

**The Committee on the Administration of Justice (CAJ)
45/47 Donegall Street, Belfast BT1 2BR
Tel: (028) 9096 1122 Fax: (028) 9024 6706
Website: www.caj.org.uk**



Winner of the Council of Europe Human Rights Prize

CAJ's response to consultation paper on
Irish Language legislation for Northern Ireland

March 2007

**Submission No. S.188 (a)
Price £1.50**

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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 by the
Committee on the Administration of Justice (CAJ)
to consultation paper on
Irish language legislation
for Northern Ireland**

March 2007

The Committee on the Administration of Justice (CAJ) is a cross community independent human rights group working for a just and peaceful society in Northern Ireland where the human rights of all are protected. As such, we have no particular expertise in questions of language, and our contribution to the debate on Irish language legislation is premised on concern to protect and promote language rights and minority rights more generally.

CAJ welcomed the references in the Good Friday/Belfast Agreement to the active consideration then underway on the part of the UK government to sign the Charter, and various other commitments made at that time to promote language rights. The Charter was subsequently signed, and further commitments were made by the government in relation to Irish language rights in both the Weston Park Agreement and the St Andrews Agreement. This current consultation on proposals regarding Irish language derives directly from the St Andrews Agreement wherein it was agreed that “*the Government will introduce an Irish Language Act reflecting on the experience of Wales and Ireland and work with the incoming Executive to enhance and protect the development of the Irish language*”.

The consultation paper sets out quite fully the issues that need to be discussed, but prior to briefly setting out CAJ’s response to the proposals, there are some introductory remarks to be made:

- a. **Chapter 1: the historical use of Irish:** it is presumably uncontested that the Irish language was actively discriminated against in the past, and that its large-scale destruction as the majority language is not merely the incidental result of rapid industrialisation? Yet the current text implies otherwise. This point is not being made solely in terms of accuracy, but because this reality should be openly acknowledged for two reasons. Firstly, this historical context is important to understanding some of the political sensitivities that may surround the language, and which are frequently alluded to

elsewhere in the consultation paper. Secondly, there are unfortunately modern-day experiences of people experiencing discrimination on grounds of their use of the Irish language, and the passage of an Irish Language Act is important in addressing this reality on the ground.

- b.* **Chapter 2:** this important oversight regarding the level of historic and current discrimination surrounding the use of the language is further compounded when reference is made to the Human Rights Act 1998 (p.8) and explicitly to article 10 (right to freedom of expression). Surprisingly, no reference is made to article 14 of the same European Convention, though it is clearly relevant to many of the following chapters: government is obliged to ensure that the “*enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as.....language....*”.

- c.* **Pobal** is a broad umbrella group for many Irish language activists, and it expended major resources on consulting within that community, drawing on international expertise, and consulting particularly closely with people working in Scotland and Wales on language issues. Accordingly, CAJ finds it highly unfortunate that government did not take the Pobal proposals as a starting point for the discussions and indicate in what ways it agreed with, or disagreed with, the carefully considered proposals already on the table. Given that Pobal suggested a detailed model that was rights based, but which drew on good practice around duties on public bodies and language schemes, they seem to have developed the fourth option alluded to in the government paper, but one which is unfortunately not set out in sufficient detail for consultees to comment knowledgeably.

- d.* **Ancillary documentation:** We note that a financial impact assessment was included with this consultation document. CAJ would have no objection in principle to the addition of such a document but we see two practical problems. Firstly, why is the Irish language the only issue that has merited such an assessment? CAJ receives a large number of consultation documents and we had never seen such a document attached previously, and the Department of Education and Learning (DEL) has subsequently confirmed, by way of a Freedom of Information Act request, that this is a ‘first’. Unfortunately, the addition of such an analysis lends itself to the suspicion that the department has reservations about the financial

costs of this particular initiative, and uniquely has chosen to carry out a financial impact assessment. Secondly, if this is to become a more routine part of any consultation exercise, then it is vital that the department concerned also estimate the possible costs of NOT taking certain actions. Thus, it is quite unacceptable for public bodies to indicate the costs of translation of texts, when they disregard the costs of producing and publishing the material in English; or for someone to estimate the financial costs of building a hospital and disregard the costs to the health service if infrastructure is allowed to degenerate.

Similarly, it is good to produce an Equality Impact Assessment, but the publication of two versions (one in the consultation paper as annexe A with a deadline of 2 March, and another fuller version issued separately with a deadline of 9 March) may lead to confusion.

Consultation Paper

Rights Based Approach

CAJ believes that a rights based approach must be the *leit-motif* of any legislation. We attach here in appendix a number of cases that have been brought to our attention regarding individuals who have faced discrimination in exercising their rights to speak in their own language. These case-histories highlight that this debate is not an esoteric one.

We do not however accept some of the characterisations of a rights-based approach set down in the paper. For example, we are unable to imagine any language rights that could be “absolute in character” (p.12). Of the fundamental rights and freedoms set down in documents such as the Universal Declaration of Human Rights (and all the related treaties) - extremely few rights are untrammelled by questions of legality, necessity, proportionality, and respect for the rights and freedoms of others. The right not to be tortured is absolute, but almost all other rights are qualified. By arguing that Irish language legislation should take a rights-based approach, CAJ does not intend to argue that any language rights are absolute. We do however believe that the international commitments of the government must be complied with, and that there be a duty on government to seek to extend the ability of Irish language speakers to exercise their rights fully in all private and public spheres.

Given the remarks made above, CAJ believes that the approach to Irish language legislative provision should be rights-based, but that this is best

done by a mixture of rights, duties, and language schemes. This option is the least explored in the consultation paper, so it is difficult to comment in much more detail. As indicated, the Pobal proposals appear to combine all three models, and it would therefore be helpful for consultees if government indicated what issues within that proposal it would like to pursue, and which require further exploration.

Equality Impact Assessment (19 January)

Para 6.12.7 The tone here unfortunately implies that Irish speakers might want “preferential treatment” and/or approval “without question” of every proposal put forward by the sector for new schools. If there are numerous concrete examples of such demands being made, this might be an acceptable point to make. However, in absence of same, it might have merely sufficed to refer to the many competing resource demands that must be balanced (in which Irish medium schools have surely as much right to assert their needs as anyone else in society).

Para 6.12.8 It is recorded that the rights based approach to Irish medium education “could impact adversely on equality” because of the correlation between language interests and community affiliation. It is not however explained why this adverse impact would derive from the rights-based approach *per se*, rather than simply the provision of Irish medium education for any reason whatsoever. CAJ disagrees that a rights-based approach would worsen the situation, but on the contrary believes that the provision of education to any group (whether Irish medium, integrated, or faith based) *because of* a rights-based approach would assist in countering any negative connotations. Education provided on the basis of rights, and in compliance with government’s international commitments to promote minority languages and minority rights, cannot be portrayed as arising on the basis of merely who shouts loudest, or who has money, or who is politically popular at any particular time. As such, a rights based approach should assist policy makers transcend partisan interests.

Page.12 data about court-users: this was a fascinating study that CAJ had not been aware of previously, and shows how valuable such data-gathering can be for studies of this kind, and further afield.

Para 8.3: regarding other comments on the EQIA - it might have been useful to refer to the fact that the courts and tribunals will have a duty to provide article 6 rights (fair trial) in the context of article 14 (non-discrimination on grounds of, amongst other things, language).

More generally, there appears to be little or no reference to the impact that greater use of languages other than English might have in terms of recruitment and training of staffing, and indeed changes in organisational culture. One might for example expect that if Irish were more used in the public service, this might encourage more Irish speakers to seek such employment (or reduce any real or perceived obstacles to the employment of Irish speakers). There should also presumably be some knock-on impact on training and other professional development for public servants?

It is perhaps noteworthy in this context that some of the attached material about experiences of discrimination have come about precisely because of an increase in Irish language usage in government offices. Examples include the production of an advert for a fluent Irish speaker that is only produced in English, or a government employee who is allowed to use Irish when working with clients, but not in telephone conversations with family members! If a greater use of languages alongside English (whether Irish or other languages) is to be seen as a positive contribution to public life in Northern Ireland, policies relating to recruitment, training, communications, service delivery and outreach must all be overhauled.

The passage of an Irish Language Act, with a rights-based approach will be an important impetus for such work.

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Committee on the Administration of Justice (CAJ)
45- 47 Donegall Street
Belfast BT12FG
Tel: 02890- 961122
Fax: 02890 246746
E: info@caj.org.uk
Web: www.caj.org.uk

Annexes:

Annexe One: extract from “Decisions and Settlements Review, 2005-2006” produced by the Equality Commission for Northern Ireland regarding the case of **Aodhan Connolly v Botanic Inns Ltd**. This case alleging religious/political discrimination by virtue of using the Irish language was heard before the Fair Employment Tribunal. The settlement, reached on 2 March 2006, recounts the dismissal of a security guard from the Globe Bar due to his use of the Irish language (the use of other languages with the many tourists and patrons was not apparently discouraged).

Annexe Two: a paper prepared for CAJ in June 2005 by Helene Renault, a French intern on placement with the organisation. The paper outlines three case-studies of people who had faced language discrimination problems. One person was denied support from his employer (Department for Social Development) to enhance his language skills (although it appeared that if he had wanted to study a language other than Irish, it might have been supported). A second person was not allowed to speak Irish in private telephone conversations from work (Social Security Agency). Yet a third instance related to the decision to advertise only in English a post in the Department of Employment and Learning that required fluent Irish.

Annexe one:

Extract from ECNI report (attached in hard copy version)

Annexe two:

The Council of Europe Framework Convention on the Protection of National Minorities (1998), the European Charter for Regional or Minority Languages and the Good Friday Agreement recognize linguistic freedom. Thus, the government has committed itself to promoting the Irish language, and the right to speak Irish in the workplace is an important human right. However, there are still many problems that Irish language speakers are facing in relation to discrimination and disadvantage.

We can focus in these papers on three cases: a Care Allowance Worker who was refused support to do a Diploma in Irish Language (case 1), a Social Security Officer who has been threatened at work for speaking Irish during a personal phone call (case 2) and the issue of vacancy advertised in English and not in Irish (case 3).

These three examples are however only emblematic. CAJ has been informed that there are many Irish speakers who are uncomfortable about speaking Irish at work, but it is likely that there will be severe under-reporting with people fearing the consequences of any complaint. Certainly in the instances which we report here, there are examples cited of others who faced similar problems but chose not to pursue the issue. A particular disincentive to anyone pursuing a complaint is if they feel isolated in their concern, and it is worth noting the existence of important support groups such as Pobal (Pobal is the umbrella organisation for the Irish speaking community in Northern Ireland, an organisation which puts Irish language rights on the agenda, creates partnerships between the Irish speaking community and statutory, community and government agencies). The following three cases were ones which CAJ researched once they were brought to our attention by Pobal.

Case 1 - Aidan Mc Bride, who was refused support by DSD to study Irish

Aidan Mc Bride, a Care Allowance Worker with the Department for Social Development, asked for support to do a Diploma in Irish Language at the University of Ulster. Help was sought in line with the Civil Service Circular CSC 29/91 that commits Government, as a good employer, to support staff seeking to do educational courses that will enhance their performance at work and/or self-improvement courses.

Making his application for support, Mr Mc Bride stated that any course improves concentration, problem solving ability, team working time management and social interaction and that all of this can add to an employee's overall performance.

This is all in accordance with circular CSC 29/91 which states that “subject to adequate financial support being available in the appropriate departmental budget(s) to enable the officers to undertake and complete the approved studies, Adult Further Education assistance could be awarded if any of the following selection criteria, which are in order of priority, are met: 1/ the subject is like to make a contribution to the officer’s performance within the department or agency in the course of his current posting, 2/ the subject is necessary to enable the officer to compete in competitions run by the Civil Service Commission, 3/ the subject is likely to make a contribution to the officer’s performance in the course of a future posting, 4/ the subject will contribute to the personal development of the individual and have some potential relevance to performance”.

His line manager wrote that she supported his application, even if she said that Mr Aidan Mc Bride did not require by management to undertake the proposed course of study and that the contents of the course would not contribute directly to the officer’s performance in the course of his current job.

He was also acutely aware that following the Good Friday Agreement and the signing of the European Charter for Regional or Minority Languages that a command of Irish ought to be regarded as an added skill in the workplace.

His application was refused on the grounds that he had not “shown how the course of study would contribute to his current or future postings in the Northern Ireland Civil Service”. He was told that the qualification would have no relevance to his job. Another employee of the Department was also refused but decided not to pursue the matter.

Mr McBride exercised his right to ask to have his application looked at again by the review Officer but the Department confirmed that the decision to disallow still stood. He asked the Training and Development Unit for the full list of the courses that had been funded by the Department, but he was told that the request was not relevant and that there was no definitive list of courses. But Mr McBride knew that at the same time as he had been refused, an employee from the same Department was given financial support to do a course in Russian and on 3 November 2003, Mr McBride wrote again to the Department to ask him “to reconsider the issue as to how the Diploma in the Irish language will “contribute to their effectiveness in the course of current or likely future postings and will benefit their personal and career development” “. He said that, “for example there are regular opportunities for detached duty so any language that can enable an individual to apply for these postings must satisfy the personal development.”

In December 2003, he had exhausted the appeal system within the Civil Service, and in January 2004, Cllr Barry McElduff MLA wrote to the Department for Social Development about the duty of government departments to take resolute action to promote the Irish language and about their support for courses in Irish.

The MLA was told that the Department supports this kind of application if the officer making the application demonstrates that their proposed course of study will contribute to their current or future performance within the Civil Service; that each application is considered on its individual merits; and that applications to undertake a

course of study in Irish would be treated in the same way as an application for any other area of study.

In January 2004, Mr McBride contacted Pobal, and they wrote to Alex Maskey MLA, the Department Permanent Secretary Alan Shannon, and the relevant Minister, John Speller. Pobal sought clarification about the case of Aidan McBride, pointing the fact that “it came as a surprise to Pobal that the Department elected not to support these two applications, particularly when other Departments had done so and when the same Department, the DSD, had allowed another employee to study Russian.”

In February 2004, there was also lobbying from Carmel Hanna MLA (SDLP, South Belfast) to the Department of Social Development about the anomaly of the case of Aidan McBride.

In February 2004, Allan Shannon replied to Pobal that “applications to undertake a course of study in Irish would be treated in the same way as an application for any other area of study” and that, as a result of Pobal’s letter, he had asked for a further review of the decision on Mr McBride’s application.

On 23 February 2004, the Department of Social Development told Aidan McBride that following the new examples he had given of future postings/secondments where language skills could potentially contribute to the effectiveness of the post (e.g. his letter from 3 November 2004), and that following receipt of a recent letter from Pobal, the decision had been revised and that his application will be supported.

Finally, Mr McBride succeeded in undertaking his first year course for the Irish Diploma, and in May 2004 he passed his exams. He thought that there would be no other difficulties, but he had continuing problems completing the course of Irish.

The funds he received were only for his first year and the Irish Diploma was a two years’ course. So he had to do another application called “Application for Continued Assistance with a course of study”, which he completed in September 2004. Mr McBride’s had a new line manager by this time, but he also supported the application: “Aidan has already completed one year of this course successfully with no detrimental effect on his job performance”; “participation in this course contributes to Aidan’s personal development, which includes communication skills, and his involvement does not impact on his job performance”.

However, a letter from the Department’s Training and Development Unit was received stating that the application had been disallowed because it had arrived too late (on 10th September 2004) when it should arrive with the Unit ten working days before the course commenced. It had apparently missed the deadline by one day.

Mr McBride again exercised his right to have the application reviewed. He clarified that the course recommenced on 21 September 2004, not the 20th as he had originally stated in his application form, and he referred the Department to the letter from his line manager (wherein the line manager explained that he was responsible for the delay in submitting the application).

Mr McBride was eventually told that he would get support for his Irish language course, but the notification came too late for him to take the course in 2004/2005, and he will have to re-apply in September 2005.

Several problems are highlighted in this case-study. Firstly, there is a question as to whether Irish is even being treated on a par as other second-language courses on offer. Why would the Department consider it more relevant for a staff member to study Russian than to study Irish, and support the former but not the latter? Secondly, the Irish language is subject to protections over and above other languages, and would quite rightly be privileged in comparison to languages such as Russian. The government has duties to protect and promote indigenous languages because of its duties under the Council of Europe Framework Convention on the Protection of National Minorities, the European Charter for Regional or Minority Languages, and other international standards. Moreover, specific commitments were made in the Good Friday/Belfast Agreement that, with regard to the Irish language, government would “take resolute action to promote the language”, “facilitate and encourage the use of language in speech and writing in public and private life where there is appropriate demand” and “seek to remove, where possible, restrictions which would discourage or work against the maintenance or development of the language”. Thirdly, the Department is at fault not only for not actively encouraging staff to develop their Irish language skills, but for making the application process so onerous as to be very off-putting. One wonders if an applicant who was less tenacious than Mr McBride, and who was less able to mobilise elected representatives and Póil to take up his cause, would have been at all successful. Mr McBride himself noted that other colleagues did not persist with their interest once they found obstacles in their way.

This case-study highlights a single case, but what does it say about attitudes to Irish language more generally? According to Mr McBride himself, some of the reluctance to support his request stems from a belief in his workplace that the Irish language is somehow connected with republicanism. Mr McBride learnt Irish at school but he has forgotten much of it and wants to study Irish because it is a part of his culture, but it is perceived as a political option for republicanism. As long as this attitude prevails, he sees little hope of the Irish language flourishing. As noted earlier, other colleagues wanted to study Irish, or even applied and were refused, and have decided not to challenge this.

Case 2 – Colin Vernon, who was told that he was not allowed to speak Irish in private telephone conversation at work (the Social Security Agency)

Mr Colin Vernon, a Social Security Officer with the Department of Social Development (a Government office), was told on the 10th September 2004 that he was not allowed to use Irish at work in personal phone calls.

His supervisor told him that a complaint by his colleagues had been received about him having speaking in Irish. The conversation in question was a private

telephone conversation between Mr Vernon and his son. Colin Vernon was told that private conversations in Irish are not allowed but that they must be carried out in English.

Bizarrely Mr Vernon has been delegated by the Department to deal with the public through the medium of Irish. That is to say that he can speak Irish with clients who speak Irish, but that he cannot speak Irish with his son.

In the Social Fund Staff Meeting of 10 September 2004 and in the letter from Social Security Agency to Pobal (2 November 2004), the Unit Manager and the Equal Opportunities Officer referred to departmental guidance (Equal Opportunities, Complaints procedures, text published by the Social Security Agency, Equal Opportunity Unit, Personnel Branch). It says that “managers and supervisors have a responsibility to promote and seek to maintain a neutral working environment” and that “everyone has a right to equality of opportunity and to a good and harmonious working environment in which no member of staff feels under threat or intimidated.”

According to the minutes of the Social Fund Staff meeting, the manager also said that “discussing religion and speculating who belongs to a particular faith or religious denomination (...) should stop immediately”. There seemed to be an implication that in some manner the act of speaking Irish is unacceptable. At the same meeting, staff that asked for guidance on what could actually be discussed in the workplace - can they speak about football or will it fuel the conflict?!

In 14 September 2004, Colin Vernon contacted Pobal, which wrote a letter supporting Mr Vernon and asking for explanations. The lobbying of Pobal was important and helpful in that the Social Security Agency recognized in its response that “there is no absolute ban on members of staff speaking Irish”. They went on also to say that, “however, if members of staff were to speak constantly in Irish, or any other language, in a deliberate attempt to exclude or intimidate someone else, or in a calculated, excessive or insensitive way, then this could significantly damage working relationships and lead to disharmony in the workplace” and that “a balance has to be struck between the right to speak Irish or any other language and a good and harmonious working environment”.

This case highlights a number of problems. Firstly, whilst correct that employers have a duty to maintain a “neutral working environment”, there is no implication in that duty that such an environment requires the speaking of only one language – English – in the workplace. Indeed, any such implication would create a conflict with other legislative provisions, and government commitments, to promote the use of indigenous languages and protect the languages used by ethnic minority communities. Certainly, there is no legal basis for prohibiting people from speaking Irish in the workplace, and any requirement about a neutral working environment should apply equally to the use of all languages equally. Even English, while spoken by the vast majority of people in Northern Ireland, can be used in a variety of ways deliberately to exclude or humiliate people and would, if used in this way, run counter to the creation of a harmonious workplace.

Secondly, the complaint was resolved, but Mr Vernon’s colleagues who had lodged the complaint against him did not apologize. The complainant still works with

the Social Security Agency, but has moved to a different office. He changed office because he was made to feel uncomfortable when speaking Irish and because of the complaint. However, he still feels somewhat worried and uncertain about speaking Irish in his new office - he does not want to have the same problems. Clearly, the procedure followed did not reassure Mr Vernon and leaves a lot to be desired. He believes it is necessary to develop a written policy, because no one knows that people have the right to speak Irish. After the letter from Pobal and the recognition by the Social Security Agency that speaking Irish is a right, the manager did not write anything. Colin Vernon wrote the Equality Branch to ask them to write something but they did not want to. There is a need of a multicultural policy and one that fully recognises Irish.

Thirdly, it is noteworthy that in other offices of Social Security Agency like the one in Falls Road or the one in Derry, members of staff apparently are free to speak in Irish. So, for the moment, the right to speak Irish in the workplace depends on the manager and on the areas. The problem is that each manager can interpret the texts as he wants and that there is not a clear policy which states that the use of Irish is allowed in the workplace. Moreover, the policy must comply with domestic legislation and international standards. Pobal has argued that the guidance currently being used by the department fails to meet such standards.

As in other examples brought to our attention, Mr Vernon speaks Irish because it is a part of his culture. He has always spoken Irish with his family and particularly with his children and had learnt Irish at school. He has done a Diploma in Irish, supported by the Department of Social Development. He believes, however, that the prohibition on the use of Irish in the workplace is purely political. Managers are frightened when Irish is used, because some of them associate it with Catholicism and republicanism. While he believes that it is possible that there are some people who speak constantly in Irish in a deliberate attempt to exclude or intimidate others, and thus fuel the conflict between the two communities, this is not true of him, nor need it be true only of Irish. After all, there were not many staff members within his Unit who could speak Irish, and the problem arose simply because Mr Vernon was speaking in Irish on the telephone with his son in a personal phone call. If he had been speaking in French or Spanish to his children, no-one would have complained or thought it the least bit problematic.

Case 3 - Job advertising in English for Irish speaker

In August and September 2003, Pobal wrote to the Department for Employment and Learning about a vacancy for a post requiring fluent Irish which the Job Centre had advertised in English but not in Irish. According to Pobal, this Department refused to accept job adverts through the medium of Irish alone and whilst the Job Centres agreed that they would 'put up a notice' with the Irish language information, this Irish language version would be in a different format to the English one. The different version was seen as implying a lesser status to the advert in the Irish language.

Pobal made the logical point that since fluent Irish is a requirement of the post, it should not be necessary to advertise the post in English; the failure to understand the Irish-language advertisement would rule applicants out of the necessary criteria for the post. The Department responded that they try where possible to accommodate employers who prefer their vacancy to be advertised in languages other than English but that “by displaying the vacancy in English as well as Irish they allow customers who do not speak Irish to understand why they may not meet the requirements of the position”. It is still not evident why it was thought necessary to spend public monies on an advert in the English language (but not Irish) when the simple addition of a few words in English explaining that fluent Irish was a criterion for the post would have satisfied non-Irish speakers scanning the jobs information.

Again, the presumption must be that there are particular obstacles being placed in the way of using Irish. If a job required fluent French or Spanish, and the advertiser had used either of these languages, would departmental policy be the same? On 29th June 2004, a Belfast Job Centre managed by Department of Education and Learning refused to accept a job advert as it was in Irish only, so this appears to be an ongoing problem.

**Internship carried out with CAJ
Interviews carried out by, and paper written by,
Helene Renault,
June 2005.**