

Strategic Review of Parading
55/59 Adelaide Street
Belfast
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1st August 2008

Dear Panel members,

Thank you for inviting the Committee on the Administration of Justice (CAJ) to respond to your consultation document outlining new proposals for parading in Northern Ireland. As you will know, CAJ has previously worked quite intensively on the issue of parades, protests and policing. We therefore welcome the opportunity to feed our learning into this process.

We were pleased to meet with the panel earlier in its deliberations, and benefited greatly from a recent briefing given to staff by Panel members, Rev Mervyn Gibson and Sean Murray. In the meeting, we outlined some initial reactions to the proposals, and this submission therefore seeks to flesh these out in more detail.

Overall, we believe the proposals are very thoughtful in nature and we welcome in particular: the focus on developing solutions in a pragmatic way; the centrality of human rights; and the reliance on community-based mechanisms that have already delivered great improvements in relation to a number of disputed parades. However, the process does seem to us to be an ambitious one, and particularly is very reliant on various constituent parts working effectively. CAJ sounds a note of caution that it only takes one weak link to break the chain. Below we outline potential weaknesses in these various parts, and would urge the panel to give them further consideration before finalising proposals.

1. Lack of central driver

CAJ can appreciate that the Panel may have felt under a political imperative not to propose an agency that could be seen as another form of Parades Commission. However, the proposed new system does raise questions as to whether the process will work without a central organisational driver.

The proposals require steps to be taken by the event organisers, any objectors, the councils, the mediators and adjudicators. All these steps have to take place within 35 days. While a more central role is proposed for OFMDFM in the latter stages, the question of who manages the process throughout and keeps it moving is of concern. Perhaps the deadline of the event may be enough to ensure the process works, but in a system so complex with so many players, CAJ can see much potential for problems. Again, the panel might wish to reconsider whether a central administrative point is needed throughout the process.

In addition, Section 6 of the Human Rights Act 1998, provides that:

“ (1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right”

To that extent any proposed adjudicative bodies that the Panel may propose to deal with or settle any disputes which are likely to arise, must be independent, objective and impartial to ensure that the State through the adjudicative body rules fairly between competing rights. As well as providing certainty in relation to the avenues open to the aggrieved parties, such a body will carry general credibility in particular if it is representative of broader society and is transparent in its approach and dealings.

2. Enforcement of the statutory code

The statutory code for the conduct of parades is clearly a central part of the Panel’s proposals, imposing as it will clear and strict conditions for all involved in parades and protests. However, no statutory code is effective unless it is enforced, and here the role of the PSNI, and particularly the Public Prosecution Service is central.

It is the State’s responsibility to effectively uphold the rule of law. It is possible to put in place robust procedures and mechanisms, which would accurately document public order violations and where possible identify the perpetrators of such violations. We suggest that it would be in the public interest to prosecute such violations to ensure the rule of law is upheld and is seen to be upheld. However, for a prosecution to take place, the prosecution test must be met. This test provides that *the evidence which can be adduced in court is sufficient to provide a reasonable prospect of conviction and that prosecution is required in the public interest* (paragraph 4.1.1 of the Code for Prosecutors). It must be borne in mind that it is extremely difficult to challenge the Public Prosecution Service (PPS) for decisions not to prosecute, as the PPS will give reasons for not prosecuting only in the most general terms (paragraph 4.12.2 of the Code for Prosecutors). It is thus crucial that procedures and mechanisms are put in place to ensure that there is subsequent accountability and the rule of law is properly and effectively upheld.

We would also encourage the Panel to follow closely the process of legislation for this code to ensure that the spirit and intention of the Panel’s proposals are translated effectively into law. It is CAJ’s experience that this can be a time-consuming yet necessary exercise, as much can be lost at this stage.

3. Appointment of mediators and adjudicators

The system proposed by the Panel entails the appointment of a large number of independent mediators, adjudicators and monitors, and it is suggested that these be recruited through the current public appointments process. However, CAJ would like to bring to the Panel’s attention some problems that exist with that process.

To date the public appointments process in Northern Ireland has been somewhat limited in terms of transparency and oversight – the powers of the Commissioner for Public Appointments for example are in some senses quite narrow. Certainly our own experience to date has been that the public appointments process in Northern Ireland

is much less robust in terms of fairness and accountability than requirements related to recruitment and selection of employees.

CAJ would not wish to be prescriptive about how independent mediators, monitors, or evaluators are appointed – nor would we question the value of their role. We would however merely wish to flag up the fact that there are weaknesses in the public appointments process which need to be considered before this part of the process could move forward.

4. Focus on a rights-based approach

CAJ has always advocated a rights-based approach to the issue of parading, and as such we welcome its centrality in the Panel's proposals. In particular, we welcome the focus of the Panel on domestic and international human rights standards including the Human Rights Act and the proposed Bill of Rights for NI.

However, we would sound a note of caution as regards any suggestion that human rights provide all the answers. In particular where rights conflict, as they so obviously do in a marching situation, human rights do not always provide straightforward right or wrong answers. Rather, if used correctly, they provide a framework for discussion and decision-making and this should be made clearer throughout.

We would also like to point again to the ambition of some of the proposals. At the CAJ briefing meeting attended by Sean Murray and Rev Mervyn Gibson there was apparent appetite for human rights training to be rolled out across all those who will be involved in the process. Again, although CAJ would welcome human rights training, we would also like to caution that this work needs strategic and sustainable action both in theory, practice and resources. CAJ would like to emphasise the particular importance of quality control of any training - ensuring the training is delivered by human rights experts, pitching the training at an appropriate level and language and that it is delivered within a strategic training plan that includes evaluation and revisiting of the training to ensure it is fit for purpose.

Once again, we commend the Panel on its work to date, but express some concern about the complexity of the various parts and the necessity for each part to work to its optimum to ensure it does not stymie the system as a whole.

As such, we urge the Panel to further explore some of these issues and in doing so please do not hesitate to come back to us should you wish to discuss any of these points further.

Yours sincerely,

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Deputy Director