

CAJ's submission no. S333

**CAJ's submission to the
consultation on a
Review of Community Sentences**

May 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 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, Joseph Rowntree Charitable Trust and the Oak Foundation.

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 on a Review of Community Sentences
Criminal Policy Unit
Massey House
Stoney Road
Belfast
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26 May 2011

Dear Sir or Madam,

Introduction

Thank you for the invitation to the Committee on the Administration of Justice (CAJ) to make a submission to the consultation on a **Review of Community Sentences**. 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.

CAJ is encouraged by efforts to ensure that the rights and needs of victims, perpetrators and the wider community are being considered and balanced by the Department of Justice (DOJ) through this and other consultations on justice matters. This work offers an excellent opportunity to develop a criminal justice system tailored specifically to the context of Northern Ireland, with provision for innovation, flexibility, the championing of human rights standards, and the development of best practice. This work also represents the benefits of coordinated and strategic thinking which can only make a positive contribution to the criminal justice system.

CAJ welcomes the commitment to the development and enhancement of alternatives to imprisonment and the recognition that imprisonment should be utilised only for serious offences. The use of a more holistic approach to sentencing provides an opportunity to address the root causes of criminal behaviour and an engagement with the principles of reform and rehabilitation. The limitations of prisons have been outlined by a recent CAJ report, *Prisons and Prisoners in Northern Ireland, putting human rights at the heart of prison reform*,¹

1 See www.caj.org.uk
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and a report by Prison Review Team, *Review of the Northern Ireland Prison Service Conditions, management and oversight of all prisons*.² Both of these reports highlighted the problems of the use of custodial sentences for minor offences including cost, the disruption to the regime and rehabilitation to long term prisoners and the detrimental impact on family relationships.

We draw attention to figures from the Howard League of Penal Reform which found, in England and Wales, that two thirds of those in prison lose their jobs, one third lose their homes and 40% lose contact with their families³: conditions which serve to hinder rather than enhance offender rehabilitation.

Using custodial sentences as an option of last resort highlights the disproportionate impact such a measure can have on an individual and recognition of the lower reoffending rates resulting from community sentences.

Consultation process

We concur with the Department of Justice on the two issues highlighted in the consultation as requiring further attention. Firstly, there is a clear need for further research on the use of community sentencing disposals, particularly the profile of offenders who receive such sentences (para.2.12). We advocate that the relevant research should be carried out as a matter of urgency and, if necessary, this consultation should be halted to consider the outcome of this research. We also note the lack of research on the gender dimension of the use of different disposals (para 2.18); as well as the increased use of the Combination Order (para 2.22) and the different re-offending rates of the three disposals considered in this consultation (para 2.29). There may also be merit in examining offender profiles (para 2.34) particularly those who are habitual offenders. The aforementioned research could contribute to a more targeted and appropriate policy on these issues.

Secondly, as the Minister for Justice notes in the *Introduction* of the consultation, there is a public perception that community sentences are the “soft option” and that the concept is not well understood by the general public. This perception ties into wider themes within the criminal justice system as a whole such as that of building confidence and improving communication with the general public. CAJ thus advocate that the Department of Justice focus efforts on improving the public’s understanding of community sentencing.

2 See <http://www.prisonreviewni.gov.uk/>

3 See www.howardleague.org

As is noted in the *Introduction*, this consultation fits within the wider landscape of reshaping the justice system. CAJ has recently made a number of submissions on related issues including on the Justice (NI) Bill 2011, Youth Justice Review, Prison Review, the Offender Levy, the Code of Practice for Victims of Crime, Special Measures for Victims and Witnesses, Bail Reform, Access to Justice and others. We direct your attention to the CAJ website, where these submissions can be found, www.caj.org.uk. These submissions focus on the importance of maintaining and developing a culture of human rights respect within the criminal justice system, the need to build public confidence in the system by adhering to the highest international standards in the administration of justice and by embracing the human rights principles of transparency and accountability.

EFFICIENCY OF COMMUNITY SENTENCES

Purposes of sentencing.

CAJ agrees with the analysis of the purposes of sentencing provided here (paras 2.2-2.5.) of punishment, crime reduction, reparation and public confidence. However, we would like to see a greater emphasis on the principle of the rehabilitation of offenders. Currently it is considered only as a sub-heading (para 2.3), with reference to how it serves to reduce crime, rather than as a stand-alone purpose. CAJ believe that the reform and rehabilitation of offenders is a vital part of the sentencing process; a greater emphasis on rehabilitation could contribute to an improvement in public confidence in the justice system. Equally, reform and rehabilitation represents a more holistic approach to crime, acknowledging intersecting factors such as alcohol and drug abuse, family vulnerability and/or dysfunction, education skills and employment opportunities. Such an approach becomes more significant with the impact of the global recession on employment and the provision of state services in areas such as youth engagement.

The role of reparation in sentencing is also important and can serve as a key component in building public confidence in the criminal justice system, and sentencing in particular. This aspect of community sentencing should thus be emphasised to the public as should the potential long-term benefits to the offender to lead them away from criminal behaviour via the acquisition of new skills. As a result, ending social exclusion should be a central plank to community sentencing, where the scheme can contribute to the employability of offenders and their reintegration into the community, leading away from a life of crime.

Sentencing process.

CAJ has made two submissions on the sentencing process (on a mechanism for sentencing and sentencing guidelines priority areas). In both, we emphasised the importance of judicial independence. We welcome the re-iteration of this principle at para 2.7.

Improving the image of community sentencing.

At para 2.28, the consultation comments upon the public's view of community sentences, namely that it is not considered a robust punishment. It is important that alongside this consultation, the Department of Justice develop an appropriate communications strategy to challenge these perceptions, develop public awareness and build confidence.

Short prison services and remand.

CAJ draw attention to several areas of concern on the use of prison for short sentences and remand. Firstly, we point to the negative impact of imprisoning fine defaulters, who may only be in custody for a few days. Secondly, we highlight the inappropriate use of remand for non-serious offences (para 2.33) where long delays between charge and trial may result in an individual serving extended periods within the prison system. The prison system is unable to offer them appropriate education or training as they are not convicted, while the impact on their family relationships, housing and job security may be severe. Finally, we draw attention to the damage to public confidence when an individual is released on conviction as they have already served the relevant time on remand. This offers little in the way of the rehabilitation of the individual and can be devastating to victims and their families, who feel that justice has not been served.

CAJ continues to advocate that custodial remand should be the last resort and that more emphasis should be placed upon the use of bail, particularly in view of recent deaths of young prisoners on remand. CAJ has highlighted similar concerns in our submission to the Law Commission's consultation on bail reform. Here we emphasised the need to place a right to bail or a presumption in favour of bail on a statutory footing, imposing a clear onus on the state to justify any interference with this right. We argued that the burden should remain with the state to prove why an individual should be detained, and not placed on the applicant, and that the proceedings to determine bail should adhere to the principles set out in the European Court of Human Rights: independent, impartial and with the participation of the accused. We highlighted the *Recommendation Rec(2006)13 of the Council of Europe Committee of Ministers* to member states on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse which incorporates many of

these principles. We also draw attention to Article 6 of the *United Nations Tokyo Rules*, which support the principle that prison should be a last resort; this is particularly in relation to children, in compliance with Article 37 of the *Convention on the Rights of the Child*.

Other jurisdictions. CAJ welcomes the inclusion of a survey of alternative disposals from other jurisdictions in this consultation. While it is important that Northern Ireland is able to tailor solutions to its locality and circumstances, international best practice and standards have a key role to play in the shaping of these solutions. We were particularly interested in the Intensive Alternative to Custody in England and Wales and the recognition of the specific needs of female offenders (para 3.6). Rick Muir, in his survey of crime and justice after devolution for the Institute of Public Policy Research, highlights the importance of learning from the experiences of neighbouring jurisdictions.⁴ Here devolution has: “opened the prospect for the cross-fertilisation of policy ideas and cross-national learning from different practices”⁵; surely too good an opportunity to be missed.

Streamlining. As with other aspects of the criminal justice system, there is value in making the process of community sentencing more streamlined and thus more coherent and transparent. Paras 4.2 to 4.5 highlight the need for greater community engagement in the sentencing process, beginning with a commitment to improve communications with the public. The Probation Board’s Community Service Strategy appears to be a step in the right direction; we look forward to an evaluation of its impact (para 4.5). In this respect, there may undoubtedly benefit to local communities having a greater influence over the nature of the unpaid work carried out as part of a community sentence, subject to the relevant oversight.

Fine defaulting. Our views on the use of custodial sentences for fine defaulting are well-known. We acknowledge the success of court fines with regard to compliance and a low level of reconviction (para 3.21) but counter this with our serious concern at the almost 2000 people who are annually imprisoned as a result of defaulting on a fine (para 3.22). As outlined in this consultation, the burden placed on the Prison Service, the individual, and their families with the imposition of a custodial sentence, is disproportionate. We therefore welcome the commitment by the DoJ to reducing the number of fine defaulters (para 3.23). We advocate that this should fit within the DoJ’s wider commitment to reducing the use of short custodial sentences for less serious offences.

4 See *Crime and Justice after Devolution*, Rick Muir, www.ippr.org.uk

5 See *Crime and Justice after Devolution*, Rick Muir, www.ippr.org.uk, p. 186

Equality. As noted in the consultation (para 5.1), these measures will have the greatest impact on young men. CAJ consider it important that the DoJ show how this impact will relate to equality of opportunity.

Cost effectiveness. CAJ is aware that alternatives to prison may be more cost effective in both the short and long term. It would seem that coordination of the DoJ Criminal Policy Unit with the Prison Review Team in relation the cost effectiveness of community sentencing (and other issues) is vital.

There may be merits in the DoJ evaluating programmes such as the Iron John Project developed by Johnny Hamil, in Benburb.

Conclusion

The effort by the DoJ to reduce the prison population and develop a more holistic approach to offending and criminality is broadly welcomed. However, such efforts need to be accompanied by robust confidence building measures to ensure that their positive impact is not limited to offenders, but benefits both the wider community and the criminal justice system as a whole. We direct your attention to the *United Nations Tokyo Rules on Minimum Rules for Non-custodial Measures* as a guide to achieve these aims.

Thank you for the opportunity to make a submission to this Review.

Caroline Parkes
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