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*Winner of the Council of Europe Human Rights Prize*

*CAJ's commentary on the*  
**NIO Code of Practice for Appointment of Independent  
Members to District Policing Partnerships**

**May 2002**

**Submission No. S.130  
Price: £1.00**

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## What is the CAJ?

The Committee on the Administration of Justice (CAJ) was established in 1981 and is an independent non-governmental organisation affiliated to the International Federation of Human Rights. CAJ takes no position on the constitutional status of Northern Ireland and is firmly opposed to the use of violence for political ends. Its membership is drawn from across the community.

The Committee seeks to ensure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its responsibilities in international human rights law. The CAJ works closely with other domestic and international human rights groups such as Amnesty International, the Lawyers Committee for Human Rights and Human Rights Watch and makes regular submissions to a number of United Nations and European bodies established to protect human rights.

CAJ's activities include - publishing reports, conducting research, holding conferences, monitoring, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include prisons, policing, emergency laws, the criminal justice system, the use of lethal force, children's rights, gender equality, racism, religious discrimination and advocacy for a Bill of Rights.

The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize.

# **CAJ commentary on NIO Code of Practice for Appointment of Independent Members to District Policing Partnerships**

## **Introduction**

The Committee on the Administration of Justice learnt of the existence of this NIO Draft Code of Practice only when the consultation process was well underway. This is particularly surprising given that we are one of the many groups that are included in the draft Equality Scheme of the Northern Ireland Office as a consultee on policy issues. The appointment of independent members raises a variety of concerns for constituencies interested in issues of gender, disability, ethnicity, religious and political discrimination, and CAJ would argue strongly that the different groups working on these issues should receive a copy of the draft Code of Practice to comment upon.

Apart from making a valuable contribution in their own right, contact with such groups provides an opportunity to widen the network of people who are consulted on, and involved in, the debate around policing. A key cornerstone of Patten's findings was that policing should involve more than the police, and CAJ believes that consultation on the way forward provides a relatively simple way of encouraging people to share in developing a representative, accountable and rights-respecting police service.

## **Para 1.3 – Consultation**

We welcome the fact that the NIO expanded its list of consultees a bit beyond those mentioned explicitly in the legislation, but see comments above. CAJ believes that it would be important to consult with a much broader network of consultees than is highlighted in this paragraph.

## **Para 1.5 – Background**

Any summary inevitably risks omitting important principles. It may be better to incorporate the terms of reference outlined in the Agreement in their entirety. Alternatively, given their inherent importance, and their direct relevance for the work of District Policing Partnerships (DPPs), CAJ would argue that, as a minimum, the following additions should be made to para 1.5(b):

- Policing arrangements that ensure that the police service can enjoy widespread support from and (be) seen as an integral part of the community as a whole;
- A legislative and constitutional framework which requires the impartial discharge of policing functions and conforms with internationally accepted norms in relation to policing standards;

- (as before) There are clearly established arrangements...influence policing policies subject to safeguards to ensure police impartiality and freedom from partisan political control.

Para 1.5(d) refers to “dialogue” at district level between the police and the community. Patten uses the terminology of “constant dialogue” (Patten, para 6.25) and this suggests a less passive relationship than is currently conveyed in this paragraph.

#### **Para 2.4 – Composition**

Though this issue is addressed elsewhere in the text and CAJ comments on it later, it would be important to emphasise in this paragraph the importance of the DPP being as representative as possible. Patten for example (Patten, para 6.26) refers to the independent members being “*selected to represent business and trade union interests and to provide expertise in matters pertaining to community safety. Taken as a whole, each DPPB (sic) should be broadly representative of the district in terms of religion, gender, age and cultural background*”. CAJ thinks that this issue cannot be over emphasised in this Code of Practice given the unfortunate failure of the government to respect this guiding principle in their own appointments to the Policing Board, and the fact that it will be local Councillors who will be most active in making proposals regarding composition. For a variety of reasons, political representatives in Northern Ireland do not adequately reflect the diversity in gender, age etc. of our population. CAJ believes that it would be worth noting this point so that Councils and the Policing Board seek actively to ensure that the remaining independent members compensate for any obvious gaps in representation.

#### **Para 3.2 – Ensuring best practice**

Reference is made to the need to make appointments on merit. CAJ has repeatedly indicated in its submissions to public authorities that this could be an excellent principle if the term “merit” was actually defined. Without a definition, an insistence on the “merit principle” often risks merely ensuring the appointment of people in the mould of those already in post (see SACHR’s study of 1997 into the merit principle).

CAJ welcomes the commitment to ensuring that the Policing Board addresses the training needs of impartial assessors. While good to refer to equality specifically, it may be worth also alluding to the section 75 duty, so that it is clear that the impartial assessors are bound to comply with this duty in the course of their work. Presumably, impartial assessors could benefit from the detailed section 75 training that we understand is being developed for the Policing Board (see their Equality Scheme recently circulated for comment).

In para 3, the value in quoting directly from the section 75 duty is even clearer. At present, the impression is given that the section 75 categories must not be discriminated against. In fact, the duty refers to having due regard to the need to promote equality of opportunity (not merely avoid discrimination) for all section 75 categories, and this paragraph needs to be amended to reflect this positive duty.

Reference in the second paragraph here to the Equality Commission's "guidance" may be somewhat misleading. The Northern Ireland Act requires that the equality schemes developed by public bodies "conform to any guidelines" provided by the Equality Commission, so the "guidelines" in fact have the force of law. The statements that follow would need to be amended accordingly. Some of the language could also be made more pro-active and positive eg. replace "every reasonable step" with "every effort", and what is meant by "other minority interests"? The reiteration of the merit principle at this point also gives the – presumably inadvertent – impression that the NIO thinks that wider advertising and outreach will somehow lessen the quality of the candidates? Given our earlier concern about its lack of definition, CAJ thinks one reference to this principle is probably sufficient.

**Probity:** why is it left entirely to the Policing Board to decide on potential conflicts of interest and whether or not candidates "are committed to, and capable of carrying out, their duties with integrity"? We understand why it should not be left to Councils alone to decide to rule out otherwise excellent candidates on the grounds of perceived or real conflict of interests, but equally it seems to CAJ strange to absolve Councils of all responsibility in this area. Obviously, local knowledge could be very relevant to a determination of possible or real conflicts of interest, and it would be useful to provide such insights to the Policing Board (see on to 3.3c).

### **Para 3.3 – Appointments Process**

#### *(a) Information Packs*

CAJ was surprised at the suggestion that the consultants should refine the job description and person specification of the independent members (we comment later on the drafts attached by way of appendix). We believe that this is a responsibility of the Policing Board, in consultation with the consultants, and not the other way around.

We believe that the last paragraph on page 10 conflates too many ideas: (a) the section 75 duty imposes a responsibility to promote equality of opportunity across a range of constituencies; (b) Patten recommended – for the benefit of policing in the general district – that the DPP be broadly representative; and (c) section 75 is an equality duty, not a non-discrimination duty (see earlier comments on this point). This paragraph needs to be re-written.

### *(b) Advertisement*

When advertising for local DPPs, it seems most important to ensure that local networks are used to the full. This Code of Practice makes advertising in the press obligatory, but wider advertising optional. There should be a particular emphasis on the need to advertise in the range of papers that are read in the local community, free newsletters distributed in the area, local groups' bulletins (not only their office noticeboards) etc. The highly centralised approach – with consultants – risks losing out on local distribution networks that will vary from place to place. The Code of Practice should make it clear that consultants should seek District Council advice about how and where to advertise to be most effective.

It should also be made clear that particular constituencies may need special attention and that broad NI umbrella groups could help advise on how best to reach candidates from ethnic minorities, from the gay and lesbian community etc. Given the importance of attracting a broad range of candidates to reflect the diverse local community, this phase of the recruitment phase is particularly important, and the Code of Practice should give a lot of emphasis to the need for pro-active outreach of all kinds.

Regarding late applications, the advert and all information provided to candidates should make this provision very clear, to avoid disappointment or confusion later.

### *(c) Selection – consultants' sift*

Will the recruitment consultants themselves be expected to assess their own composition to ensure that they are not overly homogenous? Will the process keep some sort of record – according to section 75 constituencies – as to who applied and who dropped out at what stage?

### *(d) Selection – Council nominations*

The legislation (Schedule 3, article 5.2) asks the Council to nominate "twice the number of appointments to be made of independent members". Why is the NIO asking that the panel select "at least three times" the number of candidates required? Firstly, this appears to CAJ to be a very onerous task (to interview at least 27 candidates for 9 positions). Secondly, a large number of people will be left unselected, and therefore possibly disaffected from future involvement in policing debates in the area. Thirdly, it may mean that a greater proportion of people likely to be unsuitable for appointment is interviewed, simply to meet the 'quota'.

We propose that the Code of Practice simply make it clear that the Council should interview sufficient candidates to allow them to have an effective choice in determining which candidates to recommend, and note that they will

have to recommend to the Board twice as many candidates as there are posts.

It is not clear from the Code of Practice what the Council should do if insufficient candidates come forward, or if candidates of an insufficiently acceptable calibre, or from a very narrow political/gender/class/age.... spectrum come forward? At the very least the interview panel should be given advice as to appropriate behaviour in such circumstances, and advised that they should report any such problems to the Policing Board for their further consideration.

Impartial assessors are asked to ensure that the interview panel is broadly representative. What avenue is open to them if they feel that this criterion is not being met? Should it not at least figure in their report on the process to the District Council and, in due course, to the Policing Board?

At several points it appears clear that the intent is that neither the Council nor, in due course, the Board is to be made aware of the relative weighting of proposed candidates. The Council is to receive the proposal in an alphabetical list, and must convey their decision in alphabetical form to the Policing Board. If this is the intent, then the text should clearly read "individual marks must not be provided". Equally it would be good to explain clearly why it is thought important to dis-regard the marking system, so that Council members operating the system are clear as to what exactly is expected of them. We should note that CAJ is not convinced that these arrangements are ideal – if there are clear preferences as between the candidates when measuring them against the candidate profile, we are uncertain why this information cannot be conveyed onwards.

The suggestion at the top of page 13 appears to be that the Council has to submit the names of all those considered appointable. Just as it is feasible in some Council areas that there will be an insufficiency of suitable candidates, it is likely in other areas that there will be a great surfeit. Some guidance should be given in this regard to Councils in the event that there are a large number of appointable candidates.

Why are reasons for non-appointment automatically given? Not all candidates will want to be given reasons. Would it not be better to amend this to read "all candidates should be told that they can be given more information about the process if they want reasons for their non-appointment"

Essentially CAJ believes that there is a fundamental flaw running throughout this segment. The Patten Commission, and the legislators, determined that the Councils should have a primary role in policing at the local level. Whilst in fact CAJ and others expressed some reservations about this at different stages of the process, we failed to secure any change, and Councils are therefore being relied upon to carry through on much of the policing change at local level. Given this political and legal framework, CAJ believes that Council involvement should be treated with more respect than appears to be accorded to them in this Code of Practice. Councils interview all the candidates; they

have detailed knowledge of the needs of the local district; and they have been given a clear framework within which to exercise their decision making. Why would they not be allowed to convey some of that accumulated information to the Policing Board? While the legislation is clear that the eventual decisions must be taken by the Board (Schedule 3, article 4), the instruction to the Council to produce alphabetised lists only means that the Policing Board is denied information that might be enormously helpful to them in their work.

### **Para 3.6 – Disqualification**

As the NIO is aware, the issue of the previous convictions of DPP members was controversial in the course of the parliamentary debate, not least because the Policing Act provisions contradict the thrust of the Rehabilitation of Offenders Act. However, even within the terms of the policing legislation, CAJ believes that the proposed procedure is quite unacceptable.

Firstly, CAJ sees no reason at all why all of the applicants have to have their details checked by the police before being considered for appointment. Even if there had to be an active role for the police in checking criminal records, this obviously should only apply to those candidates the Policing Board intends to appoint (not to the 50% of candidates that will not be appointed, who should not be subjected to any more unnecessary intrusion into their private lives than absolutely necessary).

Secondly, CAJ sees no reason why there should be any active process of vetting at all. All successful candidates will have been expected, in compliance with the legislation and in response to the application form, to notify the authorities whether or not they have had a criminal conviction of the type set out in the legislation. The legislation moreover lays down procedures for the later removal of members if they have not complied with these provisions. Indeed, the fact that the legislation lays down such procedures clearly implies that no active advance vetting was envisaged by the legislators.

Last but not least, the NIO has introduced a further obstacle in that a previous record – but one which does not automatically disqualify candidates – also needs to be considered by the Policing Board. The implied suggestion is that this information will only come to the fore if the police are asked to positively vet all candidates. It seems ironic that Patten was querying the strict eligibility criteria that excluded certain candidates from police jobs because they had relatively minor offences (see Patten para 15.13), but that the NIO should now be seeking to impose stricter eligibility criteria on DPP members.

Regarding the removal of members – we assume that the male gender is used because the text is adapted from the legislation? CAJ proposes that this text be made gender neutral – and that this approach be taken at all other appropriate places in the text too.



### **Para 3.9**

For some complainants, it may be difficult to make their complaint in writing. This paragraph should be amended to read – “The complainant should be asked to make their complaint in writing wherever possible”.

### **Appendix III**

CAJ believes that all the criteria cited under ‘desirable’ are also ‘essential’. We find it strange that only one criterion should be considered ‘essential’ and we believe that the benchmarks for selecting independent members of the DPPs, if left as is, are much too low and should be set higher.

Indeed we would propose adding under desirable criteria –

- experience of working with particularly vulnerable groups
- experience of working on policing related/community safety issues
- detailed knowledge of the locality and community safety/policing needs
- ability to facilitate contacts with hard-to-reach constituencies in the locality
- ability to represent interests of otherwise under- represented groups (eg young people, ethnic minorities etc)

CAJ would also propose that some guidance be given as to the kinds of indicators that interview panels might use to test for these essential and desirable criteria.

Para 12 – there should be an explicit reference here to section 75 of the Northern Ireland Act.

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A publications catalogue and details of CAJ membership  
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