Diplock Replacement Arrangements Consultation
Room 8, Stormont House Annexe
Stormont Estate
Belfast
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11th October 2006

Dear Sir/Madam

Thank you for inviting the Committee on the Administration of Justice (CAJ) to comment on the proposals to replace the Diplock Court system.

Since its establishment in 1981, CAJ has regularly called for the repeal of "emergency" legislation given the serious human rights abuses that flowed from such legislation. The government has contended that the Diplock Court (non-jury) system was necessitated because of the great risk of jury intimidation or bias but has never produced concrete evidence to that effect. We believe that the decision to remove the right to jury trial was a very fundamental attack on basic liberties, and have long argued for a change in the law. We believe that the conditions exist, and have existed for a long time, when jury trial should be the norm. We are therefore deeply disappointed that government in these proposals is allowing non-jury trials to continue, albeit in limited circumstances.

Even at the height of the violence in Northern Ireland, there was no substantive body of evidence to suggest that there was a serious problem of intimidation, and the fact that no further evidence is proffered now, in a period of relative peace and stability, is of grave concern. The onus of proof should be on those who wish to argue for the retention of non-jury courts, but this is not the approach taken. Moreover, the fact that the use of Diplock Courts has declined substantially (as per page 4) should actually strengthen the case for their total abolition.

CAJ therefore believes that the failure to introduce trial by jury in <u>all</u> cases represents a major abdication of responsibility on the part of government, and while we provide comments below on the specific proposals, these are in the context of our belief that the right to trial by jury should be restored in all cases.

- ***Restricting access to personal information and jury checks(para 3.7 etc)***

If access to personal information on jurors is to be restricted, this should apply to both the prosecution and the defence. To restrict information to the former only is unacceptable in that it gives a significantly unfair disadvantage to the latter, particularly in light of the proposals further on in relation to peremptory challenge. Moreover, there is an implication that those acting for the defence are more unreliable than their colleagues working for the prosecution – an invidious and improper suggestion, which is all the more objectionable in Northern Ireland, where defence

lawyers have been killed for their supposed sympathies. In addition, the provision of this information to the police places the defence at a further disadvantage. In its submission to the Diplock Review in 2000, CAJ proposed that the names, addresses and occupations of jurors should not be disclosed to either defence or prosecution lawyers or the police, and we would reiterate that proposal here. If additional checks are required, these should be carried out by a body independent of the process.

- ***Abolition of peremptory challenge and restriction of rights of stand-by***

CAJ is concerned that the proposals in this paper (para 3.14 on) are unfairly weighted against the defence and thus place the prosecution at a significant advantage. If these proposals stand, the prosecution will not only have information on jurors that the defence will not, but it will also retain the right to request that the Court order members of the jury to stand-by while the defence will have no right of challenge whatsoever. These proposals seem to run counter entirely to the principle of equality of arms before the law. CAJ believes that either the right of the defence to challenge a juror and the use of stand-by by the prosecution should both be removed altogether, or both should be retained with clear and strict guidelines as to their use.

- ***Other jury protection measures***

In its submission to the Diplock Review in 2000, CAJ suggested a number of other measures for the protection of juries which could be considered. For example, if there is an attempt to interfere with members of a jury, consideration could be given to the use of "out of town" juries (jurors from Enniskillen could be asked to hear cases in Belfast and vice versa). Alternatively the trial could be moved to another venue in order to minimise the potential for interference with the jury. In addition, lessons could presumably be learned from the measures taken to protect witnesses who may be subject to threat.

- ***Eligibility for jury service (para 3.26 on)***

CAJ agrees with Lord Carlile that widening the jury pool would dilute the risk of perverse verdicts, and as the government points out would represent another move towards normalisation. No arguments or evidence are offered as to why this is not being embraced, which further highlights the half-hearted approach of the government to genuine reform of the system.

- ***New system for non-jury trial (para 4.1 onwards)***

CAJ is unclear why reference is made throughout this section to the "DPP" rather than to the "PPS"?

As stated above, CAJ feels that the right to trial with jury should be reinstated in all cases. We also have a number of particular concerns about the current proposal for a presumption to shift to jury trial:

i. Stage one of the test proposed for deciding to certify a case into non-jury trial - an "assessment of the risks to the administration of justice" - appears vague and subjective.

ii. Stage two refers to an "exhaustive" list but details are very limited, making it impossible for anyone to comment. However, wide and vague categories of "offences arising out of public order incidents" and "offences that have a sectarian motive" do little to reassure us that the system will be as rigorous as the paper contends it will be.

iii. No mention is made of whether the decision of the DPP (sic) to issue certificates must be accompanied by reasons for that decision. Such an omission is a serious flaw in the proposed system, as it places undue discretion in this office. Moreover, the historically problematic and restrictive policy of the DPP/PPS in the giving of reasons for non-prosecution falls far short of that required by the Criminal Justice Review and international standards, so must not be adopted in relation to decisions on the issuing of certificates. In addition, while judicial review is offered as a means of challenge of these decisions, this is also available for decisions not to prosecute. However, there have been several attempts to secure this remedy, all without success, which does not bode well for its use in relation to other prosecutorial decisions.

- ***Equality screening***

CAJ is rather surprised that the equality screening exercise determined that these proposals would have no differential impacts on any of the nine equality categories. It would seem perfectly obvious that a system of non-jury trial for crimes/offences related to paramilitary organisations, public order incidents, or crimes with sectarian motives all have a potentially differential and adverse impact on religion and political opinion, and potentially race/ethnic origin. The failure to identify this impact and subsequently carry out an EQIA renders the entire policy flawed from an equality perspective.

In conclusion, CAJ feels that in an era where changes are being made to the criminal justice system exactly to address the undermining of confidence in and lack of human rights compliance of the system caused by the emergency legislation and Diplock Courts, failure to embrace the opportunity to totally abolish Diplock Courts is potentially damaging to these efforts.

Yours sincerely,

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