What is the Committee on the Administration of Justice (CAJ)?

CAJ is an independent non-governmental organisation, which is affiliated to the International Federation of Human Rights (IFHR). CAJ monitors the human rights situation in Northern Ireland and works to ensure the highest standards in the administration of justice. We take no position on the constitutional status of Northern Ireland, seeking instead to ensure that whoever has responsibility for this jurisdiction respects and protects the rights of all. We are opposed to the use of violence for political ends.

CAJ has since 1991 made regular submissions to the human rights organs of the United Nations and to other international human rights mechanisms. These have included the Commission on Human Rights, the Sub-Commission on the Promotion and Protection of Human Rights, the Human Rights Committee, the Committee Against Torture, the Committee on the Rights of the Child, the Committee for the Elimination of Discrimination against Women, the Committee on the Elimination of Racial Discrimination, the Special Rapporteurs on Torture, Independence of Judges and Lawyers, Extra judicial, Summary and Arbitrary Executions, and Freedom of Opinion and Expression, the European Commission and Court of Human Rights and the European Committee on the Prevention of Torture.

CAJ works closely with international NGOs including Amnesty International, the Lawyers Committee for Human Rights, Human Rights Watch and the International Commission of Jurists.

Our activities include: publication of human rights information; conducting research and holding conferences; lobbying; individual casework and legal advice. Our areas of expertise include policing, emergency laws, criminal justice, equality, and the protection of rights.

Our membership is drawn from all sections of the community in Northern Ireland and is made up of lawyers, academics, community activists, trade unionists, students, and other interested individuals.

In 1998 CAJ was awarded the Council of Europe Human Rights Prize in recognition of our work in defence of rights in Northern Ireland.

Introduction

CAJ welcome the opportunity to comment on the NIO's consultation paper on Reform of the Law on Rehabilitation of Offenders. We have long been of the view that the current Rehabilitation of Offenders (NI) Order is insufficient to meet the needs of society in Northern Ireland in terms of rehabilitation and reintegration of offenders. We therefore welcome proposals to change the current law in a way which will hopefully allow speedier and more meaningful reintegration for a larger number of ex-prisoners.

Our unhappiness with the current legislative framework arose however, partly from considerations relating to the conflict in Northern Ireland and the large number of individuals who have been imprisoned during the conflict. Some estimate this number to be in the region of 25,000 drawn from both main communities. Obviously many of this number will have convictions, which under the current Order, are not capable of being spent. This is a problem of a scale not encountered in England and Wales. The stated aim of the legislation is reintegration/rehabilitation of offenders but we feel that in its current form it will have an insufficient impact in the Northern Ireland context.

While the current proposals will assist a large number of those released prisoners imprisoned as a result of the conflict, it is also the case that there will be a large number of ex-lifers who will not benefit to any extent from these proposals.

In this connection we were surprised that the proposals simply mirrored those made in England and Wales and made no reference to the particular circumstances of Northern Ireland. Also surprising was the fact that no reference was made to the commitment in the Good Friday Agreement that

> *"The governments continue to recognise the importance of measures to facilitate the re-integration of prisoners into the community by providing support both prior to and after release, including assistance towards availing of employment opportunities, re-training and/or re-skilling, and further education."*

CAJ have over the course of the last five years assisted a number of ex-prisoners who have complaints in relation to attempts to obtain employment, insurance, PSV licenses, and criminal injuries/damage compensation. We have seen little evidence that the promises contained in the Good Friday Agreement have actually impacted upon those government departments dealing with these matters. Similarly there is no evidence that the Agreement impacted in any way on these latest governmental proposals.

The absence of any consideration of the relevant portion of the Agreement in these proposals is something which should be revisited in light of the McComb judgement issued by Mr Justice Kerr in July this year in which he said that "[T]he Agreement contemplated that mechanisms would be put in place for the accelerated release of prisoners and that those prisoners who benefited from that programme would be reintegrated into the community. It appears to me therefore that particular attention

should be paid to the fact that a prisoner released under the terms of the Northern Ireland (Sentences) Act 1998 has been adjudged not to be a danger to the public."

While therefore welcoming reform of the current law CAJ are disappointed at the very limited nature of the proposals being considered. In particular we are disappointed that there is no evidence that the Agreement has impacted on the thinking behind these proposals.

In addition we are disappointed that no indication has been given of an intention to legislate for a bar on discrimination against ex-offenders. Such a move in our view would greatly assist in the reintegration of ex-offenders into society and would not impact on public safety concerns.

In addition to the above however there is of course another aspect of the Northern Ireland legal context which is significantly different to England and Wales. The NIO make reference in their discussion paper to the equality duty placed upon them by section 75 of the Northern Ireland Act. It is asserted that an initial screening exercise was carried out which concluded that these proposals would not have an adverse impact on any of the section 75 categories. However, it is clear to us that to properly consider the potential impact of proposals such as these, the NIO must have gathered substantial material in respect of the number of ex-prisoners broken down in terms of political opinion, religion, age, etc. We would be grateful to see the results of this work. In addition it is our view that one cannot limit the impact of section 75 by asserting that because these proposals represent a liberalising move in respect of the legislation it will only have a beneficial impact on the affected groups. In deciding on this policy the NIO must have considered greater liberalisation than that on offer in the proposals. In rejecting moves in such a direction we would suggest that a number of groups might have been adversely impacted.

In our view these proposals require that a full equality impact assessment be carried out.

Certain types of posts, professions and licensing bodies should continue to be excepted from the disclosure scheme.

While we obviously see the need for some posts to be excepted from the scheme, we nevertheless are concerned that in the event that an ex-offender who discloses convictions is refused employment, there should be a clear relevance between the post in question and the offence in question. Simply because disclosure is required does not of itself mean that the ex-offender applicant is barred from taking up the post. We believe that unless there is a legal duty on employers not to discriminate against people because of their convictions, asserting that there must be a connection between the offence the post will continue to be an assertion which employers can effectively ignore.

A new judicial discretion should be considered to disapply the normal disclosure periods in cases where the sentencer decides there is a particular risk of harm.

We are not convinced of the necessity of this provision and have not seen sufficient evidence to justify it. We are prepared to accept that there might be cases where for instance a potential employer should be protected from an habitual thief. However, if this is the scenario being considered by government, some more evidence of such cases should be produced. Also, if the discretion is introduced it should be done in a way which does not introduce an unduly wide degree of discretion.

Clear guidance should also be made available through the statutory agencies and other organisations involved with the rehabilitation and resettlement of offenders.

We would support this recommendation. It is our experience that ex-offenders have little idea about the provisions of the current Order. If the state is serious about reintegration resources need to be made available to explain to offenders at the point of sentence and again at the point of release (or end of sentence) what their liabilities and rights are under the new legislation.

A voluntary Code of Practice should be developed for employers to govern the use of disclosures in the recruitment process

In line with our view that discrimination on the basis of criminal convictions should be outlawed, we believe that any Code of Practice issued under this legislation should have the force of law.

As at present, there should be sanctions available if an applicant or existing employee loses a job on the grounds of a previous conviction that they were not required to disclose.

We believe it is important that the present system be evaluated to determine if the sanctions are working properly. Anecdotally we are aware of concerns that very few cases have been taken on this basis and this would seem to indicate there is a problem with the proper functioning of the system. It may well be therefore that a system of sanctions with more "bite" needs to be developed.

The disclosure scheme should be based on fixed periods.

We agree with this recommendation.

The fixed periods should be based on sentence, with different periods applied to custodial and non-custodial sentences.

We agree with this recommendation.

The disclosure periods should comprise the length of the sentence plus an additional "buffer" period.

We agree with this recommendation.

Separate disclosure periods should be set for young offenders

We are concerned to see the definition of young offenders in the context of Northern Ireland where of course there have been problems with 17 year olds appearing in adult courts. Save for that caveat, we agree with this recommendation.

The scheme should apply to all ex-offenders who have served their sentence
We agree with this recommendation but believe it should also apply to ex-lifers. Perhaps consideration could be given to an additional buffer periods for such individuals.

The new arrangements should be applied retrospectively to bring this group within the protection of the scheme without delay.

We agree with this recommendation.

The disclosure scheme should be devised specifically to assist the employment process, with civil and criminal courts excepted from the scheme.

We agree with this recommendation but feel that the legislation should make clear that the scheme should also apply to areas outside employment, for example obtaining insurance, PSV licenses etc. It is in these areas that we believe ex-prisoners often face the most visible difficulties in reintegrating into society. For instance, we are aware of many ex-prisoners who have gained employment and sought to purchase property but have been denied insurance for the property because of declared convictions which have no element of dishonesty.