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Winner of the Council of Europe Human Rights Prize

CAJ's submission to the
**“Education For The Twenty-First Century”:
Report By The Post-Primary Review Body**

June 2002

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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.

**Response of the
Committee on the Administration of Justice
to 'Education For The Twenty-First Century' :
Report By The Post-Primary Review Body.**

June 2002

1. Introduction

This submission is being prepared in the name of the Committee on the Administration of Justice (CAJ), which is a non-governmental organisation, established in 1981. CAJ draws its membership from across the communities of Northern Ireland and beyond, and is concerned to ensure that the government meets its international obligations to protect and promote human rights in Northern Ireland. The organisation works across a broad range of civil, political, economic, social and cultural rights.

In terms of equality issues, which CAJ feels are critical to the issues raised in the review, CAJ has for some time been part of a loose 'Equality Coalition' of groups concerned to work together to promote equality of opportunity more effectively in Northern Ireland. The Coalition includes groups representing people with disabilities, children and young people, the aged, people of different genders and differing sexual orientations, ethnic minority groups and people of differing religious and political opinions.

While not particularly expert on education issues *per se*, CAJ has had a long-standing interest in educational provision because of our concern to protect and promote the rights of all. CAJ is of the opinion that any fundamental change to the education system in Northern Ireland should be designed to promote social inclusion, should target social need, and must abide by the spirit as well as the letter of equality obligations reflected in Section 75 of the Northern Ireland Act 1998.

Moreover change should both reflect the particular circumstances of Northern Ireland, and must conform to best international practice. So, on the one hand, we believe that educational changes in Northern Ireland must take account of the impact of the years, indeed generations, of conflict and division on children and young people. At the same time, we believe that any changes to such a critical aspect of children's lives as education must also be assessed in the light of UN standards, especially the United Nations Convention on the Rights of the Child (UNHCR) – see in particular Article 28, on the right to full time education on the basis of equality of opportunity, and Article 29, the State's duty to direct education at developing the child's fullest personality and talents, and promoting respect for human rights. At the European and domestic level (in the form of the Human Rights Act) similar standards apply.

Further international human rights standards relevant to this debate include:

- International Covenant on Economic, Social and Cultural Rights (1966)

The States Parties to the present Covenant recognise the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen their respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace (article 13).

- European Convention on Human Rights - First Protocol (1952)

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

- Revised European Social Charter (1966) – article 17.

With a view to effecting the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake...(1a) To ensure that children and young persons...have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose.....(2)To provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at school.

In addition, these rights, and many (indeed most) international and regional human rights instruments refer to the importance of all rights being enjoyed without discrimination. The prohibition of discriminatory behaviour is relevant when we consider the impact of Northern Ireland's educational policies vis-à-vis children of different religious traditions, different racial or ethnic backgrounds, different genders or sexual orientations, children with different intellectual or physical abilities etc. In this context, the obligation on public authorities to promote equality of opportunity across a range of social categories (section 75 of the Northern Ireland Act) is of particular significance.

2. Comments On Proposals In The 'Burns' Report

We wish to respond particularly to the three main strands in the Report:

- (i) The ending of the Transfer Tests and of selection by solely academic criteria.
- (ii) An alternative transfer arrangement including the use of the pupil profile.
- (iii) The Collegiate System.

(i) The ending of the Transfer Tests and of selection by solely academic criteria.

There are many problems with the current selection system. For example, the preparation for the transfer test ensures that children do not have full access to the common curriculum and all children do not receive equal attention in the final two years of primary school. Those who do not plan to sit the test receive less attention. This would appear to be contrary to Article 2 of the First Protocol of the European Convention on Human Rights, which has been interpreted in such a way as to give all children the right not to be denied an effective education.

The characteristics of the transfer test are so stigmatising and humiliating that many people believe that it approximates to a breach of Article 3 of the European Convention on Human Rights ("*no one shall be subjected to torture or to inhuman or degrading treatment or punishment*"), especially as the test for Article 3 is lower for children than for adults.

CAJ believes that there is a need for change in the current arrangements on social, economic and equality grounds. The opportunities the grammar schools have given to children from diverse backgrounds to achieve high academic standards, and to pass examinations which were almost a prerequisite to access to university, and in turn professional careers, are well documented. However, we believe that the single-minded educational focus on this career path is unjustified. Modern society and our economy require and value a much wider skills and knowledge base than was perhaps previously the case. In addition, though the grammar school sector has been successful for some of Northern Ireland's young people, this should not be allowed to disguise the fact that the overall educational performance in Northern Ireland does not match up to non selective systems throughout Europe.

It has been shown by many commentators that selective education is counter-productive to high academic achievement across the population, and that the most successful education systems in the world are non-selective (see for example OECD PISA 2000).

CAJ is however particularly concerned about the rights of the individual children. The presently highly structured selective system does not recognise the different paces at which young people develop. The selection process labels many children "losers", and labels more "losers" than "winners" - with two thirds of all children being branded as failures at age 11. This leaves individual children with diminished self-esteem, and the

Gallagher/Smith report highlights (at 3.2.8) the fact that teachers in secondary schools had *'the task of rebuilding their pupils self – confidence.'* Unfortunately the teachers are not always successful, and this lack of self-confidence is often not limited to 11 year olds, but remains throughout their lives. CAJ therefore believes that selection at age 11 mostly or wholly on academic criteria must end.

As evidenced in the Gallagher/Smith report, at 2.2.3, *' Pupils entering grammar schools are more likely to come from socially advantaged backgrounds, as compared with pupils entering secondary schools, and this may provide them with additional parental support and encouragement.'* Since the publication of the Review, much more evidence has been quoted of this very worrying aspect of selection, including the fact that only 8% of grammar school pupils are in the category entitled to Free School Meals. The fact that children from lower socio-economic groups are less likely to perform well in the transfer test, and consequently have a much lower chance of gaining admission to grammar schools, would appear to constitute a fundamental denial of equality to the individuals involved. Moreover, maintaining an educational system which perpetuates division and inequality merely feeds the very cycle of deprivation and disadvantage that Northern Ireland needs urgently to break.

It is also significant that the overall per capita spend on children who are educated in the non-grammar sector is significantly less than those who transfer to grammar schools. In the main, the school buildings are in a poorer state, and in many instances there is an absence of sport and play facilities. These factors add to the social exclusion experienced by these children following transfer. This is accepted by the Gallagher/Smith report at 2.5.3, *'the pupils were aware of the more favourable social status accorded to grammar schools, even though secondary pupils were generally well-disposed to their own schools.'*

It is widely accepted, including within the Gallagher/Smith report, that coaching for the transfer tests ensures that there is no level playing field provided. Indeed, such coaching even adds to the problems of division by separating those who do receive coaching from their poorer peers whose families cannot afford it.

The disparities in educational attainment post-selection are also problematic. Although there are various factors which contribute to this, the resulting disparities would appear to suggest that Northern Ireland's educational system is in breach of Article 1 (1) of the UNESCO Convention against Discrimination in Education. This includes within the definition of discrimination the subjection of a person or group to education of an inferior standard. Such educational outcomes cannot be considered acceptable, particularly given the stated commitment of the Northern Ireland Executive to equality, targeting social need and promoting social inclusion.

In the particular context of Northern Ireland, community differentials in educational achievement can have, and have had, a politically destabilising

effect. Being over-represented in the poorer socio-economic classes, Catholics will be disadvantaged by any educational system that compounds rather than addresses socio-economic inequalities. The legacy of past discrimination and disadvantage must be actively tackled in whatever educational system is pursued.

CAJ is aware that in 1996 the then Department of Education (DENI) issued a Statistical Bulletin SB1/96 entitled Transfer Procedure Tests Results, which highlighted a number of serious policy problems. It seemed that, after a change in the transfer tests from a verbal reasoning format to a curriculum orientated format in 1993-1994, pupils in those schools with the lowest proportion of pupils entitled to Free School Meals were discovered to be more than three times as likely to achieve a Grade A pass as those in the schools with the highest percentage levels of Free School Meals. Prior to the change in test procedures, there were small differences in the proportion of pupils achieved grade A passes in Catholic Managed schools and in Other Managed schools. However, afterwards (in 1995/6), the proportion of pupils in Catholic managed schools was 7% lower than in Other Managed schools. CAJ is uncertain as to what extent these statistics were maintained in subsequent years, or whether policy changes were introduced to ensure that already serious community differentials were not further exacerbated? The important lesson for the transfer test debate however, is that decisions affecting future educational provision must not be allowed – however inadvertently – to further exacerbate community differentials, but should be aimed at reducing them to the extent possible.

Also relevant to this debate is the major study carried out by the Standing Advisory Committee on Human Rights entitled 'Employment Equality – Building for the Future' (1997). A number of important recommendations were made about the contribution that education could make to creating a more level playing field for all Northern Ireland's young people. An extract from the final report is attached herewith. It is unclear to us to what extent these proposals have been actively pursued within government?

CAJ certainly welcomes the commitment by the Post Primary Review Body to respecting the value of each child. However, we are not convinced that this premise of recognising the rights of all children to an education which enables them to reach their full potential is borne out by all the proposals.

We believe that educational opportunities should be as varied and flexible as possible, and that there should be equal respect accorded to the different paths which young people may take, with equal appreciation for all types of vocational education whether in academic or vocational terms. There is a lack of variety in the educational options open to children now with varying talents and abilities in terms of their access to academic, vocational and technical education, and this appears to be contrary to Article 13 (2) (b) of the International Covenant Economic, Cultural and Social Rights which states that: '*Secondary education in its different forms, including technical and vocational education, shall be made generally available and accessible to all by every appropriate means.*'

Research shows that selective educational systems discriminate against, exclude, segregate and marginalise children from economically disadvantaged areas, and this has been commented upon above. Other casualties tend often to be children from minority ethnic groups, and children with disabilities.

➤ **Minority ethnic children**

Little research has been carried out into the effects of the educational system in Northern Ireland on minority ethnic children. However, one independent research project¹ suggests that our selective system discriminates against children from minority ethnic groups.

➤ **Children and young people with disabilities**

Research carried out for the Department of Education² found that selection had a very detrimental effect on children in mainstream schools who have special educational needs. Streaming occurs as schools prepare for the transfer test, and children with disabilities tend to be placed overwhelmingly in the bottom streams.

It is crucial that any new procedures should not disadvantage those pupils with the most need, and clarification is required as to whether existing arrangements for pupils with Statements of Special Educational Need will continue i.e. that they remain outside normal transfer procedures? It is also important to clarify how new transfer arrangements would operate for pupils who have disabilities, but do not have statements.

In conclusion, future proposals would need to be subjected to an equality impact assessment. While all section 75 categories will have to be addressed, the particular needs of these two groups will need to be studied particularly carefully. On the basis of the information already available, CAJ is fully in favour of the ending of the transfer tests and academic selection, since we believe that the current arrangements exacerbate inequalities in our society.

(ii) **An Alternative Transfer Arrangement Including The Use Of The Pupil Profile**

The absence of even a template for the pupil profile makes it difficult to see how it would achieve the objectives set for it. It is hard to have confidence in it while it remains such an under-developed idea. The suggestion of a wholesale adoption of this process, without any piloting, seems unwise. It is

¹ D. Mann-Kier (1997), *Out of the Shadows, Save the Children*.

² A.Dyson and A Millward (1998), *Practice in Mainstream Schools for Children with Special Educational Needs*, DENI Research Report Series no 11, Bangor.

also difficult to have the confidence that all parents will see the profile as a developmental tool.

CAJ believes that if criteria are to be used, then uniform criteria should apply across Northern Ireland.

The review describes the role of parents variously as one of “choice” and/or “preference”, but the distinction between the two is not clear. In our view, some of the proposed criteria are discriminatory e.g. the pupil being the child of a member of staff but, more controversially, the proximity of the home to the school, disadvantaging children in rural communities. Are “personal circumstances” the same as the present criterion of “special circumstances” in another guise – if so, this also is likely to give rise to charges of discrimination.

The criterion of “brother or sister of a pupil at the school or first child” seems very unfair since, for at least a number of years, pupils will be refused on the basis that their older siblings failed the selective transfer system and were not admitted to a school that was formerly a grammar school.

In all, it seems to us that the use of the pupil profile and the resultant very complicated system, will continue to disadvantage already disadvantaged children. It will be the children of the middle classes who will benefit from this system since it will require considerable input from parents.

➤ **children and young people with disabilities**

The collation and transfer of information about a pupil with a disability should already be taking place under the existing Code of Practice, whether that pupil has a Statement of Special Educational Needs or not. Clearly it is essential that all teaching and support staff are fully informed about the educational implications of their children’s disabilities, so that appropriate planning can take place. There is concern that this information will not be made available prior to transfer to secondary school, and that this would result in insufficient time to ensure support is available e.g. classroom assistance, selection of classrooms with suitable access etc, as well as any additional support from external agencies.

For those pupils with disabilities, but no statement, it would be particularly important for secondary schools to have access to information in advance if they are to have an informed discussion with parents on whether they have the expertise and resources to meet the pupil’s needs.

CAJ believes that the proposals for a pupil profile system contained in the report are seriously flawed and need to be reconsidered. We are particularly disappointed that the opportunity was not taken to fully explore the option of all-ability neighbourhood schools which would appear to respond much better to the needs of both the individual pupils and the wider society.

(iii) **The Collegiate System**

We welcome an end to unhelpful competition among schools and encouragement to schools in an area to liaise more closely and to plan and deliver in a collaborative way for the benefit of all the young people. However, we think that Collegiates as described in the Report would increase bureaucracy, pitting stronger schools against weaker ones, even in the name of collaboration, and this approach would be likely to lead to an unjustifiable movement of both teachers and pupils.

➤ **Children and young people with disabilities**

Almost 20% of secondary schools have special units for children with a learning disability, but there is little movement of pupils between the units and mainstream school. Research carried out for the Department of Education in 1997 recommended a reciprocal relationship between mainstream and special schools and that '*special schools should, as far as possible, be involved in 'clustering' arrangements with mainstream schools.*'³

However, we were very concerned to learn that Special Schools have been specifically excluded from Collegiates, and therefore Collegiates will exclude most children with disabilities. It is essential that this issue should be addressed if the Collegiate system is to go forward.

Parents of children with disabilities have welcomed the development of Support Services within the Education and Library Boards, and the move to common criteria and access regardless of where parents and families live. Although the proposals for Collegiates are very vague, it is notable that they do not address:-

- which Services would be moved from the responsibility of the Educational and Library Boards to the Collegiates
- how those Services would be developed and delivered within each Collegiate
- what procedures will be put in place to ensure equality of access and provision for pupils and parents across Northern Ireland
- which agency would be responsible for monitoring these Services to ensure quality and consistency across Northern Ireland.

It is essential to ensure that the needs of children and young people with disabilities are considered at all stages of this process. Unfortunately, CAJ has not had the opportunity to study the submissions from other groups who would be very knowledgeable in this area – Disability Action, MENCAP, etc – but we would urge that whatever system is introduced it ensure that children with disabilities are more not less integrated, and receive an education which helps them secure their full potential.

³ Ibid.

➤ **Other Children and Young People in Need**

Many of the concerns listed above in relation to children and young people with disabilities also apply to other vulnerable young people. In particular, those children and young people who are suspended and are at risk of, or have been excluded, have needs which are not being met at present. We fear that they might be even worse served in the proposed new arrangements. At present, a parent of an excluded child must attempt to seek another school place, with schools being within their rights to refuse that child. There would be a danger of a whole Collegiate refusing entry to the child. In addition, such children presently benefit from minimal education other than at school but there is no mention in the proposals of addressing this need within Collegiates.

It is presently recognised that the situation between children excluded in the maintained and controlled sectors differ in the rights of individual schools to exclude. This anomaly, which surely can be challenged under the Human Rights Act, should be addressed in any new model.

Children who are looked-after by Health and Social Services Trusts have particular educational needs. These have been recognised in recent years and a requirement has been placed on Education and Library Boards and Health and Social Services Boards and Trusts to address this collectively. However, it would appear that the suggested Collegiate system would entail the break up of many specialised functions of Education and Library Boards, and the devolving of these functions to Collegiates. It would seem that children who are looked-after by Health and Social Services, and many others with particular needs, would be likely to suffer, in that essential extra services may well be withdrawn.

It seems to us that, rather than setting up the complicated and bureaucratic system of Collegiates, the concept of local schools co-operating would be more beneficial for many children and young people with additional needs.

A last general concern about any move to a Collegiate system is the need for the educational sector to maintain its involvement in multi-agency planning for the needs of children. The benefits of agencies working together for the benefit of children has been widely acknowledged both by the Assembly and the Executive. Cross-cutting work which is inter-agency and inter-departmental has been emphasised repeatedly in the Programme of Government, in the criteria for Executive Programme Funds, and in the consultation on a regional strategy for children's rights and needs. It is extremely difficult to envisage how 20 Collegiates will be able to address the needs of particular groups of children with totally different problems, and also maintain close inter-agency and cross-sectoral approaches. The structure seems unworkable. One must wonder if the idea of the Collegiates does not run counter to the many other initiatives underway to ensure a more coherent and strategic approach to the educational needs of our young people?

Conclusions: A Missed Opportunity?

CAJ believes that with the exception of the proposal to end the transfer test, the present suggestions represent a missed opportunity for Northern Ireland. The opportunity is for the development of an education system which truly promotes social inclusion. However, the present proposals do not offer this.

For example, the Report hardly looks at the option of comprehensive education - dedicating some three pages only to looking at this option. We believe that more time should be taken to research the benefits of comprehensive education, and other systems, such as the Two-Tier system operating in the Craigavon area. We believe that the best practice from comprehensive systems across Europe should be distilled to design the best educational system for Northern Ireland in the 21st century.

CAJ also believes that any major change to the education system will involve massive disruption to children, parents, and teachers, and will require enormous public resources. As such, its primary goal should be to secure a better future for those children who are in greatest need. It is therefore essential that the new education system should concentrate on education for the *whole* child, and *all* children. The system should take the focus away from high academic achievements for some, but should encompass a wide range of social, educational and economic outcomes.

The structure of any revised educational system should, unlike the present system, take account of the social and economic climate that currently exists. In particular, it should work towards harmony and respect for difference between the many different groups that make up our society. It is for example extraordinary that the proposed changes do not address how educational fora can help to create an environment within which the divisions in Northern Ireland can be actively tackled. We need schools to model best practice in terms of encouraging pluralism, tolerance and human rights principles, and resources need to be provided to help them be 'motors for change' within their different communities.

The recent publication of research on the development of sectarian attitudes in children as young as three underlines the need for the education system to examine itself and its responsibility in this regard.

The eventual proposals must be tested against human rights and equality legislation, in particular the UN Convention on the Rights of the Child.

There can be little doubt that basing any new educational system on the promotion of social inclusion would allow an appropriate structure to emerge. This would create an educational system, which, for the first time, would value all our children equally, regardless of academic achievements or social and economic backgrounds. Such a system would have the potential to achieve high levels of attendance and commitment, coupled with high standards in both academic and vocational outcomes.

As mentioned earlier, there is a value on drawing on good practice elsewhere. By way of example, CAJ thinks that it is worth drawing attention to the mission statement adopted by the Department of Education and Science in the Republic of Ireland which is to

'ensure the provision of a comprehensive cost-effective and accessible education system of the highest quality, as measured by international standards, which will:

- *Enable individuals to develop to their full potential as persons and to participate fully as citizens in society and*
- *Contribute to Ireland's social and economic development.'*

This Mission Statement which places the child's needs centre-stage, but encompasses a commitment to the principles of social inclusion, may well be worth emulating. Perhaps the Guiding Principles (pages 75-78) supplemented by a specific reference to the human rights of children (page 86) should be encapsulated into a succinct Mission Statement along similar lines?