an individual could be charged with an offence with little or no justifying evidence and conceivably be remanded in custody until his or her case reaches the Crown Court. Even at that stage the only avenue he/she would have open to him/her would be to access the rarely used "No-Bill" procedure, which has been successful in less than 1% of cases in Northern Ireland since 1990.

*(v) an accelerated route for guilty pleas ; waiver of committal.*

We do not have any objection in principle to an accelerated system for guilty pleas as long as the defendant and his or her legal advisors have ample opportunity to examine the prosecution case including all documents not originally disclosed in the deposition papers.

At present, if someone in Northern Ireland wishes to plead guilty at the earliest opportunity, he or she may do so at the arraignment stage which can sometimes take place within weeks of the committal. The Scottish procedure, described at Appendix C of the document, allows for an accelerated plea after the committal stage. If the new model is to follow the Scottish example, it is difficult to see what will be achieved beyond change for change's sake. If the intention is to have a genuine reform to allow a person to enter a guilty plea at an earlier stage to make the administration of justice more efficient, without removing the necessary protection for the individual, this proposal needs to be explored in more detail and with the above comments in mind.

In relation to the possibility of a defendant waiving his or her opportunity to have the case reviewed at the committal stage, we do not object to the negative procedure that the defendant must ask for his/her case to be reviewed otherwise the review will not take place. If committal proceedings remain much as they are, we would question the practical effect of the waiver as the current procedure, if the defendant concedes that there is a prima facie case against him/her, lasts only a few minutes at the PE hearing.

*Conclusion.*

We have argued above that the primary criterion for the reform of committal proceedings is the protection of the rights of the individual defendant. While increased efficiency in the criminal justice system is a laudable aim, it must be subservient to the need to ensure that the inherent safeguards in the current system, comprising the right to challenge the prosecution case and cross-examine prosecution witnesses at an earlier stage than trial are not diluted.

We believe that if those charged with assessing the merits of the current committal procedures, and the case for improvement, bear in mind the concerns outlined in the discussion paper at paragraph 17 and those we have outlined above, their ultimate recommendations should find widespread acceptance.