

## Interim report of the Prison Review Team

In February 2011, the Prison Review Team (PRT) published its Interim Report on the conditions, management and oversight of all prisons in Northern Ireland. The review had been stipulated for in the Hillsborough Agreement the previous February. The PRT was set up in the summer of 2010 and the team included Dame Anne Owers, the former Chief Inspector of Prisons for England and Wales, Paul Leighton, a former PSNI Deputy Chief Constable, Clodagh McGrory, a Parole Commissioner and former member of the Irish Human Rights Commission, Fergus McNeill, a Scottish Professor of Criminology and Social Work and Phil Wheatley, the former Director General of the National Offender Management Service for England and Wales.

The terms of reference asked the team to begin by looking at Maghaberry, which had been reported to be one of the worst prisons in the United Kingdom. Various stakeholders pointed out that this was not a proper basis thoroughly and holistically to review the prison system. The PRT took on board this concern and reported that 'it became apparent at an early stage that it would be difficult or impossible to deal with the problems facing Maghaberry without tackling the underlying issues of management, leadership, vision, objectives and culture in the prison system of which it is a part; and indeed without reference to the wider picture in criminal justice and related services.' A significant number of recommendations made by the PRT in its Interim Report have been made previously on foot of various inspections and investigations, including the call for a discrete women's prison unit separate from a male prison, the removal of children from Hydebank Wood Young Offender Centre and reducing the overall prison population. Some critics have been sceptical of the Interim Report, rightly questioning how an effective 'change programme', as suggested by the PRT, could be realised within an institution in which there have been tremendous problems from the top down. The Interim Report itself identifies a lack of accountability and 'an absence of visible leadership and oversight' within the Prison Service.

Nonetheless, the report did a good job of setting the context and laying out the foundations upon which to build a new and better prison system. The PRT places value on the creation of visions and values that are agreed upon and developed by staff, stating: 'There should be agreement on and ownership of the vision and aims of the system: that prisons should contribute to a safer society. The values that underpin this are: justice and fairness; safety and security; decency and dignity. That vision will determine the outcomes and objectives. Performance measures and targets should be aligned to these objectives and to international best practice and human rights standards.' Despite this mention of human rights, the Interim Report was scant in its inclusion of human rights standards and it is hoped that this will be rectified in the Final Report due later this year. The PRT noted the detrimental over-emphasis on security within prison structures and culture and recommended that measures to ensure and reinforce governance, accountability and performance be created. Significantly, the PRT wishes to see an early retirement scheme created to bring in new staff and address the persistent under-representation of Catholics and women. Recommendations on reducing the number of prisoners overall and questioning the usefulness of imprisoning fine defaulters are welcome. The report also cautions against the way in which the separated regime for politically motivated prisoners in Maghaberry is allowed to skew security priorities in the rest of the prison. It remains to be seen what the final report will look like, and more importantly what political reaction to it will be. One hopes that the impact of the May election and the reappointment of the Minister for Justice will keep up the momentum for change within the Prison Service. There is wide recognition of the need for change; the political will to ensure implementation needs to be maintained beyond the election.

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# Law Centre welcomes end of world-workers registration scheme

**Many migrant workers who have lost employment or whose family circumstances have changed have not been able to rely on a UK social security safety net in recent years. As a result, the Law Centre has dealt with a significant number of cases of destitution.**

This May day, we welcomed the end to the particular restrictions placed on migrant workers from the eastern European countries of the Czech republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia. The restrictions are connected to the Workers Registration Scheme. This scheme affecting nationals from the A8 countries will officially close on 30 April 2011.

## **The impact of the scheme**

In 2008, the Law Centre challenged the lawfulness of the scheme under European law in a test case before the House of Lords<sup>1</sup> for a Polish woman who had been working in Northern Ireland. We lost the case overall but were pleased to have persuaded two of the country's most senior judges of the legal flaws in the scheme. Clients affected by the restrictions include workers who had short interruptions to their employment, workers who had not realised that a change of job required registration and women who have had to give up work for a period following domestic abuse and relationship breakdown. The Worker Registration Scheme (WRS) has been in place from 2004 and required a national of any A8 state working in the UK to register their employment for an uninterrupted period of twelve months. The scheme has been in operation for seven years, the longest permitted period under European law.

## **The changes**

The closure of the WRS brings the rights and entitlements of A8 nationals in line with nationals from other EEA states (excluding Romania and Bulgaria).

The most significant change is that an A8 national who comes to look for work from 1 May has a right to reside as a work seeker. While A8 nationals still have to satisfy the habitual residence test and show that they meet the general conditions of entitlement, they will be able to claim Income-based Jobseeker's Allowance and Housing Benefit, which provides a safety net and prevents destitution. They will be entitled to claim Jobseeker's Allowance for six months provided they can show that they are continuing to seek work and have a genuine chance of being engaged.

If a worker started work before the scheme was abolished, loses work and wishes to claim benefit, then it should not be assumed that a lack of registration before 1 May is a problem. For example, someone starting a new job in April would not have needed to register as there was a 30 day period in which to register for work.

## **How we can help**

Law Centre (NI) is happy to advise A8 nationals who experience difficulties with claiming benefits from 1 May.

We continue to lobby for effective support for other migrant workers from Romania, Bulgaria and from outside the European Union who still face restricted access to social security benefits.

## **Note**

1. Case citation: Zalewska (AP) (Appellant) v Department for Social Development (Respondents) (Northern Ireland) [2008] UKHL 67

## **Maura McCallion and Karen Mercer, Law Centre Northern Ireland**

### Conference Notice

CAJ will host a conference on Tuesday 21 June entitled 'Counter terrorism and human rights: the permanence of temporary powers.'

The conference will take place in Holiday Inn Ormeau Avenue, Belfast. For more details, visit [www.caj.org.uk](http://www.caj.org.uk) or register at [events@caj.org.uk](mailto:events@caj.org.uk) or by calling 028 9031 6000

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## CAJ's response to continuation of non-jury trials

**Non-jury trials are to be continued for another two years, undermining fair trial rights and devaluing justice in Northern Ireland. CAJ believes that jury trials are a fundamental component of the rule of law within the common law system and that restricting this component is unwarranted in Northern Ireland in 2011.**

CAJ was disappointed by the recent statement from Owen Paterson, Secretary of State for Northern Ireland, that the provisions under the Justice and Security (Northern Ireland) Act 2007, which allow for non-jury trials in certain cases, have been extended for a further two years. The Diplock Court and its successor under the Justice and Security Act were created to address the issue of jury intimidation. This system was heavily criticised from its inception for the potential and real miscarriages of justice which occurred as a result of its use. In June 2010, Brian Arthurs and his wife judicially reviewed the decision of the Director of Public Prosecutions for the certification of their trial as a non-jury trial. This was the first judicial challenge of the Justice and Security Act 2007. It was rejected by the lower Court but is currently on appeal to the Supreme Court.

CAJ made a submission to the Secretary of State opposing the extension of the system for another two years. We raised several issues. We drew attention to the examination of these provisions by the United Nations Human Rights Committee, specifically in relation to the right to a fair trial (Article 14 of the International Covenant on Civil and Political Rights), and their comments on this issue. CAJ argue that the impact of the application of the non-jury trial measures begins immediately: as soon as someone is told there is a danger of a jury being intimidated, then there is an automatic assumption that the defendant is in some way already guilty. We also have concerns about how the process of non-jury trial certification is carried out. For instance, the Director of Public Prosecutions only needs to be satisfied that 'there is a risk that the administration of justice may be impaired if the trial were to be conducted with a jury';<sup>1</sup> a threshold we believe is too low and allows the broad application of this power. We also drew attention to the absence of any publicly available evidence which indicated that jury intimidation was a serious problem in Northern Ireland. The Government, responding to a question from the UN Human Rights Committee on the issue, claimed that it, 'remains prevalent, and intimidation more generally is a growing problem,'<sup>2</sup> yet they failed to substantiate this claim with evidence.

CAJ believes that non-jury trials are unnecessary as Northern Ireland is not an emergency situation and that juror safety can be achieved using other methods. The continued reliance by the Government on the idea that Northern Ireland requires emergency legislation undermines confidence in the rule of law and the wider criminal justice system. It wrongly reinforces the idea that Northern Ireland is in conflict, ignoring the ongoing normalisation process. We believe that the introduction of jury trial for all cases would be a way to acknowledge and commend the enormous political and social progress which Northern Ireland has made in the last decade, resulting in reciprocal confidence between the people and the state.

The Northern Ireland Office (NIO) provided the opportunity for submissions to be made on the extension of non-jury trials. However, as with other NIO "consultation" processes, we were concerned as to how this was carried out. For example, for a meaningful consultation, the minimum time allowed should be 12 weeks; here only 3.5 weeks were given. Similarly, there is no indication of the list of consultees, giving rise to concerns that due regard has not been paid to Section 75 groups. Furthermore, the decision by the Secretary of State to continue the provision does not appear to have been based on any analysis of responses made to the consultation. In March 2010, the NIO indicated that a comprehensive review of the non-jury trial system would be undertaken. While CAJ acknowledge the impact of devolution, we believe that the UK Government needs to follow through with this commitment and carry out an in-depth examination of the measures.

CAJ will continue to monitor the use of the Justice and Security (Northern Ireland) Act 2007 and the impact this has on the rule of law generally and fair trial rights specifically.

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<sup>1</sup>s.1(2) Justice and Security (Northern Ireland) Act 2007

<sup>2</sup>CCPR/C/GBR/Q/6/Add1 18 June 2008

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## The Right to Life - The Government's obligations

In 2001, 2002 and 2003 the European Court of Human Rights held that that the UK government had violated its obligations under Article 2 ECHR in six cases concerning the actions of the security forces in Northern Ireland (Jordan v. UK; Kelly and Ors v. UK; McKerr v. UK; Shanaghan v. UK, McShane v. UK and Finucane v. UK). CAJ continues to monitor the implementation of the judgments. CAJ's recent submission to the Committee of Ministers in relation to these cases was considered (at its 1108th meeting) in March 2011. We outlined our concerns regarding the implementation of both the general measures and individual measures which were established following the judgments in these six cases.

In addressing the general measures arising from these cases, the government proffered the Historical Enquiries Team (HET) and Office of the Police Ombudsman for Northern Ireland (OPONI) as some of the mechanisms to address violations and the lack of independence and other defects identified by the European Court of Human Rights, in the investigation of deaths where Article 2 ECHR was engaged, both in relation to the past and for the future. These institutions continue to be subject to review by the Committee and we reminded it of our concerns surrounding these bodies, which have not been satisfactorily addressed. We advised the Committee of Ministers of our fear that there are attempts to draw a line under the past, aimed at avoiding proper accountability, and that these should be strenuously resisted so that the breaches found by the European Court of Human Rights will not be repeated in the future. These lessons are important not just for Northern Ireland but impact on how other states in conflict protect and uphold human rights standards.

### HET

The HET does not carry out Article 2 compliant investigations in historical cases (as acknowledged by the Secretariat in November 2008) and we outlined our ongoing concerns with this mechanism. In relation to its role in remedying the defects in police investigation, we noted the comments of the Chief Constable last autumn in which he stated that all work of the HET must be completed by 2013 and that a line must be drawn under the past. While it was later stated that after this date local politicians would become responsible for funding any such initiatives, we are concerned that the HET should not be disbanded until such time as all the 3,269 murders it was set up to investigate are examined, unless it is replaced by a mechanism that is human rights compliant and has sufficient powers to ensure the requisite accountability. We highlighted our concern at the alteration in structural arrangements within the HET, whereby any case with "evidential opportunities" now passes to the C2 branch of the PSNI. Following a major policy change, a block of cases involving police collusion was transferred from the HET back to the PSNI for investigation. We are concerned that in other cases, which have been referred by the HET to C2, there are not sufficient safeguards given the issues of independence that arise.

### OPONI

In relation to the Ombudsman's office, we highlighted our frustration surrounding the Office's ongoing delays in investigations, its lack of transparency and information for families about the processes. In response to this the government noted that the "The Police Ombudsman recognizes the distress and trauma being caused to families because of the lack of progress in some cases. He makes every reasonable attempt to maintain open and transparent processes and provide information to the families of victims or their representatives when asked." We and the families we work with continue to express doubts about the capacity of this office to discharge its duties to carry out Article 2 compliant investigations.

### Individual Measures

We called upon the Committee of Ministers to continue to maintain vigilance over the implementation of the individual measures that relate to cases still subject to oversight by the Committee of Ministers. The ongoing delays in the cases of Jordan, Kelly & Ors, McKerr and Shanaghan, continue to cause grave concern. We also reminded the Committee of Ministers that the Government has yet to put in place any measure which addresses the violations found by the European Court of Human Rights in the case of Patrick Finucane. We understand that there has been ongoing contact between the Government and the family and suggested that the Committee may wish to ask the Government what action is proposed to address this and to advise the Committee on a proposed timescale to ensure compliance with its obligations in this case. We stressed the importance of the Committee's continuing supervision of the execution of these judgments, until it is satisfied that appropriate measures to ensure the Government's commitments under Article 46 ECHR and domestic compliance with the Convention is fully addressed, including the outstanding general measures, as well as full implementation of practically effective individual measures in these cases.

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## Ireland's UPR Civil Society Coalition: Your Rights Right Now

On 6 October 2011, Ireland will be examined for the first time by other United Nations (UN) countries on our human rights record under the Universal Periodic Review or UPR. This is a new mechanism and is the first time that UN States directly examine each other on their human rights record. The review is conducted by the UPR Working Group of the UN Human Rights Council and Ireland is one of the last countries to be examined under the current cycle of the UPR. However, our examination is made even more interesting by our candidacy for election to the UN Human Rights Council in May 2012. Thus, Ireland's UPR examination could be viewed as the State's election manifesto for a place on the UN Human Rights Council.

One of the most exciting aspects of the UPR is the broad range of human rights that are considered: from the right to health to the right to liberty to the rights of children, older people and people from minority groups. Ireland will be examined on its obligations under all human rights agreements ratified, voluntary commitments or pledges made by the State, the UN Charter, the Universal Declaration on Human Rights and international humanitarian law.

Civil society also has the opportunity to contribute to Ireland's examination by providing evidence to the UN about the situation on the ground. With this in mind, seventeen leading Irish non-governmental organisations (NGOs), trade unions and civil society groups came together as part of the UPR Cross Sectoral Steering Group, to ensure that the voice of Irish civil society is heard during Ireland's UPR examination. Experience shows that the recommendations of civil society will be stronger if we work together. Coordinated by the Irish Council for Civil Liberties and under the banner Your Rights Right Now, the steering group carried out 17 consultation and information sessions with organisations and individuals around the country in February and March 2011. To support this process, we produced a Plain English Guide to the UPR in conjunction with the Geneva-based NGO, [upr-info.org](http://upr-info.org). Over 200 people attended the events and the Your Rights Right Now campaign received 84 submissions from organisations and individuals. As you would expect, the information and evidence collected by the Your Rights Right Now team covered a diverse spectrum of issues. However, recurring themes emerged such as access to services; equality and non-discrimination; accountability; right to information and a remedy; and, political participation.

This information was fed into Ireland's Civil Society UPR Stakeholder Report which was submitted to the UN on 21 March 2011 and officially launched by the newly-appointed Minister of State with Special Responsibility for Disability, Equality, Mental Health and Older People, Kathleen Lynch TD, on 19 April 2011. By the date of submission to the UN, 82 civil society organisations had endorsed the report and a further 25 organisations indicated their support thereafter.

The Government must also submit a State Report to the UPR Working Group, the deadline for which is 4 July 2011. Moreover, under the UPR process, the Government must conduct a national consultation exercise and the Irish Government will roll out its consultation process on Monday 16 May 2011. The three-hour UPR examination in Geneva is centred on an interactive dialogue between the State under Review and examining States. The UPR Cross Sectoral Steering Group has utilised a similar positive working method in its engagement with Government in preparation for the October examination and members of the UPR Cross Sectoral Steering Group have been invited to participate in the Government consultations.

The result of the UPR examination will be a list of recommendations made by other countries on how to improve the human rights situation in Ireland. These recommendations will be formally adopted by the UN Human Rights Council in spring 2012. The UPR Cross Sectoral Steering Group plans to continue our work with organisations and individuals around the country and use the UPR recommendations as building blocks upon which to base our work for change in Irish law, policy and practice over the next four years until Ireland's next UPR examination. One of the main aims of the Your Rights Right Now campaign is to harness the opportunity of the UPR examination to promote awareness of international human rights standards in Ireland. So far, we have received national and local coverage in print and on radio. The campaign is also supported by our dedicated website [www.rightsnow.ie](http://www.rightsnow.ie) as well as our Twitter and Facebook pages. Check out the website to see our UPR animation, videos documenting the work of the project so far, the Plain English Guide to the UPR and other information on Ireland's UPR.

**Deirdre Duffy, Irish Council for Civil Liberties [www.iccl.ie](http://www.iccl.ie)**

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## Taking a closer look at CAJ

Each month in 2011, Just News will profile a different staff member, outlining his/her role in the organisation and giving an overview of the kind of work they do on a day to day basis. If you believe the CAJ staff person can be of any assistance to you, please contact them directly.

### Jacqueline Monahan - Criminal Justice Programme Officer

CAJ has a long history of monitoring the criminal justice system. Indeed, CAJ was set up following a conference at Queen's University Belfast in 1981 chaired by Lord Gardiner, which was concerned with the administration of justice under emergency laws. Thirty years on much has changed in the Northern Ireland political sphere yet the criminal justice system still requires significant oversight.

The Criminal Justice Programme (CJP) consists of the Programme Officer, Jacqueline Monahan, and the Programme Assistant, Caroline Parkes. The CJP also benefits from the assistance of a number of volunteers who do indispensable work.

The Criminal Justice Programme involves continued reactive and proactive work. For the foreseeable future the CJP team will remain busy responding to consultations about government policies, practices and proposed legislation. Present work includes drafting submissions to the following consultations:

#### **UK Parliament**

- Joint Committee on the Draft Detention of Terrorist Suspects (Temporary Extension) Bills
- Public Bills Committee on the Protection of Freedoms Bill

#### **Department of Justice**

- Review of Community Sentences
- Proposals for the retention and destruction of fingerprints and DNA
- Review of the Criminal Records Regime

#### **Public Prosecution Service**

- Draft Disability Action Plan

We recently completed a piece of research on the Northern Ireland prison system, which rather than being a 'done and dusted' issue, remains a top priority for CAJ and continues to require monitoring and action. Specifically, we have continued to communicate our concerns and hopes for reform, greater accountability and implementation of the Optional Protocol to the Convention Against Torture (OPCAT) to the Director of the Prison Service (NIPS), Minister of Justice, David Ford, and the Prison Review Team.

In light of significant media attention and our own long-standing concerns about the decision-making process of the Public Prosecution Service (PPS), we are presently undertaking research concerning public perceptions of the PPS, notably around changes since the Criminal Justice Review, eleven years ago. This research will include two surveys and interviews with various individuals who have had contact in recent years with the PPS either as professionals (solicitors), NGOs, victims or witnesses (for more information see below).

We are presently organising a conference around counter-terrorism, dealing with issues such as demonisation of communities, fostering radicalisation, and noting the relevant lessons from Northern Ireland. This conference stems from a report published by CAJ in 2008 and realisation that the issue of terrorism and the impact of counter-terrorism measures continue to be significant.

CAJ is presently undertaking research relating to public perceptions of the PPS. If interested, please take our quick survey available on the CAJ website - [www.caj.org.uk](http://www.caj.org.uk). If you have had direct contact with the PPS within recent years and would like to offer your experience for the research, please contact Jacqueline Monahan to arrange an interview on 028 9031 6000 or email [jacq@caj.org.uk](mailto:jacq@caj.org.uk)

## Creative reflections on key human rights instruments

### - The Preamble of the Charter of the United Nations 1945

CAJ continues to creatively reflect on key human rights instruments. This month, local poet, Michael Longley, has kindly contributed his poem, 'Ceasefire.'

#### Ceasefire

Put in mind of his own father and moved to tears  
Achilles took him by the hand and pushed the old king  
Gently away, but Priam curled up at his feet and  
Wept with him until their sadness filled the building.

Taking Hector's corpse into his own hands Achilles  
Made sure it was washed and, for the old king's sake,  
Laid out in uniform, ready for Priam to carry  
Wrapped like a present home to Troy at daybreak.

When they had eaten together, it pleased them both  
To stare at each other's beauty as lovers might,  
Achilles built like a god, Priam good-looking still  
And full of conversation, who earlier had sighed:

'I get down on my knees and do what must be done  
And kiss Achilles' hand, the killer of my son.'

Michael Longley, *Collected Poems* (Jonathan Cape, 2006)

## Civil Liberties Diary - March

### 8<sup>th</sup> March

A barrister who acted for the PSNI in the Rosemary Nelson Inquiry has won a £70,000 payout after she had discovered she was being paid less than a male colleague. The settlement was accepted by Dolores Creen as against her complaint alleging sex discrimination. While the PSNI has not accepted liability in the case, Chief Constable, Matt Baggott, acknowledged the distress Ms Creen had suffered and stated that he wished to reaffirm "his commitment to equality of opportunity in the workplace."

### 9<sup>th</sup> March

Reports of a further delay to the release of the Police Ombudsman's report into the massacre at Loughinisland surfaced today. The report was first expected to be made available by 21 March 2011, however it now looks like the report will not be released until mid-May. Despite the report being concluded in June 2008 it has still to be released. A spokesman for the Ombudsman's office stated the delay had been due to "operational process reasons."

### 15<sup>th</sup> March

A clause under the Justice Bill which allows for under-18s in Northern Ireland to possess a firearm has been discovered to be in contravention of EU weapons law. The clause which allowed for the use of guns by under-18s in sports shooting and where they were accompanied and supervised by a firearm certificate holder is not compatible with the European Union Weapons Directive. The Bill was reviewed at an emergency meeting of the Business Committee.

The Independent Monitoring Commission will be wound up at the end of March 2011. The body was set up by the British and Irish governments to monitor paramilitary ceasefires in Northern Ireland. The body presented the 26<sup>th</sup> and final report to both governments. An IMC spokesman stated "the report

documents changes, impact and lessons during the period from January 2004 to March 2011."

### 22<sup>nd</sup> March

The Coroner's court has heard that 21 police witnesses to alleged security force shoot-to-kill incidents in Northern Ireland are now dead and that up to 40 others are elderly and could have difficulty giving evidence. The issue came to light in a case of 6 people shot dead in Lurgan and Armagh in 1982. The deaths had been previously investigated by former Greater Manchester Police Deputy Chief Constable, John Stalker. The subsequent report however has never been made public. Mr Simpson QC, appearing for the PSNI, explained to the court that the addresses held by the police of those interviewed were now 30 years out of date. A decision to take evidence from those too frail to give evidence at court in their homes is thought controversial and may lead to a challenge at the High Court.

### 23<sup>rd</sup> March

The Justice Minister, David Ford, has announced new rules are to be applied to legal aid work carried out by solicitors and barristers in Northern Ireland. The Justice Ministry is looking for £18m saving per annum in fees being paid to lawyers in crown court cases. Legal aid expenditure in Northern Ireland is currently at £104m per annum however its budget is under £85m. The proposed changes to the fees structure for solicitors and barristers will see the legal aid expenditure drop to £79m by 2013/2014.

### 24<sup>th</sup> March

The Smithwick Tribunal, which is examining the deaths of two senior RUC officers killed in an IRA ambush in 1989, has indicated it wants to hear evidence from a former Army intelligence officer. The Tribunal set up in 2005 is examining alleged Garda collusion in the two deaths.

### 28<sup>th</sup> March

Up to 7,000 people attended a protest against the proposed public service cuts to be implemented across Northern Ireland. The protest was organised by the Irish Congress of Trade Unions.

### 29<sup>th</sup> March

The family of Majella O'Hare, the 12 year old school girl who was shot in the back twice while walking past an army checkpoint in August 1976 has received an apology from the Ministry of Defence. The letter was handed to Majella's mother Mary at a private meeting with Secretary of State, Owen Paterson, at Hillsborough Castle. The letter has described as being 'unlikely' the army's account that a soldier opened return fire on an IRA sniper.

### 31<sup>st</sup> March

The British government has ended 50:50 recruitment to the PSNI; the recommendation of pursuing the policy in Northern Ireland had come from the 1999 Patton report. When the policy was introduced in 2001 only 8% of police officers were Catholic. Currently 29.76% of the police service is Catholic.

*Compiled by John Keers from various newspapers*

## Just News

Just News welcomes readers' news, views and comments.

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