

Angela Barratt  
Consultation Co-ordinator  
Northern Ireland Court Service  
Laganside House  
23-27 Oxford Street  
BELFAST  
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30 January 2009

Dear Angela Barrett,

**Re: RENUMERATION OF DEFENCE REPRESENTATION IN NON CROWN COURT PROCEEDINGS CONSULTATION DOCUMENT**

Attached is a note we have prepared in response to the above consultation. CAJ **recommends** that the Northern Ireland Court Service commence as a matter of urgency an EQIA and a human rights audit of these proposals. Moreover, this examination should take place prior to any further decision being reached on the adequacy of these proposals. The absence of any consideration of such an examination would clearly leave the Court Service in breach of its procedural obligations under both the Human Rights Act 1998 and Section 75 of the Northern Ireland Act 1998. CAJ would be happy to meet with you to discuss this matter further.

Many thanks,

Tim Cunningham  
Equality Policy Officer

Response from the  
Committee on the Administration of Justice  
to the Consultation on Remuneration of Defence  
Representation in Non Crown Court Proceedings

**January 2009**

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 works on a broad range of human rights issues and its membership is drawn from across the community. 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 policing, emergency laws, criminal justice, equality and the protection 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. Together with UNISON, we co-convene the Equality Coalition.

Looking at the proposals contained in this paper regarding changes to the legal aid system there are a number of points we would wish to make. Firstly, CAJ is keen to ensure that the administration of justice in Northern Ireland is conducted in a way that is compliant with both domestic and international human rights standards. In this context, we are particularly concerned with the need to ensure that the requirements of Article 6 of the European Convention on Human Rights (given effect to in domestic law by the Human Rights Act 1998 (Schedule 1)) in relation to the right to a fair trial are fully operationalised in Northern Ireland. Equally, we are conscious of the need for public authorities to comply with the requirements of Section 75 of the Northern Ireland Act with regard to changes to policy or legislation. The latter requires that an Equality Impact Assessment be undertaken in order to determine whether new or amended policies or legislative proposals will have equality implications for particular groups in society.

CAJ would be of the view that ensuring compliance with the requirements of both the Human Rights Act and Section 75 of the Northern Ireland Act in particular are crucial procedural obligations which public authorities must carry out prior to bringing forward new policy proposals, or indeed primary legislation. We are

therefore somewhat surprised to find no reference to either of these requirements in this consultation document. The only assessment that appears in this document in fact is called a “Regulatory Impact Assessment”, which contains no reference to either equality or human rights requirements. In fact it is worth noting that overall the document contains quite a number of references to the *financial* implications of the proposals, without seeking to determine any potential impact that the proposals might have on the administration of justice for example. In particular, CAJ would be concerned to ensure adequate provision for those who are not in a position to pay for their own legal representation – yet no mention of the financial position, or indeed the needs of defendants appears in this document. It is also worth noting that the Regulatory Impact Assessment compares the existing proposals against a “do nothing” option – and in effect uses the problems with the current system as an ex post facto justification of these proposals. A credible assessment would on the other hand have provided a range of options, and offered consultees an opportunity to comment on the option which they considered to be of optimum benefit. Moreover, cost would have been one element, along with a series of other issues to be given consideration for weighing up any proposals.

Given the total lack of consideration of the impact of these proposals in relation to either equality, human rights, or indeed wider justice requirements, CAJ **recommends** that the Northern Ireland Court Service commence as a matter of urgency an EQIA and a human rights audit of these proposals. Moreover, this examination should take place prior to any further decision being reached on the adequacy of these proposals. The absence of any consideration of such an examination would clearly leave the Court Service in breach of its procedural obligations under both the Human Rights Act 1998 and Section 75 of the Northern Ireland Act 1998.