

CAJ's Submission no. 293

CAJ's response to the

**Consultation by the
Northern Ireland Office on
“Police (Northern Ireland) Act 2000 –
Review of Temporary
Recruitment Provisions”**

February 2011

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.

**Consultation by the Northern Ireland Office on “Police (Northern Ireland)
Act 2000 – Review of Temporary Recruitment Provisions”**

Submission from the Committee on the Administration of Justice (CAJ)

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Introduction

The Committee on the Administration of Justice (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.

CAJ has a long history of working on both equality and policing, and was very involved in the debate around the Patten Commission and the subsequent implementation of its recommendations. In relation to Patten’s proposals for recruitment, CAJ noted in its commentary on the report that *“a police service can only hope to achieve the trust and confidence of the whole community if it is representative of the whole community. In these circumstances, requiring officers to be members of a particular community in order to ensure representativeness is we believe a valid one.”*¹

Context

Parties to the Belfast/Good Friday Agreement recognised that *“the agreement provides the opportunity for a new beginning to policing in Northern Ireland with a police service capable of attracting and sustaining support from the community as a whole.”*

¹ S91 – Commentary on the Patten report – CAJ’s response to the report of Commission into Policing, November 1999,
http://www.caj.org.uk/files/2000/01/03/S091_Commentary_on_the_Patten_report-CAJs_response_to_the_report_of_the_Commission_into_Policing_November_1999.pdf For other CAJ submissions and publications in relation to policing please see www.caj.org.uk

As such, it was believed “essential that policing structures and arrangements are such that the police service is professional, effective and efficient, fair and impartial, free from partisan political control; accountable, both under the law for its actions and to the community it serves; representative of the society it polices, and operates within a coherent and co-operative criminal justice system, which conforms with human rights norms.” (our emphasis)

As highlighted in our submission on the renewal of the provisions last year, CAJ believes that there is merit in continuing the provisions until such point as the police service is actually “representative of the society it polices.” We highlight further our reasoning for this position below.

At the outset however, it is worth considering that neither the Patten report nor the Police Act stated categorically that the provisions should end after ten years. The Patten report stated they were not taking their model beyond ten years but at that stage “a judgment would need to be made as to whether special measures were still needed.” (at 14.11)

The Police (Northern Ireland) Act 2000 states:

“s.47 (3) The Secretary of State may by order provide that all or any of the temporary provisions which are for the time being in force (including any in force by virtue of an order under this section) shall continue in force for a period not exceeding three years from the coming into operation of the order.

(4) In deciding whether and, if so, how to exercise his powers under subsection (3), the Secretary of State shall—

(a) have regard to the progress that has been made towards securing that membership of the police and the police support staff is representative of the community in Northern Ireland; and

(b) consult the Board and take into account any recommendations made to him by the Board.”

- the foreword by the Secretary of State in the consultation document - *“I am minded not to renew the provisions”*
- the accompanying press statement - *“In my view the balance of the argument favours letting the provisions lapse in March”²*
- and subsequent press coverage *“Paterson confirms PSNI 50-50 recruitment should lapse”³*

that the odds are very heavily stacked in favour of the assumption that the provisions will not be renewed. As such, we believe that the result of this consultation is somewhat prejudged, and thus question its meaningfulness.

Has the case been made?

Nonetheless, in line with the Patten view that a judgement would need to be made as to whether the provisions were still needed, we would expect to see clearer argument and rationale provided by the Northern Ireland Office as to how the judgment is made on why the provisions should not be renewed. Page 13 of the consultation document outlines some of the government’s rationale:

1. “There has been considerable progress in securing a more representative police service in Northern Ireland. Catholic composition in the PSNI has risen from 8.3% to 29.38%. This is within the range set out by Patten...”
2. “the PSNI is now broadly representative of the community it serves”
3. “there has also been a consistently high application rate to PSNI from those with a Catholic Community background”
4. “there is no reason why this application rate will not remain largely the same if the provisions lapse.”
5. “the completion of normalisation” and “the normalised society we now enjoy” (referred to in the foreword)

² <http://www.nio.gov.uk/secretary-of-state-to-consult-on-50-50-provisions/media-detail.htm?newsID=16765>

³ <http://www.bbc.co.uk/news/uk-northern-ireland-11732911>

CAJ would present the following counter-factors:

1. It is certainly true to say there has been considerable progress in securing a more representative police service. However, the statistics have *only just* passed the Patten threshold by .38% and as such the government approach to the threshold set is a minimalist one. There is a case to be made for continuing the provisions until - at the very least - the higher end of the threshold is reached. Based on the second table in Annex A, which shows an average 2-3% rise in Catholic composition year on year, then all things being equal it would take at least another year to reach the upper end of the threshold. However, other contextual factors must also be borne in mind, the most important being that there is currently a recruitment freeze in the PSNI which in the context of ongoing cuts in public expenditure and budgets, could remain the case for some time. As such it would take longer to reach the upper end of the threshold and even longer to reach representation levels that reflect broader society.
2. While the PSNI is certainly more representative of the community it serves than it was ten years ago, it is not accurate to say that it is broadly representative of the community it serves. At the last census (2001), Catholics made up 43.76% of the community. At 29.38%, the current representation levels in the PSNI have another 14.38% to go before it can be claimed that it is broadly representative. Even when compared to the percentage of the Catholic community available for work at the last census, which was 42.7%⁴, there is still a deficit of 13.32% to be bridged.
3. It is not entirely accurate to claim that there has been a consistently high application rate to the PSNI from those with a Catholic Community background. The first table in Annex A shows that that the application rate peaked at 44.3% in 2007 but has in fact been steadily decreasing since then and is currently some 7% below that figure.

⁴ It is further worth bearing in mind that the census figures are ten years old, and there is a possibility that this percentage could increase in the planned 2011 census.

4. As a result it is also not reasonable to claim that there is no reason why the application rate will not remain largely the same if the provisions lapse. The evidence actually shows that the application rate is already decreasing at a quite significant rate.

Furthermore, in our commentary on the Equality Impact Assessment of PSNI recruitment in 2007,⁵ CAJ expressed concern that in the initial selection test (IST), assessment centre (AC) and medical assessment elements of the recruitment process, there were “marked differentials” in the success rates of Catholic and non-Catholic applicants, with the latter faring much better. We particularly noted that in relation to campaign 7 (the most recent one at that time), when all applicants were considered, 18% of those from a non-Catholic community background entered the merit pool compared with 11% of those from a Catholic community background – a differential of 7%: *“in other words the success rate at Campaign 7 for non-Catholics was almost one in five, while the success rate for their Catholic counterparts was just over one in ten, i.e. almost half”*

A decrease in application rate, combined with evidence of lower success rates in the application and recruitment process for those from a Catholic background, does little to reassure us that the Catholic composition of the PSNI will continue to increase in the absence of specific measures to facilitate this.

5. While Northern Ireland has changed in many respects since the Patten Commission reported and these provisions were implemented, it is still a very long way from a “normalised society.” The reality is that Northern Ireland remains a deeply divided society in which policing by consent continues to be of critical importance. This consent rests on the legitimacy and confidence created by accountability and representativeness. To ignore this reality and adopt a context-blind approach risks undermining progress made. As noted by Patten *“if all communities see the police as their police, there will be a better, cooperative partnership between community and police, and*

⁵http://www.caj.org.uk/files/2000/01/03/S186_Commentary_on_Equality_Impact_Assessment_of_P_SNI_Recruitment_April_2007.pdf

therefore more effective policing.” (at 14.3) As noted in our submission to the consultation on the renewal of the provisions last year, the relatively recent engagement by the republican community in policing means that recruitment from that section of the Catholic community (as advocated by Patten) will still be at a much less advanced stage. There is also the reality of ongoing threats and activity from dissident paramilitary groups, particularly directed at Catholic members of the police service, which it could be argued have contributed to the decrease in applications from the Catholic community in recent years.

When these factors are considered comprehensively, CAJ does not believe that the case has been sufficiently made for removal of the provisions at this time. The rationale appears to be that all things being equal, one should see the Catholic composition reach that of the natural market breakdown in due course. However the facts do not support this rationale and the factors above clearly illustrate that all things are still not equal and complacency is therefore of concern.

If, as noted above, the political narrative and imperative dictate that the provisions will lapse, we would wish to receive further assurances as to what measures will be put in place to ensure continued progress. The Secretary of State in his foreword to the consultation document states that *“the PSNI remain determined to increase Catholic composition.”* How has the NIO assured itself that the PSNI has put or will put in place measures to ensure the recruitment and retention of Catholics until it reaches a level that is actually representative of society? At the very least, information on how the PSNI intends to deliver on this determination would have been helpful for the purposes of this consultation.

Other issues

➤ Data on retention

In our submission to the consultation on renewal of the provisions in January 2010, CAJ highlighted the importance of data regarding the retention of PSNI officers, as well as recruitment figures, when considering projection data. The NIO has

previously confirmed that ‘*of the 99 officers appointed in the last five years since 4 November 2001, and who had since left, 26 were Protestant, 72 were Catholic and 1 was not determined*’ (correspondence with CAJ, cited in CAJ’s Annual Report 2006/7). Unless the PSNI has taken dramatic measures to address this discrepancy, we should expect this trend to continue, particularly given the rise in dissident activity against Catholic officers.

It is essential that all necessary data in relation to recruitment and retention be used in measuring and assessing both the composition and experience of different communities in the police service.

➤ Civilian staff

The Patten report stated that ‘*[n]ew civilian entrants to the combined police service should be recruited in the same way and by the same process as we recommend for officers*’ (at 14.16). While it did not present a schema of the time that it would take to attain 30% Catholic support staff, immediately below the schema applying to police officers, it states that ‘*[i]t is important that the same principle of a balanced and representative workforce should also apply to the civilian staff*’ (at 14.13).

However, it is clear that no Patten targets in relation to support staff have been reached. The figures contained in Annex B show that the Catholic composition of civilian staff currently stands at 17.97% and has risen by a mere 5% since the introduction of the temporary provisions. The explanation offered in the consultation document is that “*50:50 only applies to those recruitment competitions where there are six or more vacancies of a similar nature to be filled at or about the same time. Because of these factors, continuing the temporary provisions would in any event have a very limited impact on increasing the numbers of Catholic support staff.*”

The Police (Northern Ireland) Act 2000 allows for the eventuality that the Patten target for police officers will be reached before that of support staff. Section 46 applies the 50:50 Policy separately to ‘police trainees’ (at s46(1)) and ‘support staff’ (at s46(5)). This splitting of the 50:50 Policy allows for the 50:50 Policy to be halted for officers while continuing for support staff, thus allowing for the time differential in reaching the respective targets.

With the current approach, and lapse of the provisions, it may be several years before the PSNI support staff composition would even reach the 30% Patten target, and many more years again before it was representative of the wider community. CAJ therefore submits that the 50:50 policy should continue in relation to support staff until at least the Patten target has been reached.

➤ Senior officers

The Patten report acknowledged that it would take longer before the proportions of Catholics in the senior ranks began to change as a result of their proposals. They went on to acknowledge that *“in fact the proportion of Catholics in the senior ranks – Superintendent and above – is over twice the proportion in the RUC as a whole (ie over 16%).”* They stated, however, that they *“should like to see that proportion at least doubled in as short a time as possible.”* (at 15.17)

It is of particular concern therefore that rather than double, as hoped by the Patten Commission, the representation of Catholics at Superintendent level has in fact fallen by 25% from 16.42% to 12%. Furthermore, the consultation document reports that *“of the officers appointed to date under the temporary provisions 159 have been promoted to Sergeant, 75 of these are Catholic, 82 Protestant and 2 not determined.”*

In its consultation on the renewal of the provisions last year, government at least acknowledged that the lateral entry policy has not been successful, however it did not clarify what other efforts are being made to address this discrepancy. In the current consultation document, the issue is not even raised other than to state the mechanisms that exist to encourage suitably qualified external candidates to apply – which are clearly not operating successfully.

If as appears to be the case there is inequality in the numbers of Catholic recruits reaching higher ranks, and external candidates, in particular from An Garda Siochana, are not being facilitated in applying for senior posts, further analysis is needed and policies developed and adopted to address this.

➤ Equality

It is not clear to CAJ how the assessment was made that the lapse of the provisions and restoration of merit-based recruitment would “*reduce the negative impact of the existing provisions on equality of opportunity*” and that “*if the provisions were to remain in place, there would continue to be inequality of opportunity.*” This displays at best a fundamental misunderstanding, and at worst a deliberate misinterpretation, of inequality and of the purpose of the provisions, which was exactly to address significant inequality.

CAJ welcomed the comprehensive EQIA carried out by the PSNI in 2007/2008 on the recruitment process. Of particular importance to this consultation are the inequalities it revealed, and the need – as required under section 75 – to further explore the reasons for these inequalities, any mitigating factors and alternative options. As such CAJ believes that a further full EQIA on recruitment should be carried out as a matter of urgency.

Conclusion

CAJ supported 50-50 as a means to achieve an end, the end being a police service that is representative of the society it serves. Given that the end has not been achieved, and that the evidence does not provide reassurance that it will be achieved or that there will not be regression on progress secured, the question remains: if the means is to be abolished, how will the end be achieved?

**Appendix 1 – relevant excerpts from CAJ’s commentary on Equality
Impact Assessment of PSNI recruitment April 2007**

...

5.6.1/5.6.4 We note that of those candidates sitting the **IST in Campaign Seven**, those from a non-Catholic community background were more likely to pass the test (63%) than those from a Catholic community background (55%) – an (8%) difference in success rates between the two groups. In the same campaign (Campaign Seven), pass rates at the **Assessment Centre** were higher for those from a non-Catholic community background (56% compared with 48% for those from a Catholic background). This represents a difference again of (8%) between the success rates of the two groups. And with regard to the **medical assessment**, there is a (5%) difference between the success rate of those from a non Catholic (80%) and Catholic background (75%). These all seem to be quite marked differentials.

5.6.2 Overall, we note that in relation to Campaign Seven, when all applicants are considered, 18 per cent of those from a non-RC community background entered the **merit pool** compared with 11 per cent of those from a Catholic community background. In other words, the success rate at Campaign 7 for non-Catholics was almost one in five, while the success rate for their Catholic counterparts, was just over one in ten – ie almost half. This differential should in our view be explored more fully.

5.6.3 In relation to **Inter-Campaign trends** we note that the report states that “*Applicants from non-RC community backgrounds have, on average, had higher success rates at IST than applicants from RC backgrounds*”. The report goes on to state that “*The difference in success rates for applicants from RC and non-RC community backgrounds is significantly less at AC than IST. The largest difference in success rates between the two groups was in Campaign Three (success rate of 70 per cent for non-RC candidates compared with 62 per cent for RC candidates)*”. However this seems to be contradicted by the information provided, which shows that there was also an (8%) gap between the performance of the two groups in Campaign Seven, the most recent campaign of all. Indeed the information presented in the paper (Page 39) indicates that

there was an (8%) gap between the two communities for campaigns 3 and 7, a (4%) gap for campaign 4, (3%) gap for campaigns 1 and 6, a (1%) gap for campaign 5, and according to the paper the success rate at Campaign 2 was “*broadly similar for both groups*”. So, early campaigns seemed to have relatively little difference across the two communities, so the question is surely - was this last campaign resulting in a large community differential a temporary aberration, or part of a more wider trend? In either instance, what is the learning?

6.1.1 In relation to the **summary of impacts**, there is clearly a typo in Table 6.1 which states that “*People from non-RC backgrounds are more likely to pass the IST than those from non-RC community backgrounds*”. The sentence should of course say that “*People from non-RC backgrounds are more likely to pass the IST than those from RC community backgrounds*”.

6.3.2 CAJ is of the view that one the most important aspects of any EQIA is the “*Consideration of measures which might mitigate any adverse impact; and alternative policies which might better achieve the promotion of equality*”. Clearly the ECNI agree with this analysis by stating that this is at the “*heart of the EQIA process*” (EQIA Guidance, ECNI, P. 29). In essence, this is the section of the EQIA that seeks to rectify any problems identified previously, and examine any ways of doing things differently that will better promote equality of opportunity.

Unfortunately, the **mitigation element** is the weakest section of the EQIA, since it fails to build on the good work that has taken place in gathering the data and identifying clear problems.

For example, the EQIA states **in relation to the IST**, quite correctly that “*Assessment of the impacts of the IST indicate that women, people from non RC community backgrounds, younger people and single people are more likely to be successful than other groups*”. Significantly however, the document then goes on to state that “*The IST is based on an assessment of the required levels of numeracy, literacy and logical reasoning required to effectively perform the duties of a PSNI officer and it would therefore not seem possible or desirable to*

mitigate any impacts by amending the standard test'. The question however is whether the test – for example the test which at Campaign 7 produced an (8%) difference in success rates between those from a non-RC and a RC community background – is fair, or if there is some unintended bias in the test itself. In our view, the test should itself be examined in order to determine whether for example there is a cultural/community bias to the test that produces such a differential success rate.

6.3.3 In relation to the **Assessment Centre**, the EQIA states “*Assessment of the impacts of the AC indicate that women are slightly more likely to be successful than men and that there are broadly similar success rates across other groups*” (our emphasis) (P. 53). This however contradicts the information presented earlier in the EQIA, (see above), which stated “*candidates from a non RC background are more likely to be successful*” (P. 51). Moreover, at Campaign 7, (and also Campaign 3), the gap in terms of the success rate of the two groups was as high as 8% (see above). The EQIA goes on to state that “*The AC is built around a National Competency Framework, which aims to assess the skills and qualities of applicants, and the extent to which they are suited to perform the duties of a PSNI officer. In ensuring that all applicants enter the merit pool based on merit it would not seem possible or desirable to amend this standard as a result of any identified impacts*”. Again however, the question arises as to whether given the differentials between the success rates of the two communities for example, whether the AC is objectively measuring “merit”, or whether there is a bias in the procedure itself in favour of certain candidates. Again, CAJ would recommend that more examination of the AC procedure take place, in order to test whether both groups are being afforded equality of opportunity.

6.3.4 In relation to **medical assessment**, the EQIA states that based on data from Campaign 7, women and people from an RC community background are “*less likely to meet the medical requirements than others*”. The EQIA then states that “*it is not possible to identify any trends in relation to the reasons why higher proportions of these groups failed*”. As CAJ has pointed out above, there are serious questions we

believe regarding the disproportionate number of women failing the mental health or nervous system test, which at the very least requires further analysis and we welcome the commitment to further consider the position of women in relation to the medical (Para. 7.1 below).

6.3.5 In relation to **candidate satisfaction surveys**, CAJ is of the view that the process should be amended to allow for an opportunity for analysis by Section 75 group.

7.1 In relation to the **summary of EQIA findings**, again we are disappointed at the conclusions reached, particularly in light of the good work that was carried out at the earliest stages of the EQIA in terms of presenting data. We do however welcome and concur entirely with the fact that in relation to gender, the document concludes that *“the lower success rates of women at medical should be further considered”* (P. 56).

However, we note with some concern the conclusions in relation to religion which states that *“While Roman Catholics are still less likely to apply than non Roman Catholics and are slightly less likely to be successful, the overall impact of the policy has been to promote equality of opportunity for Roman Catholics.”* CAJ accepts that the trend of more Catholics applying to work with the police is indeed a positive one, but believes that this conclusion contradicts the data presented earlier (Para. 5.6.5) and in Appendix II, which states that *“When all applicants are considered, 18 per cent of those from a non-RC community background entered the merit pool compared with 11 per cent of those from a RC community background”*. In effect this means the success rate for those from a non RC background is almost one in five, while the success rate for those from a RC background is close to one in ten. In our view, this represents something other than the conclusion that Catholics are only “slightly less likely to be successful”.