

CAJ's submission no. S. 269

CAJ's response to the
Office of First Minister and Deputy First
Minister's consultation on
Cohesion, Sharing and Integration

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Promoting Justice /
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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.

**Submission to the Office of First Minister and Deputy First Minister's
Consultation on Cohesion, Sharing and Integration**

Committee on the Administration of Justice

1. 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 is co-convener of the Equality Coalition. We welcome the opportunity to comment on the Office of First Minister and Deputy First Minister's ('OFMDFM') consultation on Cohesion, Sharing and Integration ('CSI').

We appreciate OFMDFM's efforts in CSI to advance community relations in Northern Ireland. Although we welcome some initiatives, some aspects of the CSI proposals which cause us concern are addressed in this submission. First, we are concerned that OFMDFM has not paid sufficient attention to the need to promote equality as a necessary building block for good relations. Secondly, we query the scope of CSI in terms of the groups, actors and terminology invoked. Finally, we question certain aspects of OFMDFM's operational approach to implementing CSI.

2. Greater emphasis on equality

CAJ is concerned that CSI does not place sufficient emphasis on the need for equality in establishing good relations. We have long maintained the importance of equality and human rights in addressing community relations and, in particular, our divided society in Northern Ireland. In our submission to

the Northern Ireland Office's A Shared Future consultation, we addressed this issue in full and attach a copy to this submission. In essence, it stated that *'right relationships can only effectively develop within the context of a society that treats people with equality and respect for each individual's worth and human dignity'*¹.

The need for equality to underpin good relations has been recognised as far back as 1831, when de Tocqueville found prejudice to be an *'imagined inequality'* which follows *'the real inequality produced by wealth and the law'*². More recently, in 2009, Wilkinson and Pickett published The Spirit Level, which uses various statistics to show how inequality adversely affects various social relations, including violence. They state that *'we are less likely to empathize with those not seen as equals; material differences serve to divide us socially'*³.

In the context of Northern Ireland, McCrudden has stated that it is *'inequality, and the legacy of exclusion it has brought, which feeds the conflict from which everyone in Northern Ireland suffers.'*⁴ As such, the need for equality was fundamental to our constitutional peace agreement ('the Agreement'). Mary Robinson, the then UN Commissioner for Human Rights, stated that the Agreement *'is conspicuous by the centrality it gives to equality and human rights concerns. Few documents emerging from divisive and difficult political negotiations have so well captured the importance of fairness in creating right relationships.'*⁵

However, despite this emphasis on equality in the Agreement and subsequent legislation, Northern Ireland remains a deeply unequal society. In a 2006 CAJ report entitled Equality in Northern Ireland: the Rhetoric and the Reality, we reviewed numerous government statistics and concluded that, despite progress in the employment field, *'not only are the lessons from this success not being adopted in other areas, a regression in the principles of fair participation and equality of opportunity can be observed'*⁶.

¹ Response of CAJ to 'A Shared Future' consultation, June 2003 (attached).

² Democracy in America, 2003 edition, at page 400.

³ The Spirit Level, page 56.

⁴ Benchmarks for Change: Mainstreaming Fairness in the Governance of Northern Ireland, February 1998.

⁵ Equality and Human Rights: Their Role in Peace Building, conference papers from 2 December 1998.

⁶ Equality in Northern Ireland: the Rhetoric and the Reality, 2006, at page 167.

Unfortunately, the situation has not improved much, if at all, since then. In 2005, the Northern Ireland Statistics and Research Agency (NISRA's) Multiple Deprivation Measures found that 13 of the 20 most deprived areas in Northern Ireland were predominantly Catholic. Despite five years of investment and government strategies, the most recent Multiple Deprivation Measures, from March 2010, show that the number of predominantly Catholic areas in the 20 most deprived has risen to 16 (80%).⁷

Similarly, the Northern Ireland Housing Executive statistics show that, the number of individuals in housing stress in North Belfast has steadily increased from 1091 in 2005 to 1483 in 2009⁸. Catholics remain in the majority on social housing waiting lists and are nearly three times more numerous in north Belfast.⁹

The UN Committee on Economic, Social and Cultural Rights ('the UN Committee') has recently expressed concerns about the '*persistent levels of deprivation and inequality throughout Northern Ireland*'¹⁰. In its 2009 report, it was also concerned at the '*higher poverty levels among ethnic minorities, asylum seekers and migrants, older persons, single mothers, and persons with disabilities*'¹¹ throughout the UK.

Although the CSI document does recognise that '*good relations cannot be built on inequality... the promotion of equality of opportunity is an essential element of building good relations*' (at 1.4) and OFMDFM is '*committed to tackling disadvantage*' (at para 3.16), we are concerned that this approach has not been transformed into concrete action.

This is perhaps due to OFMDFM's statement that '*we already have in place robust anti-discrimination and equality legislation*' (CSI, para 3.9). However,

⁷http://www.nisra.gov.uk/deprivation/archive/Updateof2005Measures/NIMDM_2010_Statistics_Press_Release.pdf

⁸ Northern Ireland Housing Executive statistics, sent to Participation and Practice of Rights Project under Freedom of Information Request, 2009.

⁹ Ibid.

¹⁰ Concluding observations of the Committee on Economic, Social and Cultural Rights, June 2009, para 31, at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/429/21/PDF/G0942921.pdf?OpenElement>

¹¹ Concluding observations of the Committee on Economic, Social and Cultural Rights, June 2009, para 28 at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/429/21/PDF/G0942921.pdf?OpenElement>

Northern Ireland's legislation in this area is not sufficiently robust. The European Commission has underlined that various equality directives are not fully implemented¹² and the UN Committee has recommended the need for '*comprehensive anti-discrimination legislation applicable to Northern Ireland*'.¹³

Also, the enactment of such legislation does not, in itself, ensure equality. There is a need to ensure the efficient implementation and enforcement of the law and policies, which clearly has not been achieved to a sufficient degree. Also policy approaches are required to complement and reinforce the spirit and letter of the statutes.

We recognise that a key goal of CSI is to '*promote equality of opportunity and tackle disadvantage*' (at 2.3). However, this could be at odds with more specific commitments such as the promotion of shared housing. As noted in the CSI document, '*fourteen of the fifteen most deprived areas in Belfast are highly segregated*' (at 3.27). Therefore, if funding allocations are prioritised on the basis of shared spaces (see 3.6), the most disadvantaged areas are least likely to benefit from them. This would maintain or extend inequalities and social exclusion, which in turn could worsen community relations. Also, given the imbalance in waiting lists for social housing, prioritised investment in shared housing could extend inequalities in this regard.

Furthermore, equality of opportunity may not be a sufficient aim to foster good relations. Where high levels of deprivation and social exclusion are experienced, individuals may not be able to take advantage of 'equality of opportunity'. For example, despite 'equality of opportunity' for all children to attend school, '*[s]tatistics on educational achievement have indicated concerns about underachievement among working class pupils and in particular working class Protestant boys*'.¹⁴ '*For children from poor households, lower levels of educational attainment result in an ongoing cycle of deprivation*'.¹⁵

¹² See <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/1778&type=HTML> and http://ec.europa.eu/unitedkingdom/press/press_releases/2009/pr09146_en.htm.

¹³ Ibid, at para 16.

¹⁴ Equality Commission for Northern Ireland, Statement on Key Inequalities in Northern Ireland, 2007, page 7, at [http://www.equalityni.org/archive/pdf/Keyinequalities\(F\)1107.pdf](http://www.equalityni.org/archive/pdf/Keyinequalities(F)1107.pdf)

¹⁵ Ibid, at page 3.

The above statistics illustrate that, unless measures are put into place to level the playing field, individuals may not be able to take advantage of any formal equality of opportunity that is achieved. This has been recognised in several international human rights standards to which the UK is a signatory.

The UN Committee has recommended the ‘*development of adequate policies and targeted measures to promote **substantive** equality, provide for improved health care, as well as an increase in skills training and employment opportunities for young people and adequate housing programmes for the poor and, in particular, Catholic families*’¹⁶ in Northern Ireland. Similarly, the Framework Convention for the Protection of National Minorities requires measures to promote ‘*full and effective equality*’ in all areas of economic, social, political and cultural life¹⁷. This is not recognised in the CSI document.

Although CSI itself stems from Programme for Government PSA 7’s commitment to ‘*reduce poverty and address inequality and disadvantage*’ (see para 1.6), this is not fully reflected in the CSI consultation document. We request that OFMDFM make equality and social inclusion more central to its CSI policy and action measures.

In this regard, we also remind OFMDFM that it is under an obligation to have due regard to the promotion of equality of opportunity of the nine categories listed in s75(1) Northern Ireland Act 1998. We would be grateful if OFMDFM could send us a copy of the screening report used for the CSI policy.

3. Reassessment of scope of CSI

CAJ requests that OFMDFM reassess and clarify the scope of CSI. We believe that the CSI proposals need attention in relation to the concept of ‘good relations’ and the strands, actors and subject matter to which it is applied.

¹⁶ Concluding observations of the Committee on Economic, Social and Cultural Rights, June 2009, *supra*, at para 31, our emphasis.

¹⁷ <http://conventions.coe.int/Treaty/en/Treaties/Html/157.htm>, at para 4.2.

Good Relations

First, the term ‘*good relations*’ is used throughout the CSI document, but it is never defined. This makes the CSI document difficult to understand fully, and CAJ believes it could cause conceptual and operational difficulties for the application of CSI in the future.

Although ‘good relations’ is used in s75(2) of the Northern Ireland Act 1998, this statute also does not define the term.¹⁸ The Equality Act 2010 includes ‘*tackling prejudice*’ and ‘*promoting understanding*’ within the concept of good relations¹⁹, but this is not a full definition and does not apply to Northern Ireland.

In the academic world, various definitions have been discussed, including acknowledgement that it could include ‘*agreement on living apart*’ in the context of ‘*interconnected separation*’.²⁰ It has also been noted that the ‘*low socio-economic status of a neighbourhood is the main factor undermining many types of interactions and positive attitudes among neighbours. This demonstrates how important it is to take social class into account when considering good relations.*’²¹

CSI appears to place good relations in the context of interculturalism, which is welcomed. However, the consultation document does not follow this through with the general consensus that interculturalism depends on a social context that supports equality. For example, Parekh has underlined the need for conditions within which all can participate equally.²²

CAJ recommends that OFMDFM refer to well established human rights standards when interpreting any definition of good relations. This would be in

¹⁸ The Equality Commission for Northern Ireland has suggested a working definition of ‘[t]he growth of relationships and structures for Northern Ireland that acknowledge the religious, political and racial context of this society, and that seek to promote respect, equity and trust, and embrace diversity in all its forms’ (Promoting Good Relations: A Summary Guide for Public Authorities, page 2). However, even this definition is problematic by failing to emphasise the need to promote equality.

¹⁹ Equality Act 2010, s149(5).

²⁰ Graham and Nash, 2006, ‘A shared future: territoriality, pluralism and public policy in Northern Ireland’, *Political Geography*, 25, 3 at page 273

²¹ Letki, 2008, ‘Does diversity erode social cohesion? Social capital and race in British neighbourhoods’, summarised in Equality and Human Rights Good Relations Measurement Framework report, 2010, at page 10.

²² PAREKH, B. (2007) ‘The Fact of Multiculturalism – and Its Value.’

line with CSI's implementing Objective 5 from the Programme for Government, which is to '*promote equality and the enforcement of rights*' (at 1.6). In particular, we refer OFMDFM to the text, jurisprudence and Committee submissions relating to the European Convention on Human Rights, the EU Charter on Fundamental Rights, the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the European Social Charter.

In terms of the specific subject matter currently covered by CSI, we would also recommend recourse to the UN Convention on the Elimination of all forms of Racial Discrimination, the Framework Convention on the protection of National Minorities and the Durban Declaration, which provide guidance on racism, including sectarianism. Further reference could be made to the UN Convention on the Elimination of all forms of Discrimination against Women, the UN Convention on the Rights of the Child and the UN Convention on the Rights of Persons with Disabilities, if the scope of CSI were expanded, as discussed below.

Categories included

Secondly, it is unclear whether CSI applies to all social cohesion, or only to racism and sectarianism. For the latter, it is not clear whether it applies to all religions, or only those traditionally associated with the Northern Ireland conflict. The foreword of CSI refers, in bold, to '*everyone, regardless of race, colour, religious or political opinion, age, gender, disability or sexual orientation*' (at page 1). By contrast, Robin Newton MLA has stated in the Assembly that the '*CSI strategy is designed to tackle racism and sectarianism*.'²³

This conflicting message is replicated throughout the CSI document. There are many references to an expansive approach to the groups whose needs are addressed by CSI, such as commitments to address '*any form of hate crime or intimidation*' (page 1), to promote '*cohesion, sharing and integration for all sections of society*' (at 1.9), to tackle '*other forms of prejudice*' (at 2.3) and '*intolerance*' (at 3.1). CSI also commits to continuing the Good Relations

²³ Hansard, 27 September 2010, Oral Questions OFMDFM AQO 121/11.

Indicators (at 5.10), which include homophobic and disablist hate crime, and it refers to projects involving non-Christian religions in an example (page 26).

However, the detail of the CSI proposal does not include any specific actions outside of ethnic minority or traditional community divisions. It also refers to a *'family of policies which seeks to tackle prejudice and hate..[and] complementary policies to promote equality, fairness, rights, respect and responsibility for all of the Section 75 (1) groups'* (at 1.8). As such, CSI is restrictive in its approach to community relations. It does not address the need for community cohesion based on gender, sexual orientation, disability or other strands.

We believe that this restrictive approach to community relations is short-sighted. Communities cannot be reduced to finite identities - they are multi-faceted, embracing many identities, which can be fluid and multiple. For example, Fanshawe and Sriskandarajah have drawn attention to the inability of traditional ethnic minority categories to capture the multiple and complex identities of many people.²⁴

In order to achieve true community cohesion, it is recommended that CSI addresses issues beyond racism and traditional Northern Ireland sectarianism. As a minimum, we recommend that CSI should coordinate the various policies, so that they can be mutually reinforcing. It should also recognise the importance of multiple identities and the need for equality to underpin the whole.

Actors and subject matter

Thirdly, in relation to the actors and subject matter covered by CSI, we recommend that OFMDFM also take an expansive approach. We appreciate that CSI does take into account the role of government, various public authorities, employers, contractors²⁵, educators and community groups in promoting good relations. However, the majority of actions in CSI concentrate on the individual and the need to address his/her actions (such as graffiti, verbal abuse and violence).

²⁴ Fanshawe and Sriskandarajah, 2010, *'You Can't Put Me In A Box' Super-diversity and the End of Identity Politics in Britain*.

²⁵ Please note that, while it is important to include s75 obligations in the procurement process, the *'onus'* for discharging these duties rests with the public authority concerned.

For example, in the section on Empowering the Next Generation (Chapter 4), CSI states that young people's '*flawed judgments can result in civil disturbances, antisocial behaviour or interface violence*' (at para 4.2). This approach places all responsibility on the young people, and does not acknowledge the structural conditions that may bring about such action. It cannot be a coincidence that the riots this July occurred in the Ardoyne, which is consistently listed as one of the most deprived areas in Northern Ireland.²⁶

We believe that CSI places too much emphasis on the actions of individuals and pays insufficient attention to institutional prejudice and structural disadvantage, which are fundamental to community relations. In essence, CSI concentrates on the symptoms, rather than the cause of social division.

Furthermore, CSI concentrates its attention on current expressions of social unrest without addressing the contributing factors from the past. While we acknowledge the need to confront the immediate occurrences of prejudice and violence in the community, we are concerned by the complete silence of CSI as regards the past, and its impact and implications on current and future community relations. Even 'A Shared Future' included '*reconciliation*' as one of its goals.

We would therefore recommend that CSI attribute more attention to the causes of social division, such as institutional prejudice, deprivation and dealing with the past, rather than exclusively addressing the symptoms, namely individual prejudice, behaviour, segregation and violence. We believe that a better understanding and treatment of the causes of social division would provide the best opportunity to achieve social cohesion and good community relations.

²⁶ The most recent Multiple Deprivation Measures list the Ardoyne's super output areas at 18, 20 and 28 out of the 890 super output areas in Northern Ireland, see <http://www.nisra.gov.uk/deprivation/archive/NIMDM2005FullReport.pdf> at pages 38 - 64.

4. Clarification of operational approach

CAJ is concerned that the operational arrangements for CSI are not sufficiently developed and could cause problems for the success of the initiative.

First, it is not entirely clear how CSI will relate to other government strategies for addressing good relations. It has been made clear that the Racial Equality Strategy will continue along side CSI (see para 1.10). As the Racial Equality Strategy is stronger than CSI, and also includes human rights standards, we welcome its continuation. However, we are not clear how the two strategies will inter-relate and whether one policy will take priority over the other.

Also, the reference to the '*family of policies*' (para 1.8) that will complement CSI does not provide any information on what these other policies will address, when they will be produced and how they will inter-relate with CSI. The most concrete statement is that OFMDFM will '*agree to publish a sexual orientation strategy*' (at 1.9). However, even this does not specify a time-frame or policy area. We request that OFMDFM clarify the extent and relationship of other policies in the context of CSI.

Secondly, within CSI, OFMDFM does not produce any clear action plan to implement the proposals. As a result, CSI remains largely aspirational and it is not clear exactly what action will be taken, in which time frame or how its success or otherwise will be evaluated. We do acknowledge that CSI is still being formulated and that its more precise application will be developed in time. To this end, we would like to underline the need for specific and timed action measures.

The CSI consultation document divides some '*themes for action*' into the short, medium and long term (para 2.6), without placing any specific time limits on them. We are concerned that the order of some of these themes for action is misplaced and could prevent full realisation of the actions themselves. For example, '*developing shared spaces*' is prioritised as the first short term action but '*issues around flags, emblems, murals, bonfires, cultural expression and popular protest*' are not to be addressed until the long term. This is problematic as, until the issues of flags et al are addressed (long term), the ability to develop shared spaces (short term) would likely be undermined.

We recommend that OFMDFM reconsider the order within which themes for action are taken.

Also, the CSI consultation document only makes reference to a general review by the Ministerial Panel. We recommend that timed and independent evaluation should be an essential component of CSI, particularly in the current economic climate.

5. Conclusion

CAJ is concerned that promoting equality and tackling deprivation is not included within CSI's specific policy and action measures. We do not believe that good community relations can be achieved without addressing the inequalities in our society. In particular, the emphasis on shared spaces without proper consideration of socio-economic inequalities, could inadvertently serve to weaken social cohesion.

CAJ recommends that 'good relations' is defined with reference to international human rights standards. We believe that CSI should take a more expansive approach to community relations, to take account of the diverse, fluid and multiple identities within our society. We recommend that CSI's policies should place more emphasis on the actions of institutions (as opposed to individuals) and that it should also address the need to deal with our divided society's past.

Fundamentally, CAJ is concerned that CSI is centred on the symptoms of social division, as opposed to its cause. We believe that a better understanding and treatment of the causes of social division would provide the best opportunity to achieve social cohesion and good community relations.