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Winner of the Council of Europe Human Rights Prize

CAJ's commentary on the
**Review of Charities Administration and
Legislation in Northern Ireland in 2005**

May 2005

**Submission No. S.164
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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.

Consultation on the Review of Charities Administration and Legislation in Northern Ireland in 2005

(May 2005)

Charity Registration

In principle, the Committee on the Administration of Justice (CAJ) sees no problem with a formal registration system for all charities, subject to this not entailing any excessive administrative burden, nor any political screening of charities by government. A registration system that merely formalises the current less formal registration system by way of the Inland Revenue, would be entirely acceptable. Any system however that, deliberately or otherwise, increased government controls on the work of charities would be much more problematic and we comment on this below.

Background to Review

Reference is made to a Northern Ireland review of the charities' legislation being undertaken by the Department of Social Development alongside the review of English and Welsh practices. CAJ was unaware of anything other than the latter review, and our attention was drawn to this exercise last year by the NI Human Rights Commission (NIHRC). The NIHRC had made a formal submission to the Charity Commissioners on the grounds that previous developments in English law have been routinely followed in Northern Ireland; presumably, the DSD is in contact with the NIHRC and will have been made aware of their submission? To avoid any doubt, the CAJ is presuming that the Northern Ireland Review has to date been a purely internal DSD one, which has now resulted in the consultation document, upon which views are being sought? If we are mistaken in this regard, we would appreciate some clarification. Regarding the other two reviews alluded to – the Taskforce on Resourcing the Community and Voluntary Sector and the Review of Rating Policy – CAJ has already engaged with both of these processes.

Policy Aims

CAJ accepts the seven principles laid out as policy aims but recognises that the challenge will lie in interpreting these aims into practice. We noted earlier, for

example, that it is vital that principles such as “transparency” and “accountability” not be interpreted in an overly legalistic, proceduralist, or cumbersome manner. Charities are sometimes extremely small groups, with little or no staff, and with very small budgets. Accordingly, we welcome principles such as “proportionality” and “simplicity” which should be pursued alongside the principles of transparency and accountability.

With regard to the specific principles outlined, we would like to make the following comments:

Clarity

CAJ welcomes the various points included within the definitions of charity. Given that we work in the area of human rights, we are pleased to see this theme explicitly listed as one of the themes that can qualify for charitable purposes. The NIHRC submission to the English/Welsh review addressed the interpretation to be accorded to “human rights”, but it is not clear from this consultation document whether you are seeking comments of an interpretative nature? Human rights work, by definition, is about challenging those in authority and holding them to account, and might well be described by some as “political” in nature, though it should never be politically partisan, or advance the cause of any particular political party or ideology.

CAJ also welcomes the inclusion in the Northern Ireland definition of ‘charity’, work which is aimed at the “promotion of peace” (item 12).

We also in principle welcome the addition of item 13 (the promotion of good community relations) but believe that there might be some confusion about the terminology used. The Policy and Strategic Framework for Good Relations in NI (issued by OFM/DFM in March 2005) notes that “‘community relations’ refers specifically to division between the Protestant and Catholic communities in Northern Ireland and that ‘good relations’ refers to Section 75.2 of the NI Act 1998, which includes people of different religious belief, political opinion or racial group” (para 5.5.1). In item 13 of the Charities Administration and Legislation definitions, both ideas seem to be conflated - what remit is intended to be include in the term “good community relations”?

CAJ would argue for the widest possible interpretation and believes that no narrow interpretation of item 13 – for example one that excluded the promotion of anti-racism - should be accepted. We note that the Northern Ireland Council for Voluntary Action (NICVA) in its comments endorsed the changes being proposed to the English legislation, and suggested that it might be better to transpose these in their entirety to Northern Ireland. We have some doubts about this approach. In the English formulation, one definition would include “the advancement of human rights, conflict resolution or reconciliation, or the promotion of religious or racial harmony or equality and diversity”. The underlined section here was instituted at the proposal of the Joint Steering Committee and NICVA prefers this formulation, and would integrate the concepts of “peace” and good community relations” into the revised English legal wording. CAJ would instead recommend retaining the “Northern

Ireland specific amendments” proposed in the consultation document, and add a free-standing charitable definition of the “promotion of equality”..

Our reservation about the English wording as proposed is that it might be narrowly interpreted to relate to “equality” and “diversity” in terms only of racial or religious harmony. If this were to be so – what about groups working to promote the rights of people with disabilities, to counter homophobia, to promote equal treatment of women? It would be better to recognise as a free-standing charitable objective the “promotion of equality”. Of course, most equality work could simply be incorporated within the rubric of “human rights”, but this could allow for some ambiguity. In the Northern Ireland context, there are two distinct statutory bodies and two distinct bodies of legislation dealing separately with “human rights” and “equality”, so CAJ believes it would be preferable to list ‘equality’ explicitly within the definitions of charitable activities. The English formulation is not an adequate alternative in this regard.

Transparency

Point 1 – reference is made to the footnote about exemptions in England and Wales, though it is not clear if these exemptions are being ruled out, or being considered for NI. While CAJ would have no objection in principle to the exclusion of very small groups (income under £1000 and no endowment or land), we see no reason why churches, places of worship or voluntary schools would be automatically exempted from registration.

Point 3 – regarding the reference to “exemption from oversight” – CAJ has no problem with this terminology if it is intended to refer only to the oversight of the raising and disbursement of funds for charitable purposes. Any wider oversight is presumably a matter for the body’s executive or management group, membership, or as otherwise specified in its constitution (see on for more on this issue). We would be very hesitant about the Charity Commissioners (still more the Department) taking on any responsibility for the general oversight of a charity’s work.

Point 8 – again, CAJ has no problem in principle with the need for some organisational details to be treated in confidence, but this begs the question about what material will be routinely placed in the public domain by way of the register? In principle, we see no reason why anything other than basic facts and figures should be available to the general public. Transparency is owed to an organisation’s membership, its funders and potential funders, and all of these constituencies should be able to access financial information, an organisation’s statute or constitution, and a record of activities confirming that the group concerned is carrying out its agreed objectives (by way of an annual report or whatever). The granting of charitable status should not give *carte blanche* to the authorities to require that extensive information about the organisation be placed in the public domain. It would be helpful if the authorities would clarify what information they expect to be held in the public register.

Point 10 – is this reference to the Department a typo? A registered charity should presumably be required to prepare annual reports and accounts for the Charity

Commissioners (not the Department), and maybe this is what was intended? What significance should be read into the obligation on the charity to provide material on request to “the public”? Small charities could be easily bankrupted if they were inundated with perhaps malicious requests for information and were not allowed to refuse such requests, or could not comply with this obligation by referring inquirers to the register of charities.

Accountability

There are two distinct issues relating to accountability that need to be addressed in this debate. One, which is not addressed explicitly at all in the document, is what level of accountability is owed by the individual registered charities, and to whom. CAJ would argue that charities owe accountability only to those bodies laid down in their statute or constitution – normally a membership, an executive committee, or both. A charity, by being registered as a charity, and gaining thereby certain tax benefits, has a duty to account to the Charity Commissioners, but this duty is, however, not entirely open-ended. The charity must provide information to assure the Commissioners that the charity (a) is undertaking the activities laid down in its statute, and which secured it authority to act as a ‘charity’; and (b) is spending its monies for the purposes agreed to be charitable. We see no justification for the Charity Commissioners engaging in discussions with charities about their recruitment policy, their media profile, their strategic plans etc. etc. The accountability for overseeing such issues lies solely with the authorities laid down in the organisation’s statute. Arguably, according wide-ranging oversight authority to the Charity Commissioners will undermine rather than underpin the accountability that should be required of the organisation’s executive committee or other governing organs.

The second issue around accountability relates to the authority of the Charity Commission itself. It is vital for many charities that they not be seen to be dependent in any way on government, and accordingly CAJ would agree that a completely independent NI Charity Commission is preferable to any body linked directly or indirectly with the Department. We have no objection to the Charity Commissioners having a status as a Non Departmental Public Body, as long as the protocol governing its relationship with the sponsoring department is clear and the department cannot interfere in policy decisions of the Charity Commission.

It is difficult for CAJ to comment on the size and appropriate staffing for the new body, but we assume that the proposed model has been drawn up on the basis of similar activities carried out by bodies in the Republic of Ireland & England and Wales.

The consultation document asks about the ideal appeals mechanism and it would have been helpful to learn what the other jurisdictions in these islands do regarding appeals. CAJ wonders if there would be any value in the various Commissions working collaboratively for the purposes of appeals – so that Commissioners from other jurisdictions would hear appeals, but this would depend on a certain commonality of legislative approaches across the various jurisdictions. If this were to prove possible, it would be a cost-effective way of ensuring that all the Commissions routinely

exchange information about best practice. Whatever appeal mechanism is decided, CAJ believes that the appeal mechanism cannot lie with any government department.

Compliance

The language here is somewhat worrying. In point 1, reference is made to “regulation”, and the need for a charity to be “well run” and “deserving of public support”. As noted earlier, CAJ believes that organisations should be adjudged by those governance bodies laid down in the organisation’s statute. Whereas the Charity Commissioners can assess certain aspects of a charity’s functions, they should not be attempting to judge overall whether a body is “well run” or “deserving of public support”. An alternative formulation, which would meet the presumed objectives of the Department, and CAJ’s concerns about independence would be “*All NI Registered Charities should be financially regulated to ensure that they comply with their constitutional aims and objectives, and as such can be considered to be well-run and deserving of public support*”. Underlining indicates the proposed areas of change.

All other principles should flow from this first one. Accordingly, the Charity Commissioners should only have powers relating to instituting inquiries, accessing documents etc. with a view to allowing them to reassure themselves that monies are being properly spent on the purposes laid down in the organisation’s statute. CAJ finds no justification in the document, and in principle would be totally opposed to a trend whereby Charity Commissioners were in any sense to replace the oversight provided by an organisation’s elected and appointed officers.

In the section entitled “Powers to Control Abuses”, there is presumably a typo again, in that it would surely be the Charity Commissioners, not the Department, which could require a charity to change its name?

On the question of auditing: we assume that all charities with an income of over £100,000 currently are audited - or is the Department proposing something that will bring a whole range of new organisations within the ambit of auditors?

Governance - Charitable Collections

In this section (and elsewhere, as already noted) reference is sometimes made to the Department when it might more appropriately be made to the Charity Commissioners? For example, why would exemption orders (relating to PSNI notification for door-to-door collections) in future be awarded by the Department rather than the Charity Commissioners?

On the specifics of PSNI involvement, CAJ can understand that someone must regulate door-to-door collections, but we are not clear why there is a need for “all public charitable collections to be approved by the PSNI”. Nor do we understand why the promoters of collections will be required “to account to the PSNI for the proceeds”. Surely, once the Charity Commissioners have been established, they should be the body approached for authorisation for a NI-wide door-to-door

collection? While the Commissioners would be well advised to consult with the PSNI to ascertain any counter-indicators (other non-charitable events occurring at the same time for example), the decision should surely lie with the Commissioners.

Certainly, any oversight regarding the proper collection and disbursement of monies should be a matter for the Commission, not the PSNI. CAJ believes that the use of PSNI for such work is unnecessary and an improper use of resources.

For future use – when issuing consultation documents, page numbers are useful for reference purposes.