CAJ's Commentary on the

Updated Implementation Plan for the Criminal Justice Review

and the

Criminal Justice Oversight Commissioner

Background

The Criminal Justice Review

The Belfast Agreement of April 1998 provided, inter alia, for "*…a wide-ranging review of criminal justice (other than policing and those aspects of the system relating to the emergency legislation) to be carried out by the British Government through a mechanism with an independent element, in consultation with the political parties and others.*"[1] This led to the creation, on 27 June 1998, of the Criminal Justice Review Group; a semi-independent body, composed of government representatives and independent legal experts and practitioners. In March 2000 the Review presented its final report to the Government, proposing 294 criminal justice reforms for Northern Ireland. It subsequently fell to the Government to reject or endorse these recommendations and, in consultation with the respective criminal justice agencies, to decide on a timetable for their implementation.

First Implementation Plan

In November 2001 the Government issued its response to the Review, in the form of an Implementation Plan. The Plan was a disappointment to both CAJ and others who had been active in relation to the Review. As expressed in our submission at the time, we found the Plan to be insubstantive in many respects and particularly lacking in precise and detailed information on both *how* and *when* the Review recommendations were to be implemented. Moreover, unlike the independent oversight arrangements that were put in place to monitor policing reforms in Northern Ireland, the Plan was not accompanied by a Government undertaking to create a comparable mechanism for overseeing criminal justice reforms.

Justice (Northern Ireland) Act 2002

Owing to the way in which the Review had formulated its recommendations for reform, it was clear that in order to implement many of its provisions, new legislation would have to be passed and, in some cases, justice and policing powers would first have to be devolved to Northern Ireland. However the passage of legislation, via the Justice (NI) Act of 2002, has to date given little impetus to the implementation process. The majority of its provisions have not yet been commenced due in part to the fact that many of the recommendations of the Review were formulated on the contingency of the devolution of justice and policing powers,

[1] Belfast Agreement, *Policing and Justice*, Paragraph 5.

the prospect of which, is still quite distant. In addition, CAJ was also concerned about various shortcomings in the drafting of the Act, which, in certain cases, resulted in the dilution of the original Review recommendations.

In summary, post Implementation Plan and Justice Act, only a small percentage of the Review's recommendations were operational, the criminal justice agencies were not committed to strict deadlines for implementation and the substance of some of the original Review recommendations had been reduced. Given this state of affairs, there was much hope that a second implementation plan could provide new momentum to the reform process and fill in the gaps left by the first Plan. What follows is a brief summary of CAJ's general comments on the revised Plan and then, in Section 2, a more detailed critique of the progress in implementing specific recommendations in the four main areas of interest to CAJ: human rights; the prosecution; the judiciary; and the courts.

Overview of CAJ's Response to the Updated Implementation Plan

After considerable lobbying by CAJ and others, the Government has now published an updated Implementation Plan. On the whole we welcome this revised Plan as a significant improvement on its original. In substantive terms, the information on timescales and content is both more defined and comprehensive. Perhaps most significantly, the Plan contains a Government commitment to introduce a new Justice Bill to remedy the deficits of the Act. Notable advances have also been made to present the contents of the Plan in a way which promotes public accessibility.

(i)Timescales

In the majority of instances, the updated Plan now commits the responsible criminal justice agency to a specified deadline for implementing the recommendation in question. While some of the deadlines that have been set clearly give rise to contention and others are in direct conflict with the Review (see "continuing concerns" section), we nonetheless welcome the fact that deadlines, even self-imposed ones, have actually been set. The result is greater transparency and increased government accountability.

Many of the most significant of the Review's recommendations were however formulated on the contingency of devolution and the new Plan can give little information on when these will come into effect. Instead the Plan adopts the language of the Joint Declaration in stressing that before justice and policing can be transferred there must be acts of completion of the Good Friday Agreement, a functioning and stable Assembly and cross-party agreement on devolution of justice and policing powers, including agreement on the potential institutional arrangements.

(ii) Substantive Revisions: New Justice Bill

As noted earlier, certain original Review recommendations were diluted or omitted in the first Plan and subsequently in the Justice Act. The Revised Plan calls for fresh legislation to amend those sections of the Act which had been affected in this way.

The amendments will include the following provisions:

- the Judicial Appointments Commission will be established *prior to*, as opposed to after, the devolution of criminal justice and policing powers;
- there will be equal limits on the length of service for *all* members of the Commission (formerly this limit only extended to its lay members);
- the Commission *as a whole*, rather than just its lay members, will be required to be reflective of the community in NI;
- it will be a key objective of the Commission to engage in a programme of action to secure a reflective judiciary in NI, consistent with the principle of merit;
- the Prime Minister will appoint the Lord Chief Justice and the Lord Justices of Appeal based on the recommendation of the First Minister and Deputy First Minister (formerly the PM was merely requested to consult with the First and Deputy First Ministers);
- the Lord Chief Justice's consent for the establishment of a tribunal to remove or suspend a member of the judiciary will be removed;
- section 34 of the Justice Act in relation to the power of the DPP to refer instances of police malpractice to the Police Ombudsman will be strengthened to place a *duty* on the Director to refer *all* such cases;
- a new offence, of seeking to influence the DPP without legitimate cause, will be created;
- there will be a duty on the criminal justice agencies to have due regard to relevant international and human rights standards in carrying out their functions.

It is envisaged that this Bill will go to Parliament in the Autumn and will receive Royal Assent in Spring/Summer 2004. CAJ will closely monitor the passage of the Bill at each stage through the House to ensure that the Government adheres to all that it has undertaken in the revised Plan, and to make certain that the intention of the Review is fully reflected in the drafting.

(iii) Continuing Concerns

While CAJ is satisfied with many of the improvements in the updated Plan, we nonetheless continue to have a number of concerns.

In terms of timescale, we have objections to the seemingly unreasonable delay in implementing certain Review recommendations.[2] Furthermore CAJ has always stated that criminal justice reforms in Northern Ireland must not be subject to the uncertain outcome of political developments. We are therefore concerned that those Review recommendations which do not expressly require devolution are brought forward for implementation immediately. The updated Plan states that the proposed Justice Bill will include a provision to introduce the Judicial Appointments Commission prior to devolution. It is extremely important that all possible preparations are now being made so that when the Bill is passed, the Commission may be established without delay.

Secondly we are concerned about the continuing absence of Government guidelines on how recommendations should be implemented, particularly in the case of recommendations which have common application to all the criminal justice agencies. For example we feel that there would be merit in the Government issuing basic minimum guidelines on the implementation

[2] For instance the delays to Recommendations 20 on referral to the Police Ombudsman and 244 on the Law Commission.

of recommendations such as human rights training and the development of complaints mechanisms. Indeed in respect of human rights training, there is strength in the argument that, in order to regulate this training, it should be made a statutory requirement for all criminal justice bodies. This would help co-ordinate and synthesise the approaches of the agencies.

Criminal Justice Oversight Commissioner

We welcome the Government's decision to create the office of Criminal Justice Oversight Commissioner, for which we have long campaigned. The creation of this office is an extremely important development and it should bring a new dimension of meaning and substance to the Review process. In order to optimise the potential of this office, CAJ is strongly of the opinion that it should be established on a statutory basis without delay. Moreover public confidence in the Review will undoubtedly increase, if it is clear that the Commissioner will be sufficiently resourced and assisted by independent, expert staff.

To oversee the reforms to the police service, the Government appointed Tom Constantine to lead a team of six other independent assessors from the US and Canada, a supplementary expert team of international experts and local office staff. Overseeing implementation of reforms to the criminal justice system is, purely in terms of scale, a much larger task and at least equally deserving of such independent and expert input. CAJ would moreover welcome the inclusion of women in the staff of the Criminal Justice Oversight Commissioner as there was a clear gender imbalance in the composition of the Police Oversight Office.

If reports are correct that the first Review by the Oversight Commissioner is due in December 2003, with publication of the report in January 2004, then recruitment of staff and the development of a clear, statutory-based mandate is imperative.

Human Rights and Guiding Principles

Recommendation 1
Human Rights Training

In response to the first Plan, CAJ stressed the importance of centralising human rights training across the criminal justice agencies and advocated that a definite timescale should be set by which all members of staff, at all levels, can be said to have received an adequate standard of human rights training. The revised Plan however merely describes, in more detail than the first, the various unilateral activities that are currently being undertaken by the respective criminal justice agencies but it does not prescribe guidelines for human rights training. Subsequently the content, quality and timescale for human rights training are not consistent across the criminal justice sector.

CAJ would recommend that an independent audit be carried out on the efficiency of the various types of human rights training, currently being carried out across all the justice agencies.

We welcome the section of the proposed Justice Bill which will place a statutory duty on the criminal justice agencies in Northern Ireland to have due regard to relevant international human rights conventions and standards in carrying out their functions.

Recommendation 2
Criminal Justice Aims

The Purpose and Aims document has been published since the first implementation plan but despite our request, it was not made the subject of public consultation. The second Plan now curiously states that a revised document on purposes and aims will be published by December 2003. However it does not offer any explanation as to why there is need for a revised document nor does it indicate whether the document will, on this occasion, be subject to consultation.

Recommendation 4
Reflective Workforce

The response to this recommendation is rather disappointing. Even in view of the fact that the Review places responsibility for developing a strategy for securing a reflective workforce on the agency that will administer justice *on devolution*, it would still seem only reasonable that those currently holding this responsibility - namely the NIO - would make an effort to co-ordinate the work of the criminal justice agencies to prepare for devolution. The Review clearly envisaged the development of a single, overarching policy – in its own words a "*concerted and proactive strategy*". The revised Plan on the contrary merely describes the varying activities that are currently in place to promote equality and increase representation at the level of individual agencies. Obviously this creates disparity in standards across the agencies, with some being more proactive than others.

It is all the more pressing on the NIO to co-ordinate activities in this area, given that the Review made the recommendation in March 2000. If we are to wait for devolution of justice and policing before attempts will be made to achieve a reflective workforce, then this may well give rise to a considerable and entirely unacceptable delay. Indeed, recruitment of prosecutors for the new Prosecution Service in Northern Ireland is already underway, without being subject to the requirements of a new "reflective workforce" strategy.

Recommendations 5 and 6
Equity Monitoring

We encouraged the NIO to commission independent research into the use of equity monitoring and to make public the results. Unfortunately however, the independence of this research is questionable given that lead responsibility for this matter lies with the Research and Statistics Sub-Group of the Criminal Justice Board. We also urged the DPP to consult with the Crown Prosecution Service on their experience of equity monitoring in relation to race.

The revised Plan envisages a gradual "phasing in" of equity monitoring on a pilot-type, basis. Dates have now been set for the start of this process but the Plan is ambiguous about when exactly equity monitoring will be implemented in full. Moreover, it is stated in the Plan that the initial phases of equity monitoring will concentrate on reviewing data such as age and gender, which is in fact already gathered during the prosecution process. The Plan does not refer to any action being taken to monitor community background, despite the Review's express recommendation.

Recommendation 7
Statements of Ethics

Improvements have been made in developing this recommendation since the first Plan. Dates have now been set for the publication of statements of ethics from all the criminal justice agencies. It must also be remarked that on this recommendation the Government has surprisingly given basic guidelines on certain areas that the codes of ethics should cover and the standards they should be guided by. Furthermore, the Plan emphasises the importance of having a co-ordinated approach across the agencies in order to achieve a degree of consistency in the codes. We recommend that similar guidelines should be formulated by the Government in relation to human rights training, complaints mechanisms and other matters of common interest to all criminal justice agencies.

Since the NIO has had a long-standing code of ethics we are surprised to note that there appears to be no intention to update this statement, in light of the Review and prevailing international standards, such as the ECHR which has only recently been incorporated into domestic law via the Human Rights Act. Moreover the NIO Code of Ethics does not seem to contain the kind of material envisaged by the Review as belonging in a code of ethics. It is unclear from the Plan whether or not this code will be updated but on the basis of our comments above, we strongly recommend its revision.

On the matter of consultation, we welcome the fact that the Human Rights Commission and Equality Commission will be consulted on the statement of ethics, however we strongly

recommend wider consultation with all relevant stakeholders in the community, voluntary and political sectors. It is important also that existing as well as new codes will be subject to consultation and this is not clarified in the Plan.

In terms of the contents of the ethics statements, the Plan prescribes that all statements of ethics should contain a clear policy prohibiting membership of any organisation which, "*by its policies or actions, is clearly committed to acting contrary to the law or the interests of the criminal justice system*". It also recommends the inclusion of disciplinary arrangements for breach of the ethics statement. We understand this to place a mandatory requirement on all the criminal justice agencies and hope this will be confirmed.

Recommendation 8
Membership of Organisations

Following on from the last point, it is clear that the Government has now accepted this Review recommendation on membership of organisations and agrees that it should form part of the statement of ethics.

We are concerned however that the scope of the recommendation may be reduced by a restrictive interpretation of the phrase "*acting contrary to the interests of the criminal justice system*". The Plan states that the scope of this phrase has not yet been open to discussion and we would therefore strongly recommend the issuance of guidelines on interpretation as a matter of immediacy.

Recommendation 9
Defence Lawyers

Action in relation to this Review recommendation has been given a more focussed framework since the first Plan. There is evidence that a concerted approach will be taken across the criminal justice agencies (as opposed to the piecemeal approach of the first Plan) to consider organising a training programme on the role played by defence lawyers in the administration of justice. While a deadline of September 2003 has been set for the introduction of an outline programme on this issue, it is clear from the Plan that we are only at the beginning of a long process. It is disappointing therefore that a target date has not been fixed for the complete development and introduction of the programme. Furthermore, there is no evidence of an intention to consult on the content of this proposed new training.

The Plan does not discuss the issue of introducing an effective and independent mechanism for investigating all threats made against defence lawyers, as recommended by the Review. As explained in our previous commentary on the first Plan, CAJ clarified that the PSNI are not, in the view of the UN Special Rapporteur on the Independence of Judges and Lawyers considered sufficiently independent for this purpose and that therefore a new mechanism should be developed.

Recommendation 10
Bursaries for Legal Training

The status of this issue remains unchanged from the first Plan. No progress has been made to secure funding to financially assist students who are unable to afford the high costs associated with legal training for the Bar. This may give rise to severe under-representation of certain economic and social groupings and inhibit the development of a truly representative Bench. Although practices are slowly evolving to encourage appointment to the Bench from among the ranks of solicitors, it is still the case that the majority of judges come from former barristers. If the State is genuinely endeavouring to help create a Bench which is truly reflective of all of society, proactive measures must be taken to help open this process to persons from all social and economic backgrounds.

Recommendation 16
Complaints Mechanisms

While some progress has been made to meet this recommendation at the level of individual agencies, no effort appears to have been made to harmonise approaches across the criminal justice sector. We would argue that the Government should issue basic guidelines on the design and operation of complaints mechanisms and fix a deadline by which all agencies must comply with these guidelines. This would assist the work of the Chief Inspector of Criminal Justice, who will be responsible, among other things, for evaluating the operation of complaints mechanisms. The Plan states that the Court Service, NIPS and PBNI currently make complaints papers available for independent evaluation. This is encouraging, however it would be preferable if this were an official practice, conducted periodically by all criminal justice agencies.

We do not accept that a complaint is deemed to have been independently assessed, if the assessor is a member of staff of the agency concerned, albeit unconnected to the complainant. We are encouraged therefore by the new complaints mechanism being developed by the Prosecution Service which intends to utilise an "independent figure" to ensure fairness of procedure and encourage more people with valid complaints to come forward. Although not expressly stated in the Plan, it appears that this person would not be a permanent member of the staff of the Prosecution Service. It is also stated in the Plan (r.55 and 56) that this independent figure will regularly review the workings of the complaints mechanisms of the prosecution service overall but it is not clear when this aspect will be introduced.

Prosecution

Recommendation 17
Single Independent Prosecuting Authority

The Review recommended the creation of a single, independent prosecuting authority for NI, so that all prosecutions, even those of a minor nature, should be conducted by a single prosecution service and no longer conducted by the police. Certainly measures have been taken via the Act and now the second Plan to help prepare for the introduction of a single prosecuting authority. A change management team has been employed to assist in planning this expansion and modest targets have been set for the development of new regional offices, the recruitment of prosecuting staff as well as human resource and administrative personnel. However it is our firm view that the Review envisaged a new service and not simply an enlarged version of the current one, which is essentially what the Plan and the Justice Act are delivering.

We believe that in order to command public confidence the prosecution service have to take steps to illustrate that it is truly independent, to ensure a reflective workforce, to conduct equity monitoring, to revise the practice of giving reasons and to develop a genuinely independent complaints mechanism which has the confidence of the public. Moreover, it cannot be emphasised enough that independence and accountability are not mutually exclusive and very careful consideration must be given to ensuring the correct balance of arrangements in this regard. This is crucial to restore the public confidence which has been lost in the Prosecution Service over the past years.

Recommendation 19
Statement of Ability and Determination to Prompt an Investigation (A. 6(3) powers)

It was obviously the intention of the Review, in including this recommendation, that the existing 6(3) powers should be reinforced and their usage increased, consistent with the proposals for the prosecution to take over responsibility for all prosecution on behalf of the State. This power is now referenced in the Act, presumably for the purposes of reinforcement and the revised Plan commits the prosecution service to include in its new Code of Practice - due in December 2003 - guidelines on the use of this power. We hope that these guidelines will capture the spirit of the Review recommendation, whose intention was not, as suggested in the plan to "*retain*" Section 6(3) powers but to give them new momentum and a degree of enforcement (via R.20), in cases where the police do not satisfactorily respond to a 6(3) order.

Recommendation 20
Power of Prosecutor to refer to Police Ombudsman

To encourage the use of Section 6(3) powers (above), the Review recommended that the Prosecutor should also be given a new statutory power to refer a matter to the Police Ombudsman in cases where an investigation prompted by the Prosecutor under 6(3), was not satisfactorily carried out by the Police. This is obviously a very important accompaniment to Section 6(3) powers as it provides the Prosecutor with a form of recourse if his or her

instructions are not properly met. The Justice Act already provides the statutory arrangements for the operation of this new provision but the Plan states that the relevant section will not be commenced until April 2005. We cannot find reason for this seemingly arbitrary and disproportionate delay in bringing an important recommendation into force.

We believe that recommendation 20 should be implemented immediately. However the provisional legislative arrangements, provided for by S. 34(4) of the Justice Act are unsatisfactory, as they seem to require the Director to first consult with the Ombudsman and Chief Constable before exercising the power to refer a complaint against the police to the Ombudsman. The proposed Justice Bill is an opportunity to address this anomaly.

Recommendation 21
Malpractice Allegations to be Investigated

S.34 of the Justice Act provides for an amendment to the Northern Ireland Act, whereby the DPP is added to the list of persons *able* to refer a complaint of police malpractice to the Police Ombudsman. CAJ were extremely concerned that this most important Review recommendation had been diluted in the drafting of the Act. The relevant provision – S.34 - failed to place a *statutory duty* on the DPP to refer cases of police malpractice to the Ombudsman, as was the express recommendation of the Review. The revised Plan now contains a commitment to amend S.34 of the Justice Act by way of a new Bill, so as to place a duty on the Director to refer all cases of police malpractice to the Ombudsman. We will scrutinise the Bill to ensure this commitment is fully reflected in the Bill.

Furthermore, taking into account the time needed for the passage of a new Bill, we still cannot find justification for the undue delay in implementing this new provision. The Plan states that its introduction will "*coincide with the commencement of the phased implementation of the new Public Prosecution Service*" which is due to occur in April 2005. It is likely that the intended Justice Bill will receive royal assent in Spring/Summer 2004. There should clearly be no objection to commencing this provision at that time rather than a year later, as the Plan suggests. This is particularly the case, considering that this recommendation is key to building public confidence in the new Prosecution Service.

Recommendation 23
Scrutiny of Decision to Prosecute

The information in the revised Plan is not much advanced from the original Plan and indicates that little consideration has yet been given to this recommendation. Resource implications were cited in the first Plan as a possible restricting factor for introducing a policy on this matter and certainly the revised Plan suggests that thinking has not been particularly developed. No strict deadlines have been set and the action, listed in the Plan, which is due to commence in December 2003, appears to be lacking in both structure and substance.

Recommendation 46
Relationship between Prosecution and Attorney General

According to the Plan, the Justice Bill will create a new offence that makes it illegal to seek to influence the Prosecutor without legitimate cause. We welcome this amendment to the Justice Act and would urge that this section is commenced as soon as the new legislation is passed.

Recommendation 49
Giving of Reasons

CAJ has previously commented on the relationship between the lack of public confidence in the independence and impartiality of the Prosecution Service in Northern Ireland and the continuation of a strict policy by the DPP not to give reasons for failure to prosecute or decisions to prosecute, particularly in politically controversial cases.

The first Implementation Plan gave no indication that the policy of the Prosecution Service was likely to change in regard to this matter. The Second Plan has slightly developed this position but such developments are rather insubstantial. It states that the Director, in light of the ECHR Jordan decision, has reviewed his policy and *may,* in exceptional cases only, where there is a reasonable expectation that reasons will be given and where death is or may have been occasioned by agents of the State, consider departing from his general policy.

In an effort to promote transparency and encourage public confidence in the new Prosecution Service, we will encourage the Director to consider drafting unambiguous public statements (in the codes of practice/ethics or otherwise) on:

(a) the procedure that should be adopted when making a decision to prosecute or not;
(b) the considerations that are applied in deciding whether or not to give reasons for a prosecutorial decision, including a legal test to determine when a matter is within the "the public interest" or not?

It is also in our view inevitable that the refusal of the Director to give reasons for his failure to prosecute in past cases will continue to blight the prospects for full public confidence in the new service. This is particularly the case when the leadership of the prosecution has not changed. We would encourage the Director to change his policy in this regard, particularly in light of the rulings in Jordan et al.

Recommendation 50
Prosecution Service Publications

We are concerned that the DPP's office may be interpreting S.39 of the Justice Act as meaning that the Prosecution Service is not required to publish an annual report until the completion of reform which is scheduled, according to the Plan, for December 2006. We believe that there should be an obligation on the Service to publish annual reports on the progress of the pilots and the gradual implementation of reforms, particularly given the fact that the Government stated in the updated Plan that it considers the report as "….an important accountability mechanism for the prosecution service".[3]

[3] Updated Criminal Justice Review Implementation Plan, pg 45.

Recommendations 55, 56 & 57
Complaints Procedure for Prosecution Service

We are pleased that the Prosecution Service has revised its policy on this matter since the publication of the first Plan and has now undertaken to develop an independent complaints mechanism by November 2003 with full publication and introduction (as part of the pilots) in December 2003. We were also delighted to note that Mr. Anthony Harbinson, during his presentation at the recent information session on the new Prosecution Service, stated this the complaints mechanism will be subject to public consultation.

Under the new complaints mechanism it appears that an "independent figure" will assume responsibility for dealing with complaints at the final stage of the complaints process. We trust that the steps prior to this stage in the process are equally transparent and independent and that each complainant is entitled (and indeed encouraged) to pursue the complaint to the final level. The Plan also suggests that the independent figure will not be a permanent member of the prosecution service staff. We welcome this development but seek assurance that the person selected for this important position shall command the confidence of all of the community as well as being suitably qualified.

Judiciary

Recommendation 68
Merit Principle

There has been no progress made on articulating the components of the principle of "merit" since the first Plan. We therefore wonder how the Court Service can confirm, as it does in the Plan, that this recommendation is fully implemented when the principle itself has not yet been defined? CAJ previously remarked that failing to define the principle of merit indicates a dismissal of the comments made by the Review on this matter. We further recommended that the components of merit should be articulated in the relevant Code of Practice for the new Judicial Appointments Commission.

Recommendation 69
Judiciary to be Reflective of Society

It appears from the second Plan that the Government has now decided to accept the Review's recommendation that achieving a reflective judiciary should be a *stated objective* of the Judicial Appointments Commission. The Plan confirms that arrangements will be made to include this clause in the Justice Bill.

The second Plan also accelerates the establishment of the Judicial Appointments Commission, which will now come into force before devolution (2003).

Recommendations 77-80
Judicial Appointments

In CAJ's response to the first Plan and in subsequent interventions, we criticised the Government for making the establishment of the Judicial Appointments Commission contingent on devolution, as this was not the express intention of the Review. The revised Plan now finally contains a Government commitment to include in the proposed Justice Bill, a provision which will amend the Justice Act and allow for the establishment of the Commission before devolution. A date has not yet been set for this event. However we believe that given the considerable period of time that has already elapsed between the Review and the revised Plan, this part of the Bill should be commenced as soon as the Bill become law.

In terms of the composition of the Judicial Appointments Commission, CAJ had always held the view that lay membership should at least equal legal membership, even though this was not a Review recommendation. Given this position, we were very disappointed that the Justice Act not only provided for greater representation of legal members but also contained unequal conditions of service for lay and legal members. This equality deficit has now been addressed to a certain extent. The new Bill will require that legal members as well as lay members must be representative of society and that equal standards will apply in relation to the duration of service on the Commission of both groups.

CAJ is however still strongly of the opinion that the number of lay members on the Commission should equal the number of legal members, as it is for the Scottish Judicial Appointments Board.

Recommendations 75 & 85
Appointment Procedure for Lord Chief Justice and Lord Justices of Appeal

The revised Plan has strengthened the role of the First and Deputy First Ministers with regard to the appointment procedures of the Lord Chief Justice and the Lord Justices of Appeal. In the first Plan and subsequently in the Justice Act, the Government did not fully accept the recommendations of the Review and provided only for consultation between the Prime Minister and First and Deputy First Ministers. Now, however this section of the Justice Act will be amended in the new Bill to the effect that the First and Deputy First Ministers acting jointly will, based on the selection of the Judicial Appointments Commission make recommendation for appointment to the Prime Minister, who "*in turn will recommend appointments on that basis*". We understand this amendment to mean that the Prime Minister must accept the recommendations of the First and Deputy First Ministers and will monitor the text of the Bill to ensure that it reflects this understanding.

Recommendation 107
Code of Ethics for the Judicial Appointments Commission

The revised Plan states that the code of ethics for the Commission will be drawn up after the group has been officially established. In light of the important role that the Commission will play in making the appointment process more transparent, CAJ would strongly advocate a public consultation exercise on the content of the code. The extensive public consultation exercise that was carried out under the auspices of the Scottish Executive consultation paper, "Judicial Appointments: An Inclusive Approach" proved the merit of this approach and

clearly influenced the structure and mandate of the Judicial Appointments Board for Scotland, which began its work in June 2002.

Recommendation 90
Encouragement of Applications

The Review recommended that efforts should be made to stimulate interest in becoming a judge, particularly in formerly underrepresented areas of society. This is a very important recommendation, the implementation of which would greatly assist the range of other measures being taken to create a reflect judiciary and Bench. We are disappointed to note that over three years after the Review, there is little evidence from the Plan, of work being done to make this recommendation a reality. The information in the Plan merely states that consultation on this matter between the Court Service, Equality Commission, Bar Council and Law Society will be completed by the end of 2003, with no timescale set for the elaboration of a joint programme of action. This is contrary to the Review, which states, at Recommendation 94 on the timing of implementation, that those elements of the judicial appointment strategy which do not require legislation should be "adopted for implementation at an early stage and be operated within the existing structures".

Recommendation 93
Monitoring Background of Applicants for Judicial Appointment

We are encouraged by evidence in the revised Plan which states that the Court Service is developing arrangements to monitor religious and ethnic profiles and candidates with disabilities. This process should be ready for implementation by September 2003. If the monitoring procedures are successful we hope that the results will be fed into the research on equity monitoring being carried out by the NIO.

Recommendation 96
Oath

The judicial oath has unfortunately not been neutralised to the extent that CAJ had recommended in its original submission to the Review and the revised oath has now been put in effect via the Justice Act. While the new oath no longer requires candidates to swear allegiance to the Queen, it retains language which refers to the monarchy, namely by its use of the word "realm", as opposed to the more broadly acceptable "jurisdiction".

Recommendation 99 &101
Development of Judicial Training

We believe there should be public consultation in relation to the training plan mentioned in recommendation 99. In addition we believe this should be publicly available.

In Recommendation 101, the Review recommended that induction training should be mandatory for all members of the judiciary. The revised Plan states that it accepts this recommendation, when in its own words, it expressly states that "*induction training is not*

mandatory [although]…..it is invariably the case that judges accept the induction training that is offered". We cannot see any valid reason for refusal to accept the Review's recommendation in this respect, considering the centrality of training to the Review as a whole, across all agencies.

Recommendation 104-106
Judicial Tribunals

CAJ welcomes the fact that the Justice Bill will amend the provisions of the Justice Act, which currently require that the Lord Chief Justice must issue his consent before a judicial tribunal can exercise its power to suspend or remove a member of the judiciary. This was not a Review recommendation and should never have been placed in the Justice Act.

In a number of other aspects however, we still believe that the response to this recommendation is inadequate. It is clear that the Review recognised there was a problem in relation to judicial accountability and made limited recommendations in order to remedy this. However, the relevant provisions in the Act qualify the official acceptance to such an extent, that it is unlikely they will satisfy even the most modest concern about whether the judiciary are held properly to account.

The tribunals which are envisaged in the Act cannot in any sense be described as independent. Two of the three members will be appointed by either the Lord Chancellor or the Lord Chief Justice and will be current or retired judges. The third member of the tribunal will be appointed by the First and Deputy First Minister and will be a lay person. That person cannot be chair of the tribunal. The Lord Chief Justice is also given sole responsibility for devising the codes of practice relating to the handling of complaints against the judiciary.

Courts

Recommendations 124-128
Public Outreach and Information

CAJ is encouraged by the outreach and education measures that have been developed by the Court Service. We would recommend that these activities are kept under close inspection and are evaluated to ensure that they achieve the desired impact.

Recommendation 135
Simplification of Dress

There has been no change in policy on this matter since the first Plan. We therefore want to re-state our opposition to the current dress arrangements on the basis that they may impede access to justice. We regret that the Government has failed to assume responsibility for making decisions on this matter and has ceded full discretion for the matter to the judiciary.

This is unacceptable because it is highly unlikely that the judiciary or the professions will implement the recommendation. There is also no timetable for implementation.

Recommendation 136
Simplification of Language in Courts

The measures taken by the relevant agencies to respond to this Review recommendation appear to be very underdeveloped. The Review advocates positive and effective action not just mere consideration. Greater attention needs to be paid to this matter by the responsible agencies if court services are truly intended to be publicly accessible and externally perceived to be fair and transparent.

Recommendation 141
Symbols

The rationale of the proposals for change inside the courtroom was the necessity of creating "an environment in which all those attending court can feel comfortable." It is therefore deeply regrettable that the Act has allowed the Royal Coat of Arms to remain inside a number of courtrooms and on the exterior of courthouses where it was previously displayed.