

CAJ's submission no. S. 267

CAJ's submission to the consultation on
Proposals to Achieve Best Evidence in
Criminal Proceedings

October 2010

Promoting Justice /
Protecting Rights

2nd Floor, Sturgen Building
9 – 15 Queen Street
Belfast
BT1 6EA

T 028 9031 6000
F 028 9031 4583
E info@caj.org.uk
W www.caj.org.uk

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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Achieving Best Evidence Consultation
Delivery Improvement Unit
Criminal Justice Development Division
Department of Justice
Massey House
Stormont Estate
Belfast
BT4 3SX

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To Whom it May Concern:

Thank you for the invitation dated 26 July 2010 to respond to the consultation on Proposals to Achieve Best Evidence in Criminal Proceedings. As you will know, CAJ is an independent human rights organisation with cross community membership in Northern Ireland and beyond. It was established in 1981 and lobbies and campaigns on a broad range of human rights issues. CAJ seeks to secure the highest standards in the administration of justice in Northern Ireland by ensuring that the Government complies with its obligations in international human rights law.

Having responded to the NIO pre-consultation evaluation and review (May 2009) as well as to the subsequent DOJ consultation (May 2010), we are clearly interested in the development of special measures for witnesses and defendants, and of measures to achieve best evidence in criminal proceedings more generally. Rather than re-iterating the comments which we made in the previous two consultations, we would simply refer to our previous submissions. We would also suggest that as regards process, to have produced guidance before the legislation has been adopted appears to be a case of putting the cart before the horse.

CAJ commends the DOJ for the work that has been put into the practitioners' guidance thus far. Given the sheer size of the document and the importance of getting it right, we strongly suggest that mechanisms for the monitoring of the procedures be put into place so as to ensure adequate implementation. Whilst it appears that the guidance was, at least in part, lifted from England and Wales, it is only once it is 'up and running' that any deficiencies will be made apparent. There may then be the need to adjust procedures to make them more suitable to Northern Ireland.

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As such we also recommend that a review by practitioners and other suitable stakeholders be undertaken at an appropriate time after commencement. Given the scope of the ABE Guidance, we also suggest that subsequent training for all those involved in the legal process will be put into operation.

The Achieving Best Evidence Guidance aims to address the procedural deficiencies relating to special measures, but overall appears to fall short of addressing many of the comments made in the previous related consultations. For example, as we noted in our response to NIO evaluation and review in May 2009, department-wide coherency to the issue at hand is required. At this time we noted that the NI Direct Government Services website (www.nidirect.gov.uk) implied that vulnerable witnesses are responsible for making the police aware that they may need use of a special measure when attending court. The website still (October 2010) states the same inaccurate message.

Yours sincerely,

Jacqueline Monahan, PhD
Criminal Justice Programme Officer