

CAJ's submission no. 277

**CAJ's Response to the  
Consultation on  
Sentencing Guidelines Mechanism**

January 2011

Promoting Justice /  
Protecting Rights

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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, 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.

Sentencing Guidelines Mechanism Consultation  
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Dear Sir or Madam,

Thank you for the invitation to the Committee on the Administration of Justice (CAJ) to participate in the Consultation on a Sentencing Guidelines Mechanism. 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.

At present, the legislative framework for sentencing is developed by government and applied by an independent judiciary taking into consideration the circumstances of the case. This approach properly respects the roles of Parliament and the judiciary, and the constitutional separation of powers. CAJ believes that any sentencing guidelines mechanism should honour and respect these delineations, and as such we agree with the aims and objectives outlined, namely increased public confidence, greater transparency, improved public engagement and consistency. As noted in the introduction of the consultation document, it is an important constitutional principle that judges can exercise their discretion unfettered. The judiciary cannot be or be seen to be unduly influenced by politicians or by the public mood. Judicial independence is a cornerstone of the criminal justice system as is outlined in the *United Nations Basic Principles of the Independence of the Judiciary*.

As such, CAJ believes that a considered and careful balance needs to be reached in the development of any sentencing guidelines mechanism. We are not assured that sufficient consideration has been given to the potential impacts of the various options proposed on this balance, and in particular analysis is not offered as to how the various different models would contribute to the aims and objectives of the exercise.

The consultation document helpfully outlines models on offer from other jurisdictions. However, it does not explain what learning was drawn from these in deciding the options proposed. For example, one criticism of the Sentencing Council of England and Wales is that it has curtailed judicial independence and denied judges appropriate flexibility. The Rt. Hon. Lord Justice Rose commented on this issue:

Sentencing is a complex and difficult exercise. It can never be a rigid, mechanistic or scientific process. Consistency of approach by sentences is essential to maintain public confidence. But perfect consistency in outcome is impossible to achieve because of the infinite variety of circumstances with which, even in relation to one kind of offence, the courts are presented. (Foreword to Sentencing Guidelines Council Guideline Judgments Case Compendium, March 2005)

Furthermore, building public confidence is a stated aim of this consultation process. The consultation document (para.2.2) states that in Northern Ireland ‘only 24% of respondents believed that the courts were “effective at giving punishments which fit the crime”.’ It is unclear what this information is attempting to convey as England and Wales, which has had a sentencing guidelines body for a number of years, has the same comparative figure (24%).

This seems to indicate therefore that the development of the sentencing guidelines mechanism in England and Wales has not been particularly successful in building public confidence, which rather undermines the purpose of this consultation. CAJ is interested to know the direct impact of a sentencing guidelines mechanism on public confidence and would welcome any statistics on or consideration of this issue that the Department of Justice is able to provide. The Victoria and Tasmania models appear to focus more on public education and research than providing guidance or direction to the judiciary, and we would welcome analysis of how these have operated and some explanation or consideration of why these models were not proposed, while the apparently less successful England and Wales based-models appear to have been.

The nature of the relationship between the consultations by the Lord Chief Justice and by the Department of Justice on this matter is not clear. We have particular concerns that the work carried out by the Lord Chief Justice’s Office may be abandoned or ignored depending on which mechanism is chosen from the three options. We would welcome clarity on the relationship

between the proposals outlined by the Department of Justice and by the Lord Chief Justice.

## **Equality**

Equality should be a principle applied throughout the process, from the development of guidelines to the make-up of any mechanism, if the creation of such a body is undertaken. Further to the government's responsibility under section 75 of the Northern Ireland Act to promote the equality of opportunity, the centrality of equality should focus attention on the principle that all are equal before the law (Article 26, International Covenant on Civil and Political Rights).

In response to the request in *Section 5: Equality Implications and Next Steps*, which requests views on equality impact, CAJ believes that special attention should be paid to the impact on those with caring responsibilities and dependents. We concur with the acknowledgement in the consultation that sentencing guidelines will have a greater impact on young men. We also highlight the impact on those convicted of scheduled offences, who fall under the equality scheme on the basis of political opinion. As such, we believe that an equality screening exercise should be carried out, particularly focused on these groups.

## **Conclusion**

At present, CAJ believes that the models chosen focus overmuch on guidance and or direction to the judiciary, rather than measures to improve public engagement and increase public confidence. If the objectives of a sentencing guidelines mechanism are increased public confidence, greater transparency, improved public engagement and consistency, we would be grateful for further analysis and consideration of how the options proposed would actually contribute to meeting these objectives in a way that properly respects judicial independence. In the absence of such information, we are unable to comment in an informed way on any of the models proposed.

Yours sincerely

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