

CAJ's submission no. S. 255

CAJ's Response to NICTS re
Legal Aid Means Test Revision

April 2010

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, Human Rights First (formerly 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, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include policing, emergency laws and the criminal justice system, equality and advocacy for a Bill of Rights.

CAJ however would not be in a position to do any of this work, without the financial help of its funders, individual donors and charitable trusts (since CAJ does not take government funding). We would like to take this opportunity to thank Atlantic Philanthropies, Barrow Cadbury Trust, Hilda Mullen Foundation, Joseph Rowntree Charitable Trust, Oak Foundation and UNISON.

The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize.

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Re: Proposal to Revise the Means Test for Criminal Legal Aid

Thank you for your letter of March 1st 2010 inviting the Committee on the Administration of Justice (CAJ) to present our views on 'A Proposal to Revise the Means Test for Criminal Legal Aid'. As you will know, CAJ is an independent non-governmental human rights organisation that was established in 1981. 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.

We begin by answering question 6 as this is perhaps the most significant consideration: CAJ supports the idea that defendants who are financially able to contribute to their defence costs should be required to do so. Having said that it is vital that the mechanism devised for means testing does not result in the infringement of the defendant's human right. Article 6 of the *European Convention on Human Rights* states that everyone has the right to a fair trial and specifically provides that 'everyone charged with a criminal offence has the rights to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require' (article 6.3) There is the potential that an innocent defendant would chose to represent himself although not adequately able to do so thus risking their right to a fair trial. There is also the possibility that an innocent defendant would choose to plead guilty rather than incur legal costs (Question 6).

We agree that the time is right to consider reforming criminal legal aid grants in Northern Ireland (Question 1). We neither agree nor disagree with the decision to consider reforming of the means test in the first instance and subsequently review the interests of justice test (Question 2).

We agree that Northern Ireland should follow the approach taken by England and Wales and Scotland to prescribe financial eligibility limits for criminal legal aid in the magistrates' court. However, the details of a prescribed financial eligibility limit need to be carefully considered in view of the potential implications (Question 3).

CAJ believes the government has a responsibility to spend tax payers' money wisely, however, it is important to bear in mind that having a fixed financial eligibility limit raises the concern that, despite having an income above a certain amount, an individual's financial circumstances may be, in the words of the consultation document 'complex' (4.4.) and may nonetheless require legal aid. When making the decision as to whether someone is financially eligible for legal aid, significant consideration would need to be given the monthly expenditure of the defendant.

Consideration needs to be given to the major negative financial implications on the defendant's dependents which the requirement of eligible defendants to contribute to legal costs may have. The consultation document cites the changes in England and Wales and states that an individual's eligibility for legal aid is based on his/her salary that is 'adjusted to take account of any partner or children'. However, we believe that it would be necessary to also take into account all dependants, not just children. If the Minister does decide to introduce a prescribed financial eligibility test, these details would need to be addressed in the proposal (Question 4).

We do not disagree with the approach of focusing on the reforms that have been introduced in England and Wales. We do however believe it is necessary to also learn lessons from the both the legislation which was introduced and the manner in which it was rolled out. The consultation document states (section 4.13)

the post implementation review (PIR) of the means test in England and Wales took place in May and June 2007. The review concluded that the introduction of means testing in the magistrates' courts was *largely successful but challenging*. The new system was implemented on time,

on budget and was on track to deliver the anticipated savings. A number of operational issues did arise but the MOJ, LSC and HMCS have worked together to resolve these.'

Clarity on the 'challenging' aspects would be helpful. It is worth noting that the response of the Criminal Law Solicitors' Association (CLSA) to the Crown Court Means Testing consultation in England and Wales noted that 'the introduction of means testing in the Magistrates' Court did not go well'.

No link is provided to the research report by Dr Dignan (referred to in the consultation document); it would have been helpful to have this document readily accessible as this would have facilitated more informed responses from consultees (Question 5).

Whether Article 31 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 should be amended in order to limit the resolution of doubt to the interests of justice test (as to whether to grant a person legal aid) would depend on the specific wording of the primary legislation required to introduce the new means test. Any changes must ensure that the prescribed financial eligibility limit is not too strict and can be applied with discretion (Question 7).

Thank you for permitting us to respond to this consultation.

Kind Regards,

Jacqueline Monahan
Criminal Justice Programme Officer