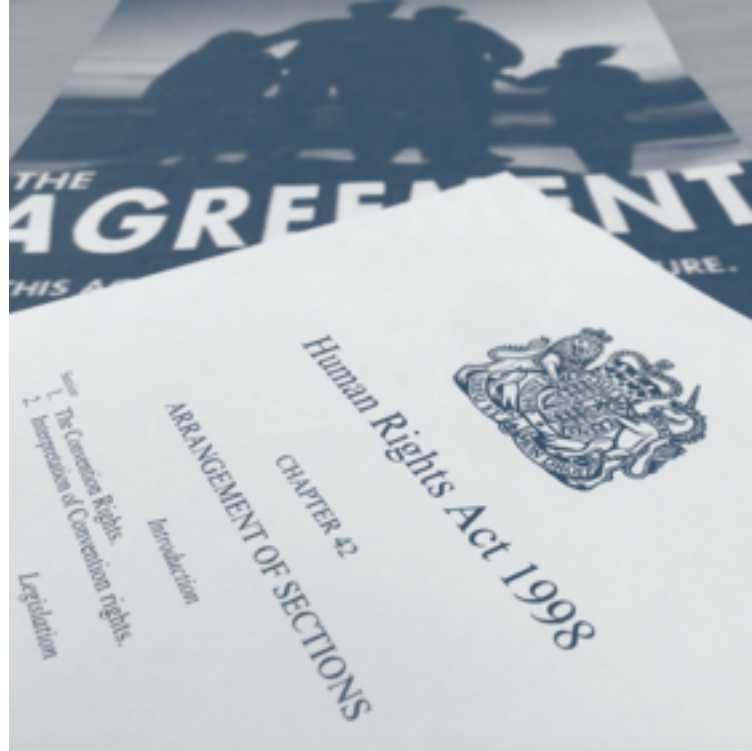


THE IMPACT OF THE HUMAN RIGHTS ACT NORTHERN IRELAND

Conference Report

THE IMPACT OF THE HUMAN RIGHTS ACT IN NORTHERN IRELAND



Conference Report

Report of a conference organised by the Human Rights Consortium & UNISON

Held in UNISON, Galway House, Belfast, 26 January 2016



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INTRODUCTION / PROGRAMME / SPEAKERS

INTRODUCTION

The Human Rights Consortium (HRC) along with UNISON organised 'The Impact of the Human Rights Act' Conference in response to the current ongoing threat to the Human Rights Act by the United Kingdom (UK) Government.

The Human Rights Act 1998 brings the European Convention on Human Rights (ECHR) into UK domestic law and is considered as one of the core human rights frameworks and confidence building measures in the Northern Ireland (NI) peace settlement.

The current UK Government has repeatedly outlined its intention to 'scrap the Human Rights Act' and given the centrality of this legislation to the protection of human rights in Northern Ireland and the operation of institutions and mechanisms flowing from the Belfast/Good Friday Agreement (B/GFA), civil society organisations in Northern Ireland continue to be deeply concerned about the risk to existing rights that this threat represents.

In response the Human Rights Consortium, in collaboration with UNISON convened a one day conference to gather evidence on what the impact of the Human Rights Act had been in Northern Ireland since its introduction.

Drawing together a broad mix of civil society organisations, academics and key public authorities this conference was an opportunity to present an important reflection on the utilisation of the HRA in every day life across Northern Ireland.

The result is a very clear picture that the HRA plays a key role in the protection of individual rights across our society and beyond that a key role in acting as one of the fundamental safeguards of our peace process.

This report attempts to capture those contributions and reflections and make them available publically.

Acknowledgements

Thanks to the panel chairs and speakers for giving their time to be part of this important conference at a time when there is such a distinct threat to the Human Rights Act.

Thanks also to the team of HRC Volunteers, Shanán Slow who provided help on the day and Olivia Lucas, David McDowell and Joseph O'Hara who helped to transcribe the speaker presentations from the panels to ensure accuracy in this report

CONFERENCE PROGRAMME

UNISON, GALWAY HOUSE, BELFAST

26 JANUARY 2016

10:00 -10:05	WELCOME & INTRODUCTION: Fiona McCausland, Chairperson, Human Rights Consortium
10.05 - 10.15	SCENE SETTING: Kevin Hanratty, Director, Human Rights Consortium
10:15-10:45	KEYNOTE SPEECH - MORNING Chief Constable George Hamilton, Police Service of Northern Ireland
10:45-12.00	REFLECTIONS ON THE HUMAN RIGHTS ACT (Civil and Political) Chair: Patrick Corrigan, Amnesty International, Northern Ireland Brian Gormally, Committee on the Administration of Justice Niall Murphy, KRW Law LLP Chief Constable, George Hamilton, Police Service Northern Ireland for Q&A
12:00-13:00	LUNCH
13:00-13:45	KEYNOTE SPEECH - AFTERNOON Prof. Chris McCrudden, Queens University Belfast
13:45-15:15	REFLECTIONS ON THE HUMAN RIGHTS ACT (Social and Economic) Chair: Patricia McKeown, UNISON Margaret Kelly, Director, MENCAP, Northern Ireland Michelle Millar, Human Rights Advisor, Disability Action, Northern Ireland Paddy Kelly, Director, Children's Law Centre, Northern Ireland Edel Quinn, Strategic Policy Advisor, Age NI, Northern Ireland
15:15-15:30	REFLECTIONS AND CLOSING REMARKS Les Allamby, Chief Commissioner, Northern Ireland Human Rights Commission

SPEAKERS

Fiona McCausland is currently working as an anti-poverty campaigner and chairs the Human Rights Consortium, which campaigns for a strong and inclusive Bill of Rights for Northern Ireland. Fiona originally trained as an accountant but in 1992 became involved in community development and qualified as a youth and community development practitioner. Fiona has worked extensively in loyalist working class areas, as well as for the Northern Ireland Women's European Platform (NIWEP) Women's Tech. Fiona is currently studying for an LLM in Human Rights at Queens University Belfast.

Kevin Hanratty is the Director of the Human Rights Consortium, a coalition of almost 160 groups that campaign for a human rights-based society through the development of a strong and inclusive Bill of Rights for Northern Ireland. He has previously worked as a Human Rights Officer with the OSCE Field Mission in Bosnia Herzegovina, a Political Consultant with the NDI in Macedonia and in policy and research work for the Social Democratic and Labour Party (SDLP).

Patrick Corrigan is Head of Nations and Regions and Northern Ireland Programme Director of Amnesty International UK. He is a founder and Board Member of the Human Rights Consortium and leads Amnesty's work on human rights in Northern Ireland, including on the Bill of Rights for Northern Ireland and on 'dealing with the past'. He is a regular media contributor on local and international human rights issues and holds a Masters' Degree in Human Rights Law.

George Hamilton is the Chief Constable of the Police Service of Northern Ireland. He joined the Royal Ulster Constabulary in 1985, where he spent his early career in Fermanagh and Belfast. He has worked in a variety of roles between Northern Ireland, England and Scotland including being seconded to assist with the transition in policing arising from the Patten Reforms, which included work on the creation of the PSNI Code of Ethics. In 2011 he was appointed Chief Constable Criminal Justice. In this role he was the Service's Victim's Champion and in partnership with the Public Prosecution Service, delivered the new Victim and Witness Care unit and other significant justice reforms. In May 2014 the Northern Ireland Policing Board appointed him as the Chief Constable of the Police Service of Northern Ireland, and he took up the post in June of that year.

Brian Gormally is Director of the Committee on the Administration of Justice, Northern Ireland's leading human rights NGO. He was an independent consultant working mainly in the community and voluntary sector specializing in justice, human rights and equality issues for over a decade prior to his current post. He was Deputy Director of NIACRO for 25 years until 2000 working with communities, alienated young people, ex-offenders and prisoner's families. He has published extensively on related topics and has been involved in peace-related work in South Africa, Israel/Palestine, the Basque Country, Italy and Colombia. He also worked on the Bill of Rights for Northern Ireland, with the Northern Ireland Human Rights Commission.

Niall Murphy is a practicing solicitor. He graduated in 1998 from Queens University Belfast, and is a partner at KRW Law LLP, Belfast. Their work is instructed by a significant number of clients engaged in state collusion litigation relating to conflict related deaths and injuries, appearing for those bereaved in Loughlinisland, Loughgall, Claudy, Clonoe, Kingsmill, the Dublin-Monaghan and McGurks Bar bombings, the Glennane Gang series of killings, Ormeau Road Bookmakers, amongst others. Niall is also a Director of Belfast based NGO Relatives for Justice (RFJ) who provide therapeutic care and legal advocacy to thousands of victims of the conflict. He has made representations for RFJ at EU and UN Level and was part of the delegation that made a submission to the Haas-O'Sullivan team in December 2013.

Chris McCrudden is a professor of human rights and equality law at Queens University Belfast, William W Cook Global Professor of Law at the University of Michigan Law School, and a practicing barrister-at-law with Blackstone Chambers. Specializing in human rights, he concentrates on issues of equality and discrimination, as well as the relationship between international and comparative human rights law. Professor McCrudden has extensive experience in the governmental and policy processes in Northern Ireland, particularly in the context of the Standing Advisory Commission on Human Rights (1984-1988), which was the forerunner of the Human Rights Commission. He served as expert advisor to the Northern Ireland Committee of the UK Parliament in 1999. He has also given evidence to several Committees of the Northern Ireland Assembly and UK Parliament on human rights issues, including socio-economic rights.

Patricia McKeown is Regional Secretary to UNISON the Public Service Union and one of the most senior trade unionists in Ireland. She is currently Co-Convenor of the Equality Coalition. She was President of the Irish Congress of Trade Unions from 2007 – 2009 and Chairperson of its Northern Committee 2005-2007, is former Deputy Chairperson of the EOCNI, and an elected member of both the NI Committee and the Executive Council of ICTU. She has recently been appointed as a worker representative for Ireland on the European Economic and Social Committee. Patricia has pioneered a range of partnership initiatives with employers in the public and private sector, and including international initiatives. Her union champions lifelong learning, professional development and has pioneered award winning jobs project in West Belfast with the Belfast Trust and the West Belfast and Greater Shankhill taskforces.

Edel Quinn is Age NI's Strategic Policy Advisor for Citizenship. She qualified as a solicitor and has worked in human rights issues in the voluntary sector for over seventeen years with older people, women and children. She has also worked in the Northern Ireland Human Rights Commission. In her current role at Age NI Edel is responsible for developing their human rights and partnership agenda, with a current focus on participation of older people, age discrimination, poverty and working to ensure government produces and delivers a robust Active Ageing Strategy. Edel is a strong supporter of the need for the introduction of a UN Convention on the Rights of Older People.

Paddy Kelly is a Queens University Belfast Law graduate and has an LLM in Human Rights from the same university. She is a barrister by profession. Paddy has worked for with a range of voluntary sector organisations including Save the Children. She established the Children's Law Centre in 1997 after the first examination of the UK government by the UN Committee on the Rights of the Child and is currently its Director. The Children's Law Centre is working in partnership with Save the Children co-ordinating the submission of the NGO Alternative Report and a Young Person led report to the UN Committee on the Rights of the Child, in advance of the 2016 examination of the UK government. Paddy currently sits on the Board of the Human Rights Consortium and is a member of the Safeguarding Board of Northern Ireland.

Margaret Kelly has worked in the charitable sector for the last 25 years. She is currently Director of Mencap NI and previous to this was Director of Fostering Network NI. She was Assistant Director for Policy and Influencing with Barnardo's NI. She has worked extensively on children's and family's issues and worked with politicians and policy makers to bring about social and legislative change for vulnerable children and adults.

Michelle Millar is the Human Rights Adviser at Disability Action's Centre on Human Rights. She is an experienced coach, mentor and facilitator with extensive knowledge in the field of community and personal development and has over 20 yrs experience working in the voluntary/community sector in Northern Ireland.

She has contributed to many reports and panel discussions on disability issues and has written the draft shadow report to the United Nations Committee on the Rights of Persons with Disabilities on behalf of the disability sector in Northern Ireland. She is an elected board member of the NI Human Rights Consortium and Here Ni. Michelle holds a Bsc (Hons) Degree in Community Development, an LLM in International Human Rights Law and diplomas in Teaching and Learning, Principle Negotiation, Coaching and Mentoring and Leadership and Management.

Les Allamby became Chief Commissioner at the Northern Ireland Human Rights Commission in September 2014 for a period of five years. Les is a solicitor and formerly the Director of the Law Centre (Northern Ireland). He was appointed honorary Professor of Law at the University of Ulster and is a trustee of the Community Foundation of Northern Ireland. He was a former Chair of an Advisory Group to the Human Rights Commission on proposals for economic and social rights within a Bill of Rights for Northern Ireland. He has undertaken election monitoring for the OSCE and IOM in Bosnia, Pakistan and Georgia. Les was also a former Chair of the immigration sub-group (OFMdFM) and a former member of the Northern Ireland Strategic Migration Partnership (Home Office)

WELCOME & INTRODUCTION



Fiona McCausland, Chairperson of the Human Rights Consortium

Thank you very much for being with us this morning. This is a very important event for us at the Human Rights Consortium. The idea behind the conference was that the current threat to the Human Rights Act coming from the Conservative Government has been ongoing for a number of years now. There has been a number of threats and rumblings of a consultation document on a UK Bill of Rights for some time, for which people have some considerable concern and the Human Rights Consortium has been focused on taking strategic action in terms of building a campaign for the retention of the Human Rights Act.

The threat to the Human Rights Act is also fundamental to delivering many of the rights enshrined in the Good Friday/ Belfast Agreement via the Northern Ireland Act and other documents relating to the peace package. So, it's important for us in Northern Ireland to be at the forefront of protecting the Human Rights Act and we have been actively reminding government of their responsibilities in that regard under international and national legislation. So, this conference is one of the evidence gathering mechanisms that we hope to use.

Specifically we hope to share the organisational and expert knowledge of the speakers and how the Human Rights Act has been used effectively in Northern Ireland, to clearly set the scene politically around local difficulties of withdrawing from the Human Rights Act and to develop a final conference report that will be used but also be a beneficial stand-alone document for civil society in Northern Ireland as a reference for how some organisations and experts utilise the full capacity of the Human Rights Act.

As well as hearing from the speakers we'll be very interested in the comments and contributions from the floor during the questions and answers sessions and after each keynote speaker and panel session, as we are aware that there is also a lot of expertise in the room either from direct experience of using the Human Rights Act or from organisational work.

On a final note, we are very grateful to everyone who has given up their time, both to speak at the conference and to attend and contribute. I'd particularly like to thank the staff of the Human Rights Consortium with Kevin our Director and Adrienne Reilly who is the Human Rights Officer working specifically on this issue. Without all of you a conference is not possible.

By way of opening the Human Rights Consortium is going to give some scene setting, giving a broad context of the Human Rights Act in Northern Ireland and I would like to introduce you to Kevin Hanratty.

Thank you.

SCENE SETTING



Kevin Hanratty, Director, Human Rights Consortium

The Context of the Human Rights Act in Northern Ireland

Good Morning. You are all very welcome. Thank you for being here. We really appreciate the interest in this event as it is really our first attempt at capturing the impact of what the Human Rights Act (HRA) has been able to achieve in NI in the 15 years since it came into effect.

We hope to use the evidence gathered today in future work to protect the HRA in Northern Ireland (NI). So, I'm doing the scene setting for the context of the HRA in NI. We have a lot of ground to cover today so I will try and be as brief as possible. So, I hope to give a broad over view that will be developed in more detail by other speakers in the course of the day.

So **'why was the HRA adopted in the first instance?'** is probably a good place to start.

Most countries have a constitution – a set of laws or legal rights, a Bill of Rights that sets out the rights each individual has within that society and the respective duties the government or state has to protect those rights.

Historically the UK has been quite unique in not having such a codified constitution or Bill of Rights.

Instead it relied on a common-law system that was essentially a system of laws and precedents set by the Parliament at Westminster that were 'negative' in their duty in that they didn't require any preventative measures on the part of government. Government action was only triggered if legislation was violated – it didn't have a duty to prevent against rights abuses in a pre-emptive manner.

This negative conception of rights had a number of problems –

- (a) it didn't protect against powers and actions of public authorities not covered by legislation that led or caused human rights abuses. Increasing number of public authorities and bodies with a public function – so harder to predict what laws required.
- (b) It placed a lot of responsibility on Parliament to ensure that enough legislation was in place or developed that did protect rights – one of the difficulties with this is that it leaves open the potential of Parliament being swayed in what legislation they do or do not bring forward by public opinion. I think this point is particularly important when considering our current debate about the future of the HRA as it is a debate largely created on the back of negative media opinion that does not necessarily reconcile with the reality of the application of the rights in question or the protection of individual rights more generally.
- (c) And finally, I think that the example of Northern Ireland in particular shows the failure of the common-law system to provide proper remedies for rights abuses. Where the lack of any legal constitutional mechanism to deal with the abuse of human rights undoubtedly fanned the flames of civil dissent during the early part of the Troubles in NI.

In contrast the HRA provided a much more positive articulation of individual rights that placed specific duties and functions on public authorities to ensure the protection of rights.

It was adopted as a piece of Westminster legislation in 1998. It came into effect in 2000 and gave further effect in domestic UK legislation to the rights contained in the European Convention of Human Rights.

And while it isn't a constitution it does set a positive framework of accessible rights for the UK.

What does it do?

UK wide: At a UK wide level the HRA places a series of duties on public authorities – so on the government and any agency carrying out duties of a public nature.

1. Government has to make a statement saying that any **proposed legislation** is compatible with Convention rights.
2. Public authorities (including Government/ministers) are under a positive duty to ensure that the Convention rights are protected – so no sitting back and waiting for violations to occur anymore – they are duty bound to do what they can to protect the rights – even if it means taking pre-emptive action.
3. Individuals can take a case in the courts if they believe their Convention rights have been violated by a public authority and
4. Courts can make a declaration of incompatibility if they believe that any Westminster legislation violates Convention rights. This allows the Government the space to amend the legislation. Courts are also under a duty to consider judgements/jurisprudence from the European Court of Human Rights (ECtHR).

Before the HRA the Convention rights were only accessible through the ECtHR in Strasbourg which was a lengthy and costly process putting remedies out of reach of most people.

Northern Ireland: More specifically to NI those same powers apply here locally but it also takes on increased significance:

1. The UK Government specifically agreed in the Belfast/Good Friday Agreement (B/GFA) to adopt the Convention rights domestically as part of the peace agreement.
2. That the new Stormont institutions would be bound in the same way as the rest of the UK to comply with the Convention rights.
3. It is actually listed along with a Bill of Rights (BoR) as the mechanisms that will make the Stormont Assembly function more effectively and protect both communities.
4. Importantly courts have the power to strike down NI Assembly legislation if it is not Convention compliant – an added strength beyond the 'declaration of incompatibility' powers for Westminster legislation.

I think the importance of this local dimension should not be underestimated. Here was a new system of historic political opponents agreeing to share power in a deeply divided society. The HRA was one of the core confidence building measures framed within the Stormont system to try and ensure that the rights of either community were not abused.

What has been its impact?

Not perfect by any means but remains the strongest single piece of rights legislation in the UK and worth defending.

The European Convention on Human Rights, which the Human Rights Act gives effect in domestic legislation was written in a different age after the Second World War.

It doesn't include social and economic rights, and has no free-standing equality duty – one of the other rights have to be violated before you can use the Art 14 equality duties.

Generally speaking in comparison to our own Bill of Rights process it doesn't fully match the expectations and requirements of a modern society – it isn't shaped to the specific needs of the community it serves. So in that sense it represents a floor rather than a ceiling. That is why we continue our campaign for a local NI BoR as provided for in the Belfast/Good Friday Agreement. Though that Bill of Rights was to be ECHR/ HRA plus – 'additional rights supplementary to the ECHR' was the line from the Agreement not 'instead of the ECHR'.

It may also be underutilized – with much further potential for incorporation into the ongoing work of public authorities.

However what evidence we do have of pro-active utilization by public authorities has been largely very positive and we hope to add to that evidence today.

Some broad reflections are that it has been generally uncontentious at a Stormont level with statements of Convention compliance forming part of the routine process of legislative scrutiny at Stormont. Access to consideration of the legal advice on how legislation complies with Convention rights would make that process more transparent but this as yet has been resisted.

The incorporation of the HRA into the new policing structures has possibly been the biggest success story of the HRA and has been largely uncontentious – we will hear more on this from our keynote speaker the Chief Constable of the PSNI.

The HRA has played an important role in the protection of those in care and how their relationship with health authorities has been handled – essentially placing a strong focus on the concepts of dignity and right to privacy in Art 8 at the heart of their care.

It has also ensured that those individuals who are in special care due to mental health problems or learning difficulties are not unduly deprived of their liberty and for people with physical disabilities it has often been the instrument through which access barriers have been removed or physical aids added to their own homes to ensure their right to privacy and a family life.

Perhaps the most impressive aspect of this is that advocacy alone using the HRA has been a significant model for success in many cases that negates the preconception that the HRA is all about litigation through the courts.

Why is it under threat?

We currently find ourselves in a situation where the UK government want to scrap the HRA and replace it with a British Bill of Rights. Why is that?

Well last week I had the pleasure of meeting Nils Muižnieks the Human Rights Commissioner with the Council of Europe along with colleagues when he was in Belfast as part of his official UK visit. In his report he referred to two key reasons for the current proposals.

“My impression is that the debate over the HRA in Westminster is not a true reflection of concerns outside England”.

‘a Bill of Rights or any other substitute should in no case weaken protection of human rights’.

– Nil Muižnieks, Council of Europe Commissioner for Human Rights

I would agree entirely with those statements. The British BoR process is fundamentally about limiting rights due to unfounded concerns about the nature of the ECHR/HRA and how it relates to the UK.

The push to scrap the HRA comes from a Westminster based campaign that has been fuelled by elements of the British press. Failure to recognise the universality of rights and their application to everyone including unpopular groups such as prisoners, foreign criminals and immigrants has led to HRA or ECHR cases related to these issues being conflated in the press to exemplify some sort of perceived problem with the HRA.

The problems with this limited interpretation and understanding of Convention rights have been well documented but the basic problems seem to be that:

- the ECtHR has been confused with the EU structures
- Schedule 2 duties of UK judges to ‘take account of ECtHR judgments’ has been misinterpreted as the ECtHR telling the UK what to do when in reality local courts and Parliament can and have ignored ECtHR judgments when they deem it appropriate.
- the UK has been unfairly treated by the ECtHR when in reality just a minority of judgments go against the UK

The threat to scrap the HRA would have a significant impact in NI.

- Firstly, it was a core element of the B/GFA and its removal would represent a breach of that international agreement and perhaps undermine other protections and guarantees from that document.
- Politically the UK Government have not indicated whether they will require a Legislative Consent Motion (LCM) from the NI Assembly to allow for the repeal of the HRA application locally. Threats not to apply a LCM to the Welfare Reform Legislation caused a massive political row locally – why would removing fundamental human rights legislation prove any different?
- Furthermore – one of the barriers to progressing a local BoR has been the claim that we require local political consensus – despite this never being a requirement of the B/GFA. If you apply the requirement for political consensus to adding new human rights protections in NI but do not apply the same consensus approach to removing existing human rights legislation then it applies a contradictory approach that is both confusing and politically dangerous.
- Further questions arise when the UK Government claim that they can introduce a British Bill of Rights without compromising the Agreement – to do so they would need to re-introduce the Convention rights somehow. This begs the question – what happens to the expansive human rights jurisprudence that has been applied locally based on HRA/ECHR judgments? Further to that if you reapply the Convention rights in NI but not in the rest of the UK because of the B/GFA

you create a two-tier system of human rights standards across the UK leaving the UK less united and splintered.

- The push to a British BoR is also not a positive exercise in expanding rights – the Govt themselves have claimed that this will limit the rights and their application – specifically the possibility of challenging public authorities.
- Finally, the British BoR ignores the local Bill of Rights process and how closely linked it is to the process of building a new society. The NI process has been a bottom up participative process that has shaped the rights expected in a BoR in accordance with public opinion. While we still don't have our own Bill of Rights this type of process is much more positive than the suggested approach for the UK which is about removing protections and having rights decide for us from the top down.

So I will finish by saying that removing the HRA would be hugely problematic politically, legally and constitutionally given how fundamental it has been to our peace process and the system of checks and balances we have established for our new structures of government.

My advice to the UK Government is that they have a duty as co-guarantors of the Belfast /Good Friday Agreement to not only **Keep the Act Intact** but instead get on with the real business of introducing our long overdue **Northern Ireland Bill of Rights**. I hope this has provided some useful context for the rest of today's discussions and I look forward to hearing the rest of the contributions. Thank you.

KEYNOTE SPEECH - MORNING



George Hamilton, Chief Constable of the Police Service of Northern Ireland (PSNI)

The Role of the Human Rights Act in Policing in Northern Ireland

Good morning and thank you for having me here today to talk on the immensely important issue of human rights. I am no academic; nor am I a legal expert; but I hope that I can contribute to your debate by providing a practitioner's perspective on the implementation and practical application of a human rights framework.

A fundamental building block of effective policing

Policing often requires balancing competing human rights and I will explore this issue in more detail later.

I want to begin with the basic principle that policing is about protecting human rights; and human rights are an enabler of effective policing.

The first place where this principle was so clearly articulated was in the 1999 Patten Report. The report made seven specific recommendations in relation to human rights – all of which were implemented. But it also articulated an ambition that human rights should be an organisational instinct, rather than simply a procedural point to be remembered.

As a younger police officer, I was on the Patten implementation team. Over 16 years on, I am now Chief Constable; and I can say with confidence that not only have the PSNI embraced this ambition; we continue to work hard to realise it every day.

One of the Patten recommendations was the appointment of a Human Rights Legal Adviser, who is consulted on a daily basis about police operations that raise human rights considerations. While in itself, this legal advice is critically important, for our Police Service, human rights is about much more than formal legal compliance; it is about the decision maker on the ground understanding and putting into practice the concepts of human rights. It's primarily a cultural issue rather than a compliance issue.

Every PSNI officer makes a commitment to human rights when they take their oath of office. Protecting human dignity and upholding human rights are also woven into the PSNI Code of Ethics which sets out the standards and behaviours expected from police officers.

Human rights have been incorporated into our policy and practice and it has become the norm for human rights to guide the decisions we make and the operational activity we undertake. Whether considering use of force; or deliberating over budget cuts, our organisation will always look to our obligation to keep people safe and our commitment to uphold the fundamental rights of the individuals and communities that we serve.

Human Rights and Accountability

While it was a central proposition of the Patten Report that the purpose of policing should be the protection of the human rights of all; Patten also acknowledged that there can be a tension between policing and human rights.

Policing exists for the protection of the community. In order to achieve this goal society accepts, and indeed demands that the law grants police officers a range of powers to limit the rights and freedoms of our fellow citizens, for example, the powers to stop, search or arrest.

No one would credibly suggest that police should not be able to enter private property to arrest a domestic abuser or use reasonable force when it is necessary to stop someone attacking another. However, in a liberal democracy, one citizen cannot be granted such powers over another without significant checks and balances.

For PSNI, human rights provide a practical framework through which we can use our policing powers while the rigorous accountability structures of the Policing Board and the Police Ombudsman ensure that we exercise these powers with the confidence and consent of the community.

The Policing Board in particular takes a very proactive approach to scrutinising our engagement with human rights. In addition to regular Committee meetings and the monthly public meeting, the Board's Human Rights Advisor produces an Annual Report highlighting both good practice and areas in which our application of human rights could be improved. This "dialogue" is extremely valuable for us and provides welcome objective clarity on how we are performing. A testimony to our commitment is that since the PSNI came into being, we have implemented 102 recommendations flowing from the Board's Human Rights Annual Reports.

"Nothing worth doing is ever easy"

The construct of human rights and accountability in policing has more than proven its worth. The most recent independent research for 2014/15 puts confidence in policing at just over 80% – a truly remarkable achievement that is often forgotten in our 24/7 news agenda.

However, "nothing worth doing is ever easy". In my view, the more challenging the policing issue, the more important human rights and accountability become. However, we should not pretend that they provide a clear or instant resolution to every critical issue we face. In a world that is constantly changing; the implementation of human rights is a constant process; it is a job that is never truly complete; and therefore something to which we cannot reduce our efforts.

In the hope that it will prompt some discussion throughout your conference, I would like to spend some time illustrating some of the challenges we continue to face. Conversations such as the ones you will be having today help shape our future development in this important area.

Human Rights and Policing the Threat

Stop and search is perhaps one of the most obvious examples of challenge for both the Police Service and for the community. I accept that there are many who would argue that stop and search, and in particular no-suspicion stop-and-search powers under the Justice and Security Act, are an unnecessary infringement of human rights. Believe me, I wish we did not need these powers but the facts remain that we are required to use them in order to keep people safe. The UK Supreme Court has ruled that, used properly, the powers are lawful.

In the PSNI, we make every effort to use these powers correctly. Human rights form a key consideration in how we apply stop and search and our decision making and operational activity is subject to very rigorous internal and external scrutiny. In particular, I would also highlight the level of scrutiny and attention the Policing Board has given to the issue over recent years. We are currently finalising the implementation of a range of challenging recommendations made by the Board's Thematic Report on Stop and Search. We have listened carefully to community feedback and have challenged ourselves as much as possible. This has resulted in an almost 40% reduction in the use of stop and search under the Justice and Security Act in the last year.

I believe public debate on stop and search is a healthy thing, although the debate should be rooted in facts rather than rhetoric. For example, we search five times more people under the drugs legislation than under

the Justice and Security Act. Stop and search is not part of a “political policing” agenda, as some would argue. It is a tool we use to keep people safe.

Human Rights Universality – Not Popularity

One of the greatest challenges facing any practitioner of human rights is striking a balance between competing rights and interests in a free and democratic society. Human rights are defined by their nature – they are universal, interrelated, interdependent and indivisible. “Popularity” or “doing what the majority of people want” are not terms that define human rights.

A decision made in accordance with human rights may not always appear to someone on the outside as the most obvious, popular or right decision. For these reasons, accountability, transparency, engagement and communication around our decision making is absolutely essential to maintaining community confidence. One area where this is clearly illustrated is our approach to the policing of parades and



protests.

In the months and weeks leading into the main part of the parades season and throughout the season itself, police officers at all levels of the organisation work closely with parade and protest organisers to help them understand what police deployments will look like and why. We also listen and learn from their views, and where possible, will adapt our style and approach.

But the challenge for my organisation, charged with the delivery of policing in a peace building society, is that at times, the universal nature of human rights is ignored, and the focus becomes solely on an interpretation of “my” human rights or the human rights of “my community”. Too often my organisation is required to step into a situation and make decisions about balancing the human rights of opposing groups as a result of a broader societal failure. This is not just in relation to parades and protests but a whole range of unresolved post conflict challenges that, in the absence of some form of political resolution, continue to be left at the door of policing.

In a society where space, symbols and history remain contested, the public debate on how PSNI balance competing human rights becomes distorted, with every police action analysed and often misinterpreted to the extent that we are accused of policing one community differently to how we police another.

This is an extraordinarily frustrating challenge for me as Chief Constable and one that I cannot solve alone, no matter how dedicated I am to human rights. I acknowledge the indications for political progress on the issues of parades, protests and flags in the recent Fresh Start Agreement and I hope that momentum can be sustained on these issues in the weeks and months ahead. This is particularly important as we look ahead to this year of commemoration.

Human Rights in an Era of Austerity

Policing and indeed other public services are facing huge austerity which is forcing our organisations to make significant changes in the way we deliver services. I am grateful that the most recent budgetary settlement was not as bad as had been forecast; however, the fact remains that by the end of this financial year, the PSNI budget will have been reduced by £120m since 2013-14. With cuts of this magnitude, we have been forced to prioritise service delivery in a way that policing has never had to do before in Northern Ireland.

At the same time as the budget has been shrinking, the demands to which my organisation must respond are increasing in scale, breadth and complexity. We deal with everything from abandoned vehicles through to international criminal gangs trafficking human beings within our community. We strive not only to deliver visible neighbourhood policing but also to protect the vulnerable behind closed doors, from crimes such as domestic or child abuse. Modern crime types, such as cyber and financial crime, are emerging and changing all the time.

I have two major responsibilities – firstly, as a Police Officer, I have a duty to keep people safe across all of these demands; and secondly as the PSNI's Accounting Officer, I have a duty to manage the organisation's budget responsibly. Balancing these two responsibilities has been, and will continue to be a key issue for the PSNI in the months and years ahead.

In my time as Chief, I have had to make some very difficult decisions about how I appoint my finite financial and human resources to keep people safe from harm. Human rights have played a critical role in these difficult decisions but they do not exempt me for my budget responsibilities.

I have told both the Justice Minister and Policing Board members that I will not compromise on keeping people safe. When it comes to a clear threat to life, there is little doubt that, the PSNI would and could take whatever action was required to protect life – including a budgetary overspend. Case law in this area is not definitive but I would need to demonstrate that the circumstances were such that it was absolutely clear that additional expenditure was necessary to protect life.

However, when it comes to the day to day management of threat, risk and harm – while human rights will guide our resourcing decisions – it is not an excuse to justify spend that I simply don't have or investment in resources that I know I cannot afford in the future.

Human Rights and Dealing with the Past

This is an issue which has been discussed recently with the Policing Board in relation to the level of staff and resource that the PSNI can put to dealing with the past. As yet, there has been no agreement on dealing with the past.

While I will continue to hope that a political solution can be found, for every day that goes by without resolution, the PSNI is left to absorb substantial costs in relation to dealing with the past. It is a fact that every penny and person I invest in the past is an investment I am not making in keeping people safe today. By way of illustration of the very real dilemmas this presents, there are around 50 investigators working in Legacy Investigations Branch; while our Human Trafficking Unit consists of eight officers working on 16 ongoing investigations; and within our Public Protection Branch, approximately 60 police

officers are dealing with over 1200 Child Abuse Investigations and just over 30 police officers are dealing with over 300 domestic abuse investigations.

I and my Senior Colleagues apportion our finite resources according to threat, risk, harm and vulnerability. In times of high demand – for example we had two murders in one week at the beginning of this month – we need to be able to move our people to the areas of greatest need. This means that detectives will, from time to time, be diverted from policing the past to present day investigations – be they investigations into murder; child abuse or a serious cyber-crime attack.

Do not misinterpret the points I am making as an argument against investing time and resources in dealing with the past. The argument I am making is one that I have made on many occasions before – the public services of today, including the Police Service, are not constructed or suitably resourced to respond to the demands of dealing with the past.

Aside from the financial and human resource costs, the past also presents significant costs in terms of public confidence in policing. PSNI's legacy related work is facing almost weekly legal challenge, related predominantly to the speed at which we can conduct the significant volume of legacy related work; and the perceived independence of the Police Service to do it.



This is an extraordinarily challenging area for me as Chief Constable. I have on a number of occasions sought legal advice as to my obligations and independence when it comes to investigating the past.

But the answers are not always immediately clear. The precise extent of the investigative obligations arising from Article 2 of the European Convention on Human Rights is a complicated and developing issue, the final determination of which can only be made by the courts. There are a number of ongoing judicial proceedings in this area, and I look forward to the legal clarity that these will bring. But, while we wait for judicial clarity, the current legal advice is that PSNI's Legacy Investigations Branch is Article 2 compliant. I accept that many people would disagree with this position; however, in the present situation, I have no options but to fulfil my statutory responsibilities to the best of my ability within my current budget.

My legal responsibilities cut across a wide range of legislation including the European Convention of Human Rights, the Police Act, the Coroner's Act, the Justice Act, the Data Protection Act and the Freedom of Information Act.

Until there is a political resolution on dealing with the past, PSNI's focus must be on what we are legally required to do. This includes our disclosure duties to the Coroner as well as the duty to provide adequate protections via proposed redaction to any information that is disclosed. We are also legally required to complete investigative actions which have been directed through various accountability mechanisms including, the Bloody Sunday Investigation; the Military Reaction Force Investigation, investigations emanating from the Boston College tapes and the On the Runs Review. We must fulfil our Section 35(5) duty to provide information to the Director of Public Prosecutions in an increasing number of cases including the recent and very public referral to the activities of the individual referred to as Stakeknife.

While we will continue to do our best, at present, we do not have the human resource capacity allocated to legacy to allow us to meet all these legally required duties at the speed that I would like. While resourcing levels are kept constantly under review, such is the scale of the demand a level of delay is almost inevitable. There are also almost 1000 cases for which there had been no Historical Enquiries Team review. These cases were due to transfer to the Historical Investigations Unit; a process that is now on hold due to the ongoing political impasse. But my statutory responsibilities do not require me to continue the work of HET; nor can I afford to take on the scale of this additional responsibility.

Instead, PSNI's Legacy Investigation Branch will use a Case Sequencing Model to bring to the fore those relatively small number of cases which have the greatest potential to bring offenders to justice, particularly those who continue to be involved in serious crime today. Progressing these investigative opportunities is entirely in keeping with our statutory requirements

The very cold reality is that criminal proceedings are increasingly unlikely in the vast majority of cases. While some cases will lend themselves to further progress through the judicial system, with forensic science providing the greatest chances of success, these cases are likely to be very few in number. I know this is difficult for many people to hear. But I would rather be honest than compound the hurt of so many people who have suffered so much.

As a human being, I want to be able to help all those who have suffered; I want to be able to provide answers to those who continue to have questions about what happened to their loved ones. But, as Chief Constable, I know that the holistic solution required cannot come from the Police Service. From where I sit, it is clear to me that the processes of law, including human rights law, can only do so much. They are not in themselves capable of healing the hurt caused by our conflict. It was for this very reason that I was so supportive of the range of institutions for dealing with the past which were outlined in the Stormont House Agreement. The proposals in that Agreement provided for a much more holistic approach to the past.

I fully accept that reaching agreement on this challenging issue is not easy. But, the current hiatus is unfair on everyone – unfair on grieving families and unfair on the public services of today who continue to pay a price in terms of budget and public confidence. I encourage our politicians to continue to talk and to try to resolve their differences and make progress on this challenging but critical issue. Finding a way to deal more roundly with our past is the greatest progress that we could make towards the safe, confident and peaceful future we all desire.

Conclusion

Having taken more than my fair share of your time this morning, I will draw my points to a close by repeating my belief that the basic principle of policing is protecting human rights; and human rights are an enabler of effective policing. I have no doubt that PSNI and the community we serve have benefitted tremendously as a result of the embodiment of human rights within policing.

As I said earlier, nothing worth doing is ever easy. Operationalising human rights requires constant effort; it is a job that is never truly complete; and therefore something to which we will never reduce our efforts.

SESSION ONE: REFLECTIONS ON THE HUMAN RIGHTS ACT IN NORTHERN IRELAND (CIVIL AND POLITICAL)

Brian Gormally, Director, Committee on the Administration of Justice (CAJ)



The Significance of the Human Rights Act in Northern Ireland

In October 2014, the Conservative Party published proposals in a document entitled “Protecting Human Rights in the UK: the Conservatives’ Proposals for Changing Britain’s Human Rights Laws” which proposed repealing the Human Rights Act (HRA) and replacing it with a British Bill of Rights. Although that document was widely criticised, the following commitment was included in the Conservatives’ Election Manifesto:

“The next Conservative Government will scrap the Human Rights Act, and introduce a British Bill of Rights. This will break the formal link between British courts and the European Court of Human Rights, and make our own Supreme Court the ultimate arbiter of human rights matters in the UK.”

Some sources expected that legislation to implement this pledge would be introduced quickly. However, the Queen’s Speech contained reference only to “proposals” on a Bill of Rights and the Background Briefing paper to the Speech included the following explanation:

“The Government will bring forward proposals for a Bill of Rights to replace the Human Rights Act.

“This would reform and modernise our human rights legal framework and restore common sense to the application of human rights laws, which has been undermined by the damaging effects of Labour’s Human Rights Act. It would also protect existing rights, which are an essential part of a modern, democratic society, and better protect against abuse of the system and misuse of human rights laws.”

It may be that the complexity of the proposals and the extent of opposition to the proposal to scrap the HRA, expressed between the election and the Queen’s Speech, prompted the Government to delay the

introduction of legislation. There was supposed to be a consultation published in the autumn. However, in December the consultation was delayed again, but for a potentially interesting reason.

UK Justice Minister Michael Gove confirmed that the long-anticipated bill of rights consultation had been put back until 2016 when he appeared before the House of Lords Constitution Committee.

“My original intention was to publish the [bill of rights] consultation before Christmas,” the Justice Secretary told peers. “It has now been put back. I expect it will be produced in the New Year.”

The delay, Gove indicated, was due to the possibility of “complex” constitutional changes involving the UK’s highest court which the Prime Minister had raised and which “requires serious thought”. The new issue, the Justice Secretary explained, was “whether or not we should use the British bill of rights to create a constitutional longstop, similar to Germany’s Constitutional Court, and whether the Supreme Court should be that body”.

We will comment briefly on the “German option” later, but for now let us just note that the discussion adds further uncertainty to the content and timing of the Government’s proposals.

Threat or Opportunity?

There are those who see the possible advent of a British Bill of Rights as an opportunity rather than a threat, both in terms of increasing the protection of rights in general and in opening up a space where a Bill of Rights for Northern Ireland, albeit limited, might be negotiated. At one level, whether this is so is a matter of political opinion. At another, however, it seems perfectly legitimate for a non-party political NGO to analyse the context of a political proposal and the terms in which it is being brought forward in order to assess the likelihood of it proving either a threat or an opportunity in terms of the protection of human rights.

In so doing, the first point to note is that “breaking the link” between the European Court and the British (i.e. UK) courts in itself would diminish rights protection. Below, we argue that the jurisprudence surrounding the Convention, not just its text, must be brought into domestic legal effect to amount to proper “incorporation.” However, the cutting off of UK courts from being able to “take account of” as well as contribute to European jurisprudence removes one route of effective protection of human rights. International oversight is, in itself, a way of controlling the unfettered power of the national state, particularly where parliamentary sovereignty is absolute; breaking the link between domestic courts and the European Court in itself reduces the effectiveness of that oversight.

Without going into detailed textual analysis, it is also possible to see clear threats to a proper system of human rights protections in the way the proposals have been argued. Against the universality of human rights is posed the concept of “British” values and principles, seen to be different and inherently superior to “foreign” or “European” impositions. Against the basic principle that human rights accrue to every person by simple virtue of their humanity, the proposals suggest that “foreign nationals” be treated differently and that rights are dependent on the proper exercise of “responsibilities.” Against the principle that everyone – even those declared enemies – are deserving of human rights protection is set the proposal that the ECHR should not bind the actions of British military forces overseas. This is a particularly sinister proposal in a week when the Prime Minister has asked the National Security Council to “stamp out” what he described as an industry trying to profit from soldiers. He said: “It is clear that there is now an industry trying to profit from spurious claims lodged against our brave servicemen and women who fought in Iraq.” This is nothing other than an attempt to attain legal impunity for murder and torture by UK armed forces.

In this context, the idea that proposals deriving from the present UK Government offer an opportunity to extend human rights protections flies in the face of both the facts and any sensible political analysis.

As regards a Bill of Rights for Northern Ireland, it is hard to see how knocking down one of the pillars of the Belfast/Good Friday Agreement brings an opportunity to erect one that has never been built. It is also hard to see anything in the present or foreseeable political configuration in Northern Ireland that would give one hope that the opportunity to contribute to debate on the content of a “British Bill of Rights” (or even a UK Bill of Rights) will forge the political consensus held to be necessary for a bespoke Northern Ireland element.

This is not to say that human rights activists do not have an obligation to fight for the best protection for human rights possible in any circumstances, including if the HRA is repealed and a new British Act is proposed. It is, however, to say that the first step in any human rights campaign is to prevent regression if possible which, in current circumstances, means opposing repeal of the HRA by all legitimate means.

Threat to the Peace Process

Constitutional issues are being dealt with by an eminent speaker in the afternoon, but I just want to make a few points. In relation to the “German option,” our initial response to this proposition is that it could well be a diversion from the basic impact of a repeal of the HRA. We also believe that there are some current misunderstandings about the German position. The first point is that the ECHR is actually incorporated in German law, as all treaties must be under the Constitution (the Basic Law) if they are to have legal effect. The repeal of the HRA would, of course, de-incorporate the ECHR as regards the UK. Second, the German Basic Law entrenches human rights similar to those of the ECHR and in some respects grants greater protection. There is no equivalent UK law and, if one were to be introduced, we doubt that it would enhance Convention protections. Third, the German Federal Constitutional Court has insisted that the judgements of the European Court must be used as an “interpretative aid” in respect of the Basic Law. Fourth, the only circumstances in which the Basic Law can override Convention rights are where the latter actually restrict the protections available. However, we await with interest the UK Government’s proposals.

One threat to the peace process comes because CAJ believes that repeal of the HRA would breach the Belfast Good Friday Agreement, even if replaced by a “British Bill of Rights” that might list Convention rights. The Agreement pledged to “incorporate” the ECHR into domestic law. It is our view that “incorporation” cannot just mean repeating the text of the ECHR (or most of it) in a UK statute. It also involves “bringing in” the institutions of the Convention and the jurisprudence developed by the Court and other Convention bodies. It is that link that the Government is explicitly committed to breaking. To repeal the HRA, without replacing it with legislation that would reference both the text and jurisprudence of the ECHR and provide for UK courts to be able to take account of, and contribute to, that jurisprudence would without doubt breach the Agreement and its supporting Treaty.

This would, of course, breach faith with the people of Northern Ireland (and indirectly with the people of the Republic of Ireland) and also with the Irish Government. The Agreement also commits to safeguards to ensure the Northern Ireland Assembly or public authorities cannot infringe the ECHR. Removing this safeguard takes away a significant pillar of the human rights architecture both of the Agreement and Northern Ireland society. It threatens the whole basis of trust in the new institutions that has been painstakingly built up since 1998.

In relation to other key provisions of the peace settlement the HRA 1998 is, for example, also vital to the framework for the human rights compliance of policing in Northern Ireland. One of the key functions of the Northern Ireland Policing Board, as set out in s3(3)(b)(ii) of the Policing (Northern Ireland) Act 1998, is to monitor compliance with the Human Rights Act 1998. The PSNI Code of Ethics, provided for under s52 of the same Act is also designed around the framework of the ECHR as provided for by the HRA 1998. Again, the full impact of this legislation involves both the letter of the Convention and its jurisprudence.

Another key area is the question of dealing with the legacy of the conflict in terms of unresolved crimes and human rights violations. This is not the place to delve into the highly developed and complex jurisprudence that has coalesced around the requirement on states to properly investigate cases of deaths and torture under Articles 2 and 3 of the Convention. It is enough to say that the leading cases came from Northern Ireland, that the entire debate around a comprehensive structure for dealing with the past has been conducted in terms of Convention rights and that the Human Rights Act has enabled UK courts to play a full part in the development of this ground breaking jurisprudence.



Coming back to constitutional issues, it is also our view that repeal of the HRA would engage the Sewell Convention that holds that the UK Parliament will not normally legislate with regard to devolved matters except with the agreement of the devolved legislature. A legislative consent motion by Stormont would therefore be necessary.

The Way Forward

Our argument can be summarised as follows. In spite of a possible partial retreat or delay in the implementation of the manifesto commitment, the current UK Government is committed to repeal of the HRA and its replacement by a British Bill of Rights of unknown content. The source and context of the proposals mean that they are a threat to human rights protection and it is extremely unlikely that any increase in protection will be possible in course of the process of implementation. The “German option” is a constitutional red herring. The proposals would breach the Belfast/Good Friday Agreement and the international treaty which backs it up. Repealing the HRA would also undermine basic elements of the rights-based governance

of Northern Ireland, especially with regard to the vital area of policing. The proposals would engage the Sewell Convention, requiring legislative consent motions in the devolved legislatures which, for varying reasons, are unlikely to be forthcoming. If the UK Government nonetheless presses on with their proposals, there will be a constitutional crisis which will threaten the United Kingdom as we know it.

Following the logic of this analysis, CAJ will help fight the repeal of the HRA in the following ways:

- If a consultation is published, make a robust contribution to the debate and encourage others across the UK and Ireland to do likewise
- Work with colleagues and allies across the UK with a view to defeating the proposals in the UK Parliament
- Work with colleagues in the Republic and directly to press the Irish Government and political parties to make clear their opposition to the proposals

- Work with colleagues in Northern Ireland to make the arguments against the proposals, covering all the issues raised in this paper, with a view to denying a legislative consent motion if a bill comes forward
- Continue to press for a “HRA+” Northern Ireland Bill of Rights

In general, we should maintain the importance of direct links between the UK jurisdictions and the regimes of international covenants ratified by the UK and work for incorporation where appropriate (e.g. the Convention on the Rights of the Child). In addition, when lobbying at any level we should use international treaties, especially those ratified by the United Kingdom, as settled law. They may not be directly justiciable in the courts, but they should be regarded as the established norm, the starting point and continuing guide for decision making in relevant areas by all public authorities.

We should remember that the foundation of our current society was the quintessentially political act, the exercise of self-determination, the act of constitution-making by all the people of this island in the simultaneous referenda on the Belfast /Good Friday Agreement. That act gives all of us, politicians and civil society, a mandate to move forward and neither time nor political disagreement can nullify it. The people spoke for a rights based society in 1998 and that mandate continues to authorise and empower our continuing struggle for that goal.

Niall Murphy, Solicitor Advocate/Partner, KRW LAW LLP

We are a society in transition from conflict to peace. This is a *peace process*, a movement toward peace and away from violence, and it is a process through which is woven a narrative of human rights. In our post-conflict society of transitional justice, ours is a state of exception in that its violent past determines its present and its future and the shadow of its past falls long.



- Our criminal justice system retains judge only courts for particular offences.
- Our judicial system retains the scars of conflict when lawyers and judges were targets in the conflict.
- The urban landscape and infrastructure, the peace walls and murals, reflect the past and the present, the concrete bunkered police stations, the water cannon, the armoured police vehicles and so forth.

And crucially from the perspective of a rights discourse, generally ours is a society of widespread economic and political disenfranchisement. These are aspects of the North of Ireland that politicians in Westminster are loathe to be reminded of. In Brussels and Luxembourg, the North of Ireland may appear at the margins, geographically, economically and politically but in Strasbourg, the North of Ireland has remained solidly at the forefront of much jurisprudential thinking regarding the responsibilities of individual member states and individual human rights.

Lawyers here, in addition to being under attack during the conflict, were at the forefront in using the ECHR on behalf of our clients and fearless in taking cases against the British government to the ECtHR in Strasbourg resulting in landmark judgments including *McCann and Others v UK 1995*, *Jordan v UK*, *Kelly and Others v UK*, *McKerr and Others, v UK and Shanaghan v UK in 2001*, *McShane v UK in 2002* and *Finucane v UK in 2003*.

Therefore, in a sense, even during the conflict, and most certainly post incorporation, the ECHR was an element of the narrative of rights discourse. Having being a signatory to the ECHR in 1950, Britain did not incorporate the Convention into domestic law through legislation until 2000 through the Human Rights Act 1998, fulfilling a Labour Party manifesto pledge having been in the political hinterland since 1979.

With the advent of a Labour administration at Westminster proclaiming a commitment to human rights and peace in Northern Ireland it was unsurprising that human rights would become part of the Good Friday Agreement 1998.

The Agreement is express in its commitment to human rights. For example:

“The tragedies of the past have left a deep and profoundly regrettable legacy of suffering. We must never forget those who have died or been injured, and their families. But we can best honour them through a fresh start, in which we firmly dedicate ourselves to the achievement of reconciliation, tolerance, and mutual trust, and to the protection and vindication of the human rights of all.”

“There will be safeguards to ensure that all sections of the community can participate and work together successfully in the operation of these institutions and that all sections of the community are protected, including ... (b) the European Convention on Human Rights (ECHR) and any Bill of Rights for Northern Ireland supplementing it, which neither the Assembly nor public bodies can infringe, together with a Human Rights Commission”

“The participants believe it 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.”

The ECHR was regarded as so important that the Agreement also committed the Irish Government to incorporate the ECHR under the “equivalence” provisions.

The Agreement, in addition to being overwhelmingly approved by referendum, in Ireland North and South, was also incorporated as a treaty between the UK and Ireland and lodged with the United Nations. Article 2 of the treaty binds the UK to implement provisions of the annexed Multi-Party Agreement which correspond to its competency.

Indeed, paragraph 2 of the Rights, Safeguards and Equality of Opportunity section of this Agreement states:

“The British Government will complete incorporation into Northern Ireland law of the European Convention on Human Rights (ECHR), with direct access to the courts, and remedies for breach of the Convention, including power for the courts to overrule Assembly legislation on grounds of inconsistency.”

This commitment was given legislative effect through the Human Rights Act 1998.

A core point in the Good Friday Agreement is the word ‘incorporate’. Section 2 of the Human Rights Act states: “Interpretation of Convention Rights” which in effect states that the Convention rights must be interpreted “taking account” of ECtHR jurisprudence and the positions of the other Council of Europe institutions.

It is this section that requires UK courts to “take account” of ECtHR judgment (not follow them as binding precedent) and it is that link that the British government is explicitly committed to breaking, which can only be considered as a dangerous assault on the Peace Process.

To repeal the Human Rights Act, without replacing it with legislation that would reference both the text and jurisprudence of the ECHR and provide for UK courts to be able to take account of, and contribute to, that jurisprudence would without doubt breach the Good Friday Agreement and its supporting Treaty.

As reflected in the extracts above the Agreement also commits to safeguards to ensure the Northern Ireland Assembly or public authorities cannot infringe the ECHR. Removing this safeguard takes away a significant pillar of the human rights architecture both of the Agreement and society in the North of Ireland and threatens the whole basis of trust in the new institutions that has been developed since 1998 and as such a repeal of the Human Rights Act would be in contravention of an internationally endorsed peace accord.

The inherent legal benefits of the Human Rights Act were most recently summarised in an application for judicial review brought by the Northern Ireland Human Rights Commission on the law on the termination of pregnancy in here. In this case the Commission sought a declaration of incompatibility as a 'victim' under s 7(2B) of the Northern Ireland Act 1998 which empowers it to take test cases in relation to human rights issues without having to fulfil the victim requirement in section 7 of the HRA. The Court held that the Commission had the power to bring test cases and to challenge Convention compatibility with legislation pre-dating 1998.

The judgment considers the position of the Convention in this jurisdiction, with Judge Horner reflecting that:

"[91] The Convention protects certain fundamental rights. The Court in Strasbourg made this clear to all those in Northern Ireland in 1982 when it ruled that the imposition of criminal sanctions on practising homosexuals infringed the Article 8 rights of Mr Dudgeon and others like him: see [1982] 4 EHRR 149. Despite this ruling Northern Ireland has not become a modern day Sodom and Gomorrah as some feared. Indeed, the removal of these criminal sanctions allowed and allows practising homosexuals to grow up and live and work in Northern Ireland and to contribute to its society without fear of prosecution or discrimination.



[92] When all the political parties signed up to the constitutional settlement which was enacted in the 1998 Act, they did so on the basis that one of the foundation stones of the new Northern Ireland was that its laws would be Convention compliant. This has had an effect on a number of different areas where there are strongly held religious and moral beliefs: e.g adoption – see Re G (Adoption: Unmarried Couple) [2008] UKHL 38.

[93] There can be no doubt that the Convention necessarily has had the effect of making Northern Ireland a more tolerant and liberal society, one that is more pluralistic and broadminded. Whether this is a good thing is not a matter for the Court. But it is one of the Convention's objectives. The Convention does not require anyone to give up his or her deeply held beliefs on certain moral or religious matters. It just means that in respect of certain rights protected by the Convention one section of the community, whether in the majority or not, is no longer able to deny to others whether by the imposition of criminal sanctions or otherwise, the ability to enjoy those protected Convention rights."

Through the Human Rights Act, the courts here play an important democratic and balancing role, taking into account the practical realities and effects of power-sharing in the other organs of government: *"There can be no doubt that the Convention necessarily has had the effect of making Northern Ireland a more tolerant and liberal society, one that is more pluralistic and broadminded. Whether this is a good thing is not a matter for the Court. But it is one of the Convention's objectives."*

Tolerance, liberalism, pluralism and broadmindedness – protected through the ECHR by the Human Rights Act – are values which are core to a society in a process of transition from conflict to peace and should be guaranteed without threat or replacement by an ideological instrument bounded by restrictive covenants on rights and the imposition of responsibilities on individuals. To repeal the Human Rights Act and to diminish the effect of the ECHR here, at this moment, part of the UK – and the Island of Ireland, would be to step back from the process of peace so hard fought for and so hard to maintain.

The Risks Prevalent in Dilution of a Human Rights Architecture

"The Terror Threat" As we know from the experience during the conflict when this jurisdiction was used as a testing ground for laws and policies in the counter-insurgency approach;

- Prevention of Terrorism Act,
- Diplock courts,
- internment and interrogation

In the years since 9/11 a new security agenda has ushered in a plethora of draconian measures to test the bounds of the Human Rights Act, which surely speak to the ever increased importance of maintaining safeguards to protect the citizen as a bulwark against the omnipotence of the State,

There is presently a hard edge to policing, be it through

- stop and search,
- surveillance under RIPA (Regulation of Investigatory Powers Act 2000)
- the use of informers/CHIS (Convert Human Intelligence Sources)
- the tension between policing and National Security (and the Security Services),
- Public Interest Immunity applications,
- Closed Material Procedures,
- the return of the Supergrass,
- pre charge detention limits and so forth.

The State strives to protect on the grounds of national security but its arguments to do so, do not often make good law – the repeal of the Human Rights Act would not only have political consequences for the constitutional arrangements under the Good Friday Agreement and the subsequent agreements, but would also remove as a legislative mainstay in the tool box of those charged with representing the interests of those brought before the courts in these cloaked circumstances.

I would like to address two specific matters which highlight the ongoing need for the Human Rights Act as a core protection for the rights of the individual.

Pre-Eminence of National Security post Devolution of Justice to the Devolved Institutions.

With the devolution of policing and justice powers in respect of this jurisdiction to a local assembly in Belfast, in 2010, the framework of the pre-eminence of national security was enshrined and protected through a series of Memoranda of Understanding and written protocols, not legislation. Most notably, however, there is no statutory definition of national security.

“The term ‘national security’ is not specifically defined by UK or European law. It has been the policy of successive governments and the practice of Parliament not to define the term, in order to retain the flexibility necessary to ensure that the use of the term can adapt to changing circumstances”

At the time of the devolution of policing and justice in April 2010, the British Government produced a protocol setting out ‘Handling Arrangements for National Security Related Matters’, and remarkably therein, sought to re-designate the entirety of the history of the previous 40 years of conflict as a national security matter.

“The NIO will retain ownership and control of access to all pre-devolution records ... DOJ officials will have no access to pre-devolution NIO records that relate to matters that remain the responsibility of the UK government, including records that relate to matters of national security”

The Protocol further set out that the UK Government will ‘determine what information pertaining to national security can be shared and on what terms’ with the devolved Minister of Justice. The Protocol is clear that it ‘is not legally binding and does not give rise to legal obligations’, yet it is a statement of policy intent to restrict the disclosure of information.

Similarly, an NIO Memorandum of Understanding with the Policing Board on National Security Matters, made it clear that the Chief Constable would not answer Policing Board questions which ‘indirectly touch upon’ national security matters if there is a risk of damage to the interests of this undefined concept.

In December 2014 agreement was finally reached on legacy mechanisms; after previous attempts to agree on how the past would be addressed had become log-jammed.

Significantly the Stormont House Agreement (SHA), a political agreement, included for the first time both governments as well as the parties to the devolved power sharing Executive.

Fundamental to this was that the Historical Investigations Unit (HIU) element, which the majority of families bereaved from across the community seek most, would be fully Article 2 compliant. This too included a public commitment by the UK government that they would provide full disclosure to the HIU.

However, as progress was made through the Stormont House Implementation Group (SHIG), which included the party leaders meeting weekly and when appropriate relevant agencies such as DOJ and the PSNI CC, the commitment to full disclosure appeared not to materialize.

The deliberate leaking of draft legislation that would ultimately put the legacy mechanisms on a statutory footing confirmed that the UK Government had inserted a ‘national security’ veto effectively torpedoing the entire legacy section of the agreement.

For their part the Irish Government, through Minister Charlie Flanagan, described this as a ‘*smothering blanket*’ and that it was completely ‘*unacceptable*’.

In preliminary observations following a country visit to the jurisdiction the UN Special Rapporteur on Truth, Justice, Reparations & Non-Recurrence, Mr. Pablo de Greiff said,

‘Although everyone must acknowledge the significance of national security concerns, it must also be acknowledged that particularly in the days we are living in, it is easy to use “national security” as a blanket term. This ends up obscuring practices which retrospectively, it is often recognized (unfortunately, mostly

privately), were not especially efficient means of furthering security. In particular, national security, in accordance with both national and international obligations, can only be served within the limits of the law, and allowing for adequate means of comprehensive redress in cases of breaches of obligations.'

The Fresh Start Agreement of 20th November 2015 however abandoned the legacy mechanisms; the core crux of this being the UK government's insistence of a 'national security' veto seeking to trump victims' rights to know the truth concerning the killing of their loved ones.

Key questions arise:

- why won't the UK government provide full disclosure, in compliance with international obligations, having initially committed to doing so?
- why would they have need to use a veto in killings carried out by non-state actors, as is the case currently concerning many of the 56 legacy inquests involving almost 100 deaths?

Indeed, the European Commissioner for Human Rights, Nils Müznieks noted as recently as last week, the fact that the European Convention on Human Rights has a particular resonance here, stating specifically with regards to national security:

*"I urge the UK government and other parties concerned to return to negotiations on mechanisms for dealing with the past in the Stormont House Agreement, including setting up the Historical Investigations Unit, as soon as possible. **Disagreements over the national security veto concerning disclosure of information need to be resolved.**"*

That this elusive and undefined concept was allowed to act as the catalyst to deny all victims of the conflict an Article 2 compliant resolution to their cases, is a disgrace, but that the only legal concept, providing them with a modicum of hope, the Convention, is also under attack, is a Kafkaesque farce.

Closed Material Procedure

An area of grave concern to lawyers concerned with the protection of human rights, is the recent growth of secret courts. Almost all criminal and civil matters are held in open court, which means that the press and public are entitled to be present, and where they might be excluded (for example where it is necessary to protect children) the impugned citizen and their legal representative are present to hear and challenge the evidence presented.

However, Part 2 of the Justice and Security Act 2013, which came into effect in July 2013, introduced fundamental changes to British law, in any civil case involving national security by creating an extraordinary alternative to the Public Interest Immunity (PII) procedure.

The 'Closed Material Procedure' (CMP), represents a '*carve out from basic principles of equality of arms and open justice*' by allowing courts to consider any material, the disclosure of which would be "damaging to the interests of national security".

The shifting dynamic behind the legislation was the response to the MI5/MI6 involvement in 'War on Terror' practices such as an 'extraordinary rendition' and orders for disclosure in civil cases, arising therefrom, most notably in the case of Binyam Mohamed, who was a victim of rendition.

The Justice and Security Green Paper cited the complex and long series of cases concerning Binyam Mohamed as a crucial event in the preservation of sensitive intelligence material. In February 2010, the Court of Appeal (CA) ordered that several paragraphs previously redacted from the Divisional Court judgment in 2008 should be restored and made part of the open hearing. On three separate occasions prior to the CA case the then Foreign Secretary of State, David Miliband signed PII certificates to suppress publication of the paragraphs of a Divisional Court reasoning that they contained summarised interrogation techniques used by the CIA against Binyam Mohamed.

The radical significance of CMP's from a rule of law perspective cannot be over-estimated, however infrequently Parliament's intention is, that it be used. Indeed, during the final debate in the House of Lords, Lord Brown, himself a retired Law Lord, and former Intelligence Services Commissioner, warned that the legislation involved such a:

“radical departure from the cardinal principle of open justice in civil proceedings, so sensitive an aspect of the court's processes, that everything that can possibly help minimise the number of occasions when the power is used, should be recognised.”

The intention of Parliament on review of Hansard was that this repressive anti-terror legislation, was the new world order response to the 'War on Terror'.

However, the facts of the matter in practice are somewhat different to the lofty Parliamentary intentions, and as is often the case, repressive measures are often invoked immediately in this jurisdiction to preserve the interests of the State in concealing their involvement in murder and other crimes. It is a fact that there are only 14 applications pending before ALL courts in the United Kingdom, yet 7 such applications are pending in Belfast High Court, and NONE of them relate to the War on Terror. Indeed, the first such application for CMP in this jurisdiction was made in respect of a civil case taken by the parents of children, who were subjected to unlawful searches having been removed by armed police from a bus travelling from a republican commemoration in Dublin, back to Belfast, a circumstance, it should be noted, which did not involve the role of MI5/MI6 and the modern war on terror...

Notice that an application for a Closed Material Procedure will be applied for, was received in our office on 21st May 2014, by the Ministry of Defence in a civil case being taken by a lady, Margaret Keeley, who is suing the PSNI Chief Constable, the Ministry of Defence and Frederick Scappaticci, for the latter's arrest and detention of her in the 1990's whilst an agent of the MOD in the Internal Security unit of the IRA.

Mrs Keeley is seeking disclosure as to confirmation of her suspicion that Freddie Scappaticci was working as an agent of the State, whilst conducting her interrogation as an IRA officer into the circumstances of a perceived botched IRA operation, involving Mrs Keeley's husband, Peter. There has been widespread media speculation that Mr Scappaticci is an infamous army agent code-named Stakeknife, responsible for the infiltration of the IRA and murder of many IRA members, whilst in situ as the head of internal security. Indeed, the concern, is that the authorities are feigning national security in circumstances where the actual agents are self-disclosed and publicly known, just to frustrate the litigation.

The full CMP hearing in Ms Keeley's case is listed for later this year, but whereas this is an application made by the Secretary of State, it has fallen to the Plaintiffs to cajole the determination of the applications to ensure justice is not further delayed, for example, the appropriate security logistic arrangements have not even been implemented yet, nor have the full team of Special Advocates required been appointed nor is there a secure safe location identified to store the documents, which was to have been resolved by October 2015, but still remains extant.

Conclusions

The proposed repeal of the Human Rights Act 1998 is a retrograde step of cataclysmic proportions, not only for those seeking truth recovery and accountability in accordance with Article 2 of the Convention but for all those concerned with open government and accountability.

It should be recalled that the Convention was drafted by British lawyers, some of whom prosecuted at the Nuremburg Trials, determined to spare Europe from the horrors of communism and fascism. Indeed, one of the draftsmen of the Convention was David Maxwell Fyfe who was also a Conservative politician. When he worked on the European convention in the late 1940s, he and other European conservatives disposed of early drafts that mentioned the rights of workers, nor does it mention shelter or free education and healthcare. It is not a radical left wing, liberal document.

In a celebrated speech in 2009, the late Lord Bingham listed the liberties the European Convention protects.

- The right not to be tortured or enslaved.
- The right to liberty and security of the person.
- The right to marry.
- The right to a fair trial.
- Freedom of thought, conscience and religion.
- Freedom of expression.
- Freedom of assembly and association.

“Which of these rights, I ask, would we wish to discard? Are any of them trivial, superfluous, unnecessary? Are any them un-British?”

It has been observed that such a step would set the clock back 50 years, and one can only consider the wolfish delight with which Russia, Turkey, Hungary and other authoritarian states will greet a repeal of the Human Rights Act. They will say that if Britain no longer enforces the European Convention, why should they? It would appear that the current British Government considers that the rights of those bereaved as a result of its illegal policies, are trivial, superfluous and unnecessary.



KEYNOTE SPEECH - AFTERNOON

Professor Christopher McCrudden, Queens University Belfast

The Constitutional Significance of The Human Rights Act in Northern Ireland



I'm particularly conscious speaking in this room of having Inez McCormack looking very directly at me and no doubt thinking deeply about these questions still as she did in the past.

So this is going to be a very boring talk because it's going to be quite technical. And the reason why it's going to be quite technical is because others can much better do the pyrotechnics about how awful these proposals might be and I'm not going to do the rhetoric, I'm going to do simply an analysis that is partly political but mostly legal. That's where my expertise lies. Eventually by the end of the talk I'm going to be suggesting various legal routes that Patricia has encouraged me, among others, to talk about.

These issues are complex, they are contested (and I'm talking legally not just politically) and the outcome of any of the interventions that I'm going to talk about is by no means certain. If these things were easy then we wouldn't have needed to come together today to talk about them. It's because they're complex and having spent the last few weeks thinking about these, a lot more complex than I'd originally thought.

So the genesis of this talk is because before I was asked to talk to the Human Rights Consortium (and I'm delighted to do so) I was asked along with Gordon Anthony, who's also a professor at Queen's, to give evidence today to the Sub-Committee of the European Union Committee in the House of Lords which is looking at the implications for the EU and Britain's involvement in the EU of the repeal of the Human Rights Act.

And they requested evidence because they wanted particularly to focus on the implications for Northern Ireland of the repeal of the Human Rights Act. So we've just finished that session. We gave both written and oral evidence to the Committee. You'll be able to see that obviously on their website which will give you perhaps an insight into the degree of sympathy that the Committee expressed to most of the points that we were making. I think it would be a very interesting report.

The chair of the committee is Baroness Helena Kennedy, that some of you will know, and a respected figure in both human rights practice and law. And I suspect that the report will be well worth reading for those in the room. So that's by way of preliminaries. I'm now going to do the boring bit which is going through the technicalities before I can come to the questions about legal interventions.

So let's start at the very beginning which is the basis for the protection of human rights in general in Northern Ireland. And essentially what we have is a multi-layered approach. So we have common law protections and we have ordinary statute.

We have what might be considered constitutional arrangements; particularly the Human Rights Act, the Northern Ireland Act. We have EU law and we have the European Convention on Human Rights. Those are all layers. And, as typically happens in the UK constitutional context, none of those ever goes away.

They are all layered on top of each other. So one of the complexities is 'what's the actual relationship between these different layers?' and 'what happens if one of the layers is taken away?' And that's by no means a simple question.

Now getting into one of the major questions, in the Northern Ireland constitutional context "human rights" in quotes (and all of these terms are going to be in quotes,) "human rights" is neither an excepted nor a reserved matter, with certain exceptions that we'll come on to.

What that means is that neither Schedule 2 of the Northern Ireland Act, which basically sets up the Northern Ireland Government, which deals with excepted matters nor Schedule 3 which deals with reserved matters mention human rights, save where there is an explicit mention of the European Convention on Human Rights that I'll come back to.

So the principle of the Northern Ireland Act is clearly set out in Section 4.2 and that is that a transferred matter (matters that are transferred to the local assembly) means any matter that is not an excepted matter or a reserved matter.

So the conclusion is pretty simple and that is that the Northern Ireland Assembly has power to legislate in respect of human rights as a transferred, that is a devolved, matter. From that point of view the constitutional status of human rights is that it's a devolved matter.

Now, that interpretation is supported by various bits of other parts of the Northern Ireland Act that I won't bore you with but for example it's included and implied by the Assembly's Standing Orders which talk about the Assembly receiving reports from the Human Rights Commission (Les is here) which can deal with human rights matters and so there's a clear implication that the Assembly has jurisdiction over human rights as a devolved matter.

Now although "human rights" (quote, un-quote) are devolved and the Assembly is empowered and indeed obliged to act to observe and implement the European Convention on Human Rights, the Assembly and Northern Ireland ministers are disabled from amending the Human Rights Act 1998.

So it has jurisdiction over human rights broadly defined but it does not have jurisdiction over the Human Rights Act. And why is that? Because Section 71 of the Northern Ireland Act provides that the Human Rights Act constitutes an entrenched provision, meaning that it can't be modified by an Act of the Assembly or subordinate legislation made by ministers.

So I'm going to be dealing in some greater detail with the Northern Ireland Act and the relationship with the Human Rights Act but just before we leave the protection of human rights in Northern Ireland broadly, there are of course extremely important ordinary (let's put it that way) statutes that apply. That is non-constitutional type statutes.

And of course in the area of equality and non-discrimination in particular. So fair employment and treatment order etc, etc. So there is a whole slew of ordinary legislation that applies in the human rights context as well and we're all pretty familiar with that.

Now just before getting on to some of the more technical questions let's just complete the map by adding in one extra dimension to the arrangements and that is that there is a further provision of the Northern Ireland Act that is of relevance to the protection of human rights that doesn't immediately appear to be of relevance and that is that the Northern Ireland Act as it was amended to give effect to the St. Andrew's Agreement provides in Section 28a that there's going to be a Ministerial Code, there's a Ministerial Code.

And the Ministerial Code is the kind of thing that everybody, apart from rather nerdy lawyers, jump over, but actually it's quite important and it's important because ministers are required to act in accordance with that code. So the Northern Ireland courts for example have held those provisions in the Code to be legally binding and judicial review not infrequently takes place holding ministers to account for breaches of the Ministerial Code.

Why's that relevant? Because the Ministerial Code includes a requirement on ministers to (quotes) "uphold the rule of law". "Uphold the rule of law". Now why's that relevant? Because there's uncertainty as to whether the rule of law in this context includes the rule of international law but arguably it does. And therefore, if that interpretation is correct, there's an obligation on ministers in the Executive to uphold international law including international human rights law obligations.

Now that argument has not been put directly to the Court, I don't know what would happen, but interesting question. And interesting because it comes back to an issue later on that I'll mention about the importance of the Ministerial Code. I don't want to overstate that point about international law.

There has been litigation about the use of international law so that for example the Court has held that if a minister states that he's taking international law into account then that decision can be reviewed if it's contrary to international law. In other words, if he says he's taking international law into account, that he's acting in accordance with it, then it can be reviewed if it turns out in practice that he can't.

Let's turn to particularly the protection of human rights under the European Convention on Human Rights and under EU law and of course those are two separate sets of legal obligations. The European Convention on Human Rights being the bit that sort of supports the Human Rights Act; European Union Law now importantly with legally enforceable Charter of Fundamental Rights.

So you have two, as it were, European based rights protections under the ECHR and under the EU Charter of Fundamental Rights. So I'll talk about the extent to which the operation of those is different in Northern Ireland as opposed to the rest of the United Kingdom.

But before I do that of course, the point is very well worth making that, although the genesis of the ECHR in Northern Ireland was the Good Friday Agreement (a point I'll come back to in a minute) the working out of how it should be imposed in Northern Ireland was very much based on the devolution model that applied in Scotland as well.

And so many of the respects in which the ECHR plays out in Northern Ireland is very similar to the way that it plays out in Scotland and Wales; particularly Scotland. But I'm not going to dwell on those similarities instead I'll concentrate on the differences, cause the differences then gave rise to interesting questions.

How's it different? It's different in three respects. Some more important than others. The first is what I'll call a functional difference. The second is a procedural difference. And the third is in terms of its status in international law.

As regards the functional differences; people in this room will know better than I do that the ECHR has played a critical role in the most recent Troubles in Northern Ireland. From the early days in the 1960s when it was used by people in this room among others as a method of challenging religious and political discrimination, way back in the late 1960s, through to the descent into violence when it was used heavily in the context of controlling the security forces, through into the transition when it's being used as an important mechanism in the context of dealing with the past. So there's a functional difference. Those kinds of issues don't arise in the rest of the United Kingdom. Not in the way that they do here.

Procedural differences, the second set of differences, concern the operation of the ECHR in Northern Ireland, and in most respects those relate to the particular role of the Human Rights Commission. So the Human Rights Commission in Northern Ireland has a status and a role that differs in terms of the ECHR and the Bill of Rights in Northern Ireland from the rest of the United Kingdom. And Les will know that better than I do and can speak to it.



But those are important differences, so that for example it enabled the Commission successfully to challenge Northern Ireland's abortion laws in a way that it wouldn't necessarily have played out in exactly the same way in the rest of the United Kingdom.

The third difference is the international law difference and that concerns the status of the ECHR as part of the Belfast/ Good Friday Agreement where the protection of rights has dimensions that are internal to Northern Ireland and external to Northern Ireland. So the important point here is that the Belfast /Good Friday Agreement not only constitutes a peace agreement between the contending communities in Northern Ireland. It also comprises an international agreement between the Republic of Ireland and the United Kingdom.

So the Agreement that you'll be familiar with as much as I am includes in various places a commitment by the British Government, quoting Section 6 of the Agreement, 'The British Government will complete incorporation into Northern Ireland law of the European Convention on Human Rights with direct access to the courts and remedies for breach of the convention, including power for the courts to overrule assembly legislation on grounds of inconsistency.'

Now there are lots of international agreements that many, many of us have read where you get more fudge than you do clarity. This is one of those relatively unusual international agreements that is absolutely clear. It says the British Government is committed by the Agreement to introducing the European Convention of Human Rights into Northern Ireland law, giving remedies and allowing breach of it to be enforced by the courts. Full stop. So the human rights provisions included in the devolution arrangements in Northern Ireland are therefore, unlike those in the rest of the United Kingdom, underpinned by this international agreement between Ireland and the United Kingdom.

Now, how far those obligations as international law obligations protect the different parts of the Human Rights Act is up for debate but as a minimum, I would have thought, I would (as lawyer's say) I would submit, it would appear to require at least that if Westminster did repeal the Human Rights Act, it could

continue to meet the UK's international obligations under the Agreement only by providing at the very least that Convention rights would continue to be justiciable in Northern Ireland courts.

Ok, so, come back to that point in a minute before I do let's just complicate the issue further and think about the EU Charter of Fundamental Rights in Northern Ireland. What you'll see emerging in the context of the debates over the next year is increasing argument by some that the EU Charter of Fundamental Rights can simply replace any vacuum caused by the repeal of the European Convention on Human Rights in domestic law, and to some extent that's true. In the context of the implementation of European Union Law the EU Charter of Fundamental Rights is enforceable in domestic law and in the context of implementation of EU law provides very much, if not more human rights protection than the European Convention of Human Rights does.

The major limitation of course is that it has to be in the context of the implementation of European law, and, in terms of the functional differences that the ECHR plays in Northern Ireland where many of the issues that come up relate to the Troubles, very few of any of those areas are directly within the implementation of EU law scope, so from that point of view, yes, the European Charter of Fundamental Rights can play a role, but can it fill the vacuum caused by the repeal of the Human Rights Act? No, it can't.

It does however have the rather intriguing effect that of course were the Human Rights Act to be repealed, lawyers, like myself, will be arguing to the Court that as many areas as possible fall within the area of the implementation of EU law. Those will be contested and they will lead to litigation, and they will lead to appeals. So, if the British Government thinks that by repealing the Human Rights Act they are going to minimise litigation they may think again, because this is going to increase litigation rather than decrease it, because lawyers like myself will relish the opportunity to be able to make points as to the operation of the EU Charter and those will all be good points. They will not be rubbish points, they will be good points and they will be subject to litigation.

So that is the simple bit. We've talked about the protection of human rights in general, we've talked about the protection under the ECHR and we've talked about the protection of human rights under the EU. The role of the Charter, yes, has a role to play but can't fill the vacuum.

Ok, let's get to the complicated bit. What can anybody do about all of this? One question that arises and, I hope that you feel I haven't rushed through this too much. I'm going to now slow down the pace a bit. Much of what I've said I hope is relatively familiar to you, but I'm now going to slow down the pace. Who has to consent to the repeal of the Human Rights Act?

There is a convention and it's called the Sewell Convention which governs ostensibly at a political level, the relationship between Westminster and Whitehall and devolved administrations.

This convention in broad, very broad terms, says that if the UK Government is about to do something in devolved areas, it has to seek the agreement of the devolved administration. That's the Sewell Convention. You've heard a lot more about it in the Scottish context because the Scots have now taken it very seriously indeed. You've heard less about it in the Northern Ireland context, but, you will hear a lot more about it in the next year or two years, I suspect.

So, to the extent that the Sewell Convention operates it would mean that Westminster would have to seek permission, agreement from the Northern Ireland Assembly, for legislating in the area of human rights. We've seen, remember, that human rights is a devolved area. So, the question then would be, well, would a Legislative Consent Motion (which is what the technical phrase is); would a Legislative Consent Motion be forthcoming from the Northern Ireland Assembly? Ok, so everybody got the picture. The picture is if they want to repeal the Human Rights Act, do they have to seek the permission of the Northern Ireland

Assembly to do so, in so far that it affects Northern Ireland? If they don't seek that permission and just run rough shod over it, can anything be done about it?

Now, here's where it becomes really complex, and, there are various areas of complexity. One question is what exactly is the Convention? What exactly is it? And to put it simply there is a broad reading of the Convention and a narrow reading of the Convention. The broad reading of the Convention is essentially that anything that Westminster does that touches on devolved areas broadly defined, the Northern Ireland Government has to consent to it. The narrow reading is that it's only where the legislation, the Westminster legislation, touches on directly devolved issues, that are specifically directly devolved to the Northern Irish administration, does Westminster have to seek agreement. So that's one complexity: 'What exactly is the Convention?'

The second complexity is: 'What exactly (coming back to the question) would the British Government be doing if it repealed the Human Rights Act?' The complexity there is that, whilst the human rights area is devolved, the Human Rights Act is excepted, and so, if it is an excepted matter, the Northern Ireland Assembly has no jurisdiction over it, and therefore, repealing the Human Rights Act gives rise to no breach of the narrow understanding of the Convention, because, the Northern Ireland Assembly didn't have any right to legislate in the Human Rights Act area anyway, and so repeal of it therefore, can't be in breach of the Convention, that's the argument.

So, I'm sharing this with you because it emphasises my initial point that this is not a simple area, there is no clear cut answer to this. So, there's a question therefore over the operation of the Sewell Convention.

Now, I'll come back to the legal implications of that in a minute, but, let us assume that the British Government did decide that it did want the permission, the approval of the Northern Ireland Assembly, would it get permission from the Northern Ireland Assembly, would it get a Legislative Consent Motion? There the answer is, I suspect pretty clear politically, that they would not get a Legislative Consent Motion. Why? Because a Legislative Consent Motion would, I suspect, immediately be subject to a Petition of Concern in the Assembly. As you know, if I think it's thirty plus MLAs sign a petition of concern (which is not that difficult to get) then any legislation or any approval by the Assembly is subject to a weighted majority by both blocks, by the Unionist block and the Nationalist block. So that forty percent of both blocks sitting and voting, present in the assembly and voting have to agree.

Given the current state of politics on human rights, it's likely; first of all, that there would be a Petition of Concern, and second of all, that you would not get forty percent, at least of the Nationalist block voting in favour of the repeal. So, my judgement, political judgement would be that it's highly unlikely that there would be a Legislative Consent Motion. That's why the question of what happens if the British Government overrides the Sewell Convention comes back into very central area of debate.

Now, there are all kinds of additional complications, which I won't get into, we can get into it more in discussion and debate afterwards if the issues arise.

So, let us turn to the question of, imagine that there is a repeal of the Human Rights Act, with or without acceptance by the Northern Ireland Assembly, what could the Northern Ireland Assembly then do? And what I've said earlier on or hinted earlier on, is that if the Human Rights Act is repealed for Northern Ireland, the Northern Ireland Assembly would have the right, because human rights is a devolved matter, to come back with a replacement of the Human Rights Act.

So, it would have the right to come back and would be empowered to replace the Human Rights Act with another Human Rights Act, but (and it's an extremely big but) but, it would not have the power, probably, to impose of itself obligations under the Human Rights Act, that it imposes, because, the powers of the

assembly and of the Northern Ireland ministers are not devolved matters, they are excepted or reserved. They would not therefore have the power to self-impose the Human Rights Act upon itself. That's one possibility.

The other problem, and it's a much more major problem, is that the Northern Ireland Government in enacting a Bill of Rights for itself, would not be able to impose a Bill of Rights on, let's call them UK public authorities.

So let's think of the Ministry of Defence. The Northern Ireland Government has no jurisdiction imposing human rights obligations on the Ministry of Defence. There is a possible way forward of course which is, ironically, that the assembly could seek the approval of the Secretary of State to legislate to include the Ministry of Defence in their new bill of rights. That's of course; deeply ironic because, you'd be going back to exactly the minister who repealed the Human Rights Act in the first place, asking for permission to include all the bodies that the minister wanted to exclude in the first place, that's probably not going to happen.

Ok, so, we are in the potential for, how can I put it technically, a hell of a mess. So, what can be done about it? Well, as a lawyer, I think immediately of legal remedies. There are of course lots and lots of political activity, you're as familiar as I am, if not more so, in terms of what might be done politically. I've pointed out for example there are various places where a political block can be imposed. For example, in terms of the Assembly, obviously in terms of Westminster etc. etc. I'm going to leave aside the political stuff and just get to the legal stuff. So, what can be done?

There are three possibilities, let's put it this way, let's talk first of all about the possibility of domestic litigation; secondly, we'll talk about the possibility of European litigation; and third I'll come to the point about international law litigation.

Now, in terms of the possibility of domestic litigation, there is a sort of extreme argument, which I'm not going to buy (but which never the less you should know about), which says there is sufficient dicta, sufficient opinions that are sort of floating around in various bits of various cases by the Supreme Court, that indicates that maybe on a good day, if they're really really fed up, they might find legislation to be incompatible with the rule of law.

This is in a case called the *Jackson* case. The *Hunting Act* Case, which raised a question under the Parliament Acts. Don't hold your breath. Yes, there are dicta of that kind, yes, maybe in the most extreme circumstances where Parliament decides to abolish elections, then the Supreme Court might step in, but, it's not going to step in on something like this.

Would it be possible, the second area of domestic litigation, would it be possible to challenge a Northern Ireland minister's decision to bring forward a Legislative Consent Motion? Right, so, you remember if a Legislative Consent Motion is necessary, and if a Northern Ireland Minister attempts to bring forward a Legislative Consent Motion, can that itself be contested? The answer is maybe. Why? Because, under the Ministerial Code, there is an obligation to uphold the rule of law. What does the rule of law mean? Well, does it involve the rule of international law? Does the rule of law involve upholding human rights and furthering them rather than rolling back on them? All of those kinds of question, that's the stuff of litigation.

The third kind of issue in terms of domestic litigation; what about non-compliance with the Sewell Convention? Let's say that the British Government decides that it's going to override the Sewell Convention and that it is not seeking therefore permission or agreement from the Northern Ireland Assembly, what can be done then? Well, the sort of the classic wisdom is, among academics, that the

conventions of the constitution are not lawfully binding. They are binding in politics only. That's the understanding.

However, one question that arises and I'm going to sketch this out and we can talk about it again in more detail, colleagues here, who I'm going to be teaching with, that I've got the pleasure of teaching with, may also want to pitch in at this point. There is a doctrine under judicial review of administrative action that talks about legitimate expectations, that is; if there is a legitimate expectation that a public body will do "x" and someone relies on the basis of that expectation, then that expectation is enforceable against the public body. I'm summarising an extremely complex area of law in one sentence. Those that are familiar with it will realise how much simplifying I'm doing here. Nevertheless, the interesting and intriguing question arises, would it be possible to take a judicial review of UK Government ministers for failing to comply with the Sewell Convention, because, it raised a question of legitimate expectations which had not been fulfilled?

Now, that would be an interesting case. There is an intriguing Canadian Supreme Court decision, how many of you thought we'd be talking about Canadian Supreme Court when you walked in innocently at the very beginning of the day? So this Canadian Supreme Court decision is intriguing because it raises almost precisely the same issue that I'm talking about. So remember when there was the remaking, as some of you will, of the Canadian Constitution in the 1980s and Canada sought to implement a charter of rights, and, it had to go through this procedure of officially being given permission to do it from the UK, for some bizarre reason that we don't need to get into. So, there was a 'repatriation,' as it was called, of powers from the UK to Canada to do this. The issue arose as to whether the Canadian provinces had to be consulted under a constitutional convention. Sounds familiar?

So, the question was that the Canadian Supreme Court then had to decide whether they would give this kind of argument any kind of legal basis, would they even hear the case? Because remember, this is a constitutional convention and traditionally constitutional conventions are not matters for the court. Interestingly, the Supreme Court of Canada had its cake and ate it. What it did was it said, well we're going to hear the case and we're going to decide whether there is a constitutional convention but we're not going to make it legally enforceable. Now, of course the Supreme Court of Canada knew precisely what it was doing, and what it did was, once it decided that there was a constitutional convention, the political weight of that decision meant that the Canadian Government could do little else other than consult. So, it actually got its way. That's what I meant about having its cake and eating it. It avoided giving legal effect, legal enforcement to the convention, but, it never the less decided what the convention was. So, these are very intriguing areas that if it comes to it, I suspect, will get into court.

Let's turn to European litigation possibilities. Well, one possibility is, of course either an interstate case, I think of Ireland or an individual application to the European Court of Human Rights under Article 13, saying that there is no adequate domestic remedy. That for many purposes at least, the ECHR being implemented through the Bill of Rights, through the Human Rights Act constituted the basis for the UK's obligation under Article 13 to provide a domestic remedy. If you repeal that without substituting something equivalent then you're in breach of Article 13.

Different argument under EU law, which is that, there is provision in the European Treaties for what's called 'upholding the rule of law' by member states. Now, you remember, you probably don't, but you should remember that all new member states of the European Union are required to be members of the European Convention of Human Rights. We have never yet faced the situation where an existing member who came in before that requirement now exits the European Convention, because, nobody contemplated it. The question arises however, as to whether there is a breach for the requirement to

uphold the rule of law by a member state now exiting from the Convention. OK, two issues under European.

Let's turn to international law where I have to say the position is a lot less interesting and the conclusion will be essentially that I'm very sceptical as to whether there is an international law remedy, even though I believe that there would be an international law breach. Why? So, the immediate thing that international lawyers would look to is whether there is a compulsory jurisdiction as it's called in the International Court of Justice.

Essentially there is a compulsory jurisdiction, that is to states that are in dispute with each other over a matter of international law, can go to the International Court of Justice even though one of the parties doesn't want to do it. That's what it means about compulsory jurisdiction.

So, there is a compulsory jurisdiction where both of the parties, in the case the United Kingdom and Ireland, have agreed to the compulsory jurisdiction. So, there reciprocity, but, so that's all good.

Another good thing is that the Good Friday Agreement/Belfast Agreement has been formally registered in 2000 to the United Nations. So, it indicates a desire to be legally bound, but, Ireland, in its agreement of the compulsory jurisdiction to the International Court of Justice put in a caveat and the caveat was that it did not accept the compulsory jurisdiction of the court over any matter or any dispute arising between the United Kingdom and Ireland over Northern Ireland; which seems to rule out, as far as I can read it, if there are other international lawyers in the room, it seems to me to rule the compulsory jurisdiction of the International Court of Justice over the implementation of the Good Friday Agreement. That's my reading of it. I'm persuadable otherwise, but I can't quite see around it.

Where we are is, there's a mess potentially. We don't actually know what the proposals are. Clearly we're in a position of trying to second guess what might happen, clearly also Whitehall is going to be alerted to all these arguments. That's the disadvantage as it were, because, once you alert people to them they are likely to be able to circumvent them, that's the danger of going public, but, that's important for the debate.

So, there's the potential for a hell of a mess. Is there the potential for legal remedies? Possibly, both in the domestic context and the European. I've thrown a lot at you, my apologies, it's not my fault. I feel a bit like the old Greek messenger who was killed for bringing the bad message. My apologies for trodding through a complex area and I look forward to the conversation afterwards. Thank you.

SESSION TWO: REFLECTIONS ON THE HUMAN RIGHTS ACT IN NORTHERN IRELAND (SOCIAL AND ECONOMIC)

Margaret Kelly, Director, Mencap



Good afternoon and thank you for giving me the opportunity to speak about the issue of human rights and human rights infringements for people with a learning disability. And why the Human Rights Act is actually important to an organisation like Mencap and why we want to see it remain in place.

Mencap is the voice of learning disability. We are the charity who works with people with a learning disability and we work to ensure that they are listened to, valued and included. And we have a vision where people with learning disability live ordinary lives, in ordinary houses, as part of ordinary communities where they are absolutely involved. But, unfortunately the reality for many people with a learning disability is really very different from that and quite often they are both unseen and unheard and making that voice heard is a key part of our role.

There are 1.4 million people with a learning disability in Britain and Northern Ireland, 33 thousand people with a learning disability in Northern Ireland locally, 13 thousand children and young people who are under 18 with a learning disability and every single week in Northern Ireland two babies are born with a learning disability.

So as we have better medical intervention and as we are more able to help babies live then we have a growing population of people with a learning disability so their rights and their involvement and their inclusion in our community actually is a growing issue, rather than one that is going to go away.

I would suggest that in our current context that the rights of children and adults with a learning disability actually remains significantly behind those of many other groups and I have actually worked in the charitable sector for twenty-five years and I have worked primarily on families' and children's issues and families' and children's rights and I have to say I still find it shocking some of the infringements that both children and adults with a learning disability have to face.

Some of the main human rights issues for us are access to education including early years, child minding and day care. I think there's probably not a parent in the room who wouldn't talk about our absolute lack of childcare in Northern Ireland.

But if you add to that the needs of the child with the learning disability, maybe a child who has serious developmental delay, who can't walk, who can't talk, then actually finding child care so that you can go out to work or so that that child can grow and develop is really difficult and it is a hugely significant problem.

We at Mencap offer a local service but that's a very limited service for around sixty children and most parents, particularly parents in rural areas absolutely struggle with that. Access to education is a huge issue for children with a learning disability and not just simply attending an educational establishment but actually reaching their full educational potential. Children with a learning disability are eight times more likely to be excluded from school than other children.

I'm going to focus in one of my case studies on access to health but it is a hugely significant issue with major infringement. Access to employment and financial independence.

Young people with a learning disability are 3 times more likely to be NEET (Not in Education, Employment or Training) than any other group of young people and actually something else that I want to focus on is access to family life and personal relationships, to marriage, to independence, to children. And also then what happens to older carers who have adult dependents with a learning disability and as they get older and, we have a huge hugely significant problem with this in Northern Ireland, as they get older and they are still caring for their adult dependents and they are maybe in their seventies or their eighties then where is the access to care that allows those people to step back from that role.

Those are the kinds of very practical infringements for Mencap where we offer advocacy and support and where we require the kind of framework that the Human Rights Act gives us to actually mount challenge to achieve change.

So my right to family life; I'm going to give you the example of Sarah who is thirty-four and who has Down's Syndrome and who lives with her family and who has a huge amount of family support and who wanted to marry her fiancé Thomas and Thomas was thirty-eight and Sarah's family were very much in support of her marrying her fiancé, Thomas's family were very much in support of them getting married and they had had a very clear conversation about what that meant but to get married they had to pass the mental capacity test through adult social services and unfortunately, on that particular occasion, the assumption was made that they had to prove mental capacity, rather than assuming that Sarah and Thomas had that capacity, that they had to prove it before they could get married and they were refused permission to get married.

So they worked with Mencap, we worked with the local authority, they took a legal challenge and eventually that was changed. I work, as part of my role, with our youth group in Northern Ireland. There are quite a number of those young people in their mid-twenties who want to get married, who are in relationships and who want to get married and see it as their right to a family life and to personal life.

And I consider as we go forward and attitudes do change and people with learning disabilities do push those boundaries of what is acceptable, that will be a growing issue. The other side of that has been that parents with learning disabilities are fifty times more likely to have their child taken into care than other parents.

And at Mencap we have set up Parent Pioneers to work with parents, to work with social services, to support them to enable them to keep their children. Both those are some of the most fundamental rights that are still very much open to legal challenge that we think require the framework and the context of the Human Rights Act to address.

In Mencap we've been running a campaign called 'Death by Indifference' and there has been some recent coverage of it, particularly around 'Do Not Resuscitate' orders. There are twelve hundred adults with a learning disability who die prematurely every year. Once you've taken into account the disability, adults with a learning disability, if you're a woman are likely to die twenty years prematurely, if you're a man thirteen years prematurely.

Primarily due to delay in diagnoses, delay in treatment, a lack of understanding by many healthcare professionals around the needs of people with a learning disability or how to communicate with them or how to actually give treatment in a way which that is acceptable or how to work with families.



The inappropriate use of 'Do Not Resuscitate' orders, so we've had a number of advocacy cases in Mencap where 'Do Not Resuscitate' orders have been put on both children's files and adults' files and the assumption has been made about their quality of life that it's not worth resuscitating in the event of a medical emergency and the requirement to discuss that with families, the requirement to ensure that that person gets the treatment they need has been ignored.

So again for us, some of those most basic fundamental human rights that we think the Human Rights Act gives us the protection to actually enable us to take forward. We have argued that actually there is an institutionalised response by the NHS to people with a learning disability and in fact we need training and information for all health professionals to help them understand those needs and to help them put in place the kind of plan and action that will mean that when someone goes to A&E who has a learning disability they can expect the same quality and level of care as any of us who go through that door.

The final issue just that I want to touch on, and there are actually quite a number of issues for us related to the Act, well actually I'm just going to touch on two. I'm going to touch on hate crime. So 56% of people with a learning disability in Northern Ireland say they have experienced aggression or violence from a stranger because of their condition and of the vast majority of disability hate crimes only 3% got recorded and only 1% resulted in a prosecution. Disability hate crime needs to be taken as seriously as other crime, as other hate crimes, and people with learning disabilities would need to be given assistance to access justice. Those require institutional change.

They require a case by case individual response but they also require institutional change.

I'm sure many of the people in this room will know that there has been a huge campaign around the rights of individuals with a learning disability to live in communities and a movement to move people who have been in institutionalised care in places like Muckamore back into the community.

And while we have made significant progress on that, there are still a group of people who reside in Muckamore as their long term address and for whom we still need further progress but also, I think slightly more concerning, a growth in the number of people who are there on delayed discharge and who have been there for a significant period of time because of the level of the complexity of their needs and not being moved back out to the community. Again for us that is about the right of people with learning disabilities to live in a local community in the same way that you or I do, and there's a need to address those underlying institutional barriers to that.

So for me the discrimination and the rights infringements suffered by people with learning disabilities very much sits within those key areas that the Human Rights Act raises and the Human Rights Act has been critical for Mencap on both an individual level but also at a government and a structural level to actually seek redress. We have a really long way to go in terms of ensuring that people with learning disabilities have access to equal rights.

The issue of capacity of people with a learning disability is going to become even more important going forward and for us, keeping the human rights act and using it as the key platform to shape our arguments about what life should be like in reality for people with a learning disability is critical and its part of why we are very supportive of the campaign to keep the Human Rights Act. Thank you.

Michelle Millar, Human Rights Advisor, Disability Action

Good afternoon everyone. I'd like to thank the Human Rights Consortium for giving Disability Action the opportunity to speak at this event today. I was asked last night to do this presentation, so bear with me please.



So I just want to follow on from the last speaker who has mentioned a lot of what I was going to say in terms of disability rights. As the Chief Constable this morning mentioned that he was a practitioner not an expert, I too am a practitioner of promoting and protecting human rights of people with disabilities.

I'll just give you a background of what Disability Action does. We are very much focused on protecting and promoting the rights of people with disabilities in Northern Ireland. We have a lot of services that we provide and advocacy would be one of our main areas of work in terms of human rights.

I wanted to focus really on a couple of issues today around our advocacy work in relation to protecting private and family life and I want to give you a couple of examples of case studies that we've worked with. The first case involved a lady with motor neurone disease who had given birth to a baby in hospital. She was told that she couldn't take the baby home, that the baby would have to go into care and the reason for that was because the particular Trust did not have a care package put in place in order for her to get support when she brought her baby home.

This contravened her right to a private and a family life. So Disability Action stepped in and advocated on her behalf. We did a lot of work with the particular Trust, which shall remain anonymous, and in so doing we were able then to get a package in place. That lady, her child has flourished. Her own health has completely deteriorated but she is home with a healthy, happy young child now. Just because you have a

disability doesn't mean to say you don't have any rights. People with disabilities have the exact same rights as everyone else.

I want to then go on and talk about, as the last speaker Margaret alluded to, people coming out of long term institutionalised care, integrating them back into the community. Many people with disabilities who have lived in institutions for long periods of their life will find it really difficult to settle into mainstream communities. They will need a lot of support and in order to do that, there needs to be the resources there to support those individuals to settle and flourish in their communities.

One of the things, we have been doing, is working with people who have come out of long stay institutions, going back into a community who don't have the ability to articulate their needs or their concerns, particularly so the staff who support those people in the institutions have also moved into the community. Those staff members are themselves to some degree institutionalised.

Their skills don't transfer necessarily into community settings and we are having to work with the Trusts and the staff. One example would be that, in an institution for people with extreme disabilities would be that the staff would sit and eat their lunch with them. Now when you move into the community setting, each individual with a disability has a particular amount of money to live on.

So effectively the staff members are eating their lunch money if that makes sense. The staff actually should be eating, buying their own lunch and eating that with the residents, but that's not happening. So we are doing a lot of basic work on that level.

As I said a lot of the key workers need to understand, that the people they support have a right to privacy. So when someone with a disability goes to a doctor and their key worker goes with them, they have a right to say actually, 'I don't want my key worker to come in with me,' or 'I don't want you, as my key worker, to tell my family what my doctor has said.' They must be given the information in order for them to make the informed choice.

Another area for Disability Action has been to work with the Electoral Commission. That's in terms of getting people with disabilities the right support, information and advice to enable them to vote. For example, what happens if a person who is blind and wants to go into the voting booth? What support is there for them? We've had an example where an electoral member has said to a member of the public, 'Who do you want to vote for, is it him here? Is this who you want to vote for Mr. B?' shouting his information all over the place. So things like that we've done a lot of work with the Electoral Commission to put measures in place to combat that.

In terms of information and advice, the right to a fair trial, challenging disputes on benefits and taking forward and challenging discussions at appeal is an important part of our work. We constantly challenge discrimination on a daily basis. The United Nations Convention on the Rights of People with Disabilities has provided us with a framework and this has gone beyond many of the other conventions.

So the United Nations Convention is used in our policy work as a good framework, it really is fundamental to the rights of people with disabilities. Some are immediate and some are progressive rights, however, the Human Rights Act itself is the tool that we align this with. So particularly the right of family life, as I have mentioned. The Human Rights Act is fundamental to ensuring the economic and social rights.

In a rights based approach to disability these are fundamental. Without the Human Rights Act, without the right to challenge that benefits decisions be changed. The Human Rights Act itself was used to challenge the Bedroom Tax under the right to family life and that was a successful challenge. It doesn't mean that it

ends up in Court, but the fact that Human Rights Act exists allows us as individuals to then take on policy advocacy.

I'd just like to end on a very important point that disabled people have fought long and hard to have their rights protected and abolishing the Human Rights Act is a big step back for people with disabilities and we don't want this to happen. We want to challenge this. I think that really covers everything I wanted to say here today. Just in terms of inequality I would like to remind people that tomorrow is Holocaust Memorial Day and to step back and say nothing in terms of inequality it's a step in the wrong direction. We need to fight for the people with disabilities for everyone in our society.

Thank you for the opportunity again.

Paddy Kelly, Director, Children's Law Centre

The Children's Law Centre (CLC) is a human rights organisation founded on United Nations Convention on the Rights of the Child (UNCRC) after the first examination of the UK government in 1995, following a recognition that there was a significant deficit in children's rights in this jurisdiction. CLC was founded prior to the Human Rights Act 1998 (HRA).



The first seminar CLC ever organised was in partnership with Christine Bell at Queens University Belfast on the potential positive implications of the Human Rights Act for children's rights. A generation of children have benefitted from the protections afforded to them by the HRA. And as lawyers increasingly argue HRA points in children's cases we have increased recognition of children as rights holders and increased protection of their rights. It is hard to believe we are here today probably close to 18 years after that first CLC seminar, discussing how to protect the Human Rights Act 1998.

All of CLC's work draws heavily on the HRA not least because of the strong linkages with the UNCRC. We would be seriously challenged to protect the rights of the most vulnerable children in this jurisdiction in the absence of the HRA.

We deal with 2500 issues on our advice line every year with monthly increases in the number of calls. While we only have to resort to litigation in a small number of cases, advocating for the child in the context of the public authorities' duty under the HRA often circumvents costly and protracted litigation.

I will try in the time available to spotlight a few relevant children's rights issues which we believe it would be more difficult to vindicate either through the courts or in policy engagement in the absence of the HRA.

There is a need for effective and speedy remedies especially when the victim is a child whose rights are breached at a critical stage in their development. Such denials of rights, if they are not speedily redressed, can have a lifelong detrimental impact on children's development. The enforceability of rights within domestic courts is imperative to securing timely remedies that will effectively ensure the rights of vulnerable children.

If, as was the case pre commencement of the HRA, you have to have recourse to the European Court of Human Rights (ECtHR) to vindicate your European Convention on Human Rights (ECHR) rights because you could not argue justiciability in domestic courts, time delay was significant e.g. *T&V v UK*.

The facts of the case occurred in February 1993 and the judgment was not delivered in the ECtHR until December 1999 nearly 7 years later. The implications of that judgment for a child's rights to a fair trial

have been significant. That however does not detract from the fact that in the pre HRA days it took 7 years for the case to be heard before the ECtHR. Had the ECHR rights engaged been directly justiciable in domestic courts arguably there would not have been such an inordinate delay in bringing about important changes to domestic practice in this area of legal process.

CLC seeks to give full effect in this jurisdiction to the rights protected under the UNCRC through policy, litigations, advocacy and training. Regrettably the UNCRC is not yet justiciable directly in domestic legislation. However, it is recognised as an interpretive tool for the ECHR – CLC have tried to argue standalone UNCRC and indeed United Nations Convention on the Rights of People with Disabilities (UNCRPD) points in litigation but unfortunately we have been unsuccessful.

The ECtHR has drawn on the UNCRC as an interpretive tool for the ECHR. The UK Supreme Court has also employed the UNCRC as an interpretive tool. And I would particularly reference the judgments of Baroness Hale in this respect. The HRA has therefore enabled UNCRC points to be argued in our domestic courts and in so doing to some degree has given effect to the UK government's obligations under the UNCRC.

Re T&V used UNCRC as an interpretive tool with particular reference to UNCRC Arts 3, 37 and 40. It was not until 16 years after the ECtHR judgment in T&V that s98 of the Justice Act (Northern Ireland) 2015 introduced the best interest principle as an aim of our Youth Justice system. In the interim period in the absence of domestic legislation, lawyers and those advocating for children's rights in the criminal justice system had to rely on the HRA and cite UNCRC Art 3 as an interpretive tool or rely on the 1999 judgment in T&V and subsequent developing case law when seeking to protect the child's right to a fair trial in conjunction with their best interests.

The HRA has also I would argue encouraged an increased willingness in the courts to consider UNCRC points alongside HRA points.

CLC would argue that the HRA and the ECt judgment in T&V is of continuing relevance in its work to guarantee the child's right to a fair trial. While there have been significant developments in respect of protecting children's right to fair trial in the intervening period since T&V we remain concerned that the child's Art 6 right to a fair trial is at risk of being compromised. We see this in current practice in some cases and in respect of current policy discourse, most notable in respect of video links and the absence of lawyers at Youth Engagement Clinics,

In recent consultation carried out by CLC with young people in Lakewood Regional Secure Centre young people commented on their court experience with one young man commenting

“I went but no one asked me what I thought”.

These are very vulnerable young people and their ability to engage in what are often complex and deeply personal legal proceedings, even when they are in court and well represented, is often limited. CLC have argued in respect of policy proposals to introduce video links in such secure accommodation cases, that the child's Art 6 right to a fair trial would be further compromised if their engagement was via a video link. In seeking to protect the fundamental right to a fair trial in such cases involving what are arguably some of our most vulnerable children, CLC in opposing the introduction of video links, is drawing heavily on the Human Rights Act and associated ECHR case law.

Likewise, in respect of Youth Engagement Clinics, young people are currently consenting to diversionary disposals in the absence of legal advice and in many cases without appreciating the implications, for



example in respect of criminal records. CLC have been arguing strongly with the Department of Justice that this constitutes a breach of the child's right to a fair trial under Art 6.

As the key human rights frameworks impacting on the lives of children CLC represents, we draw heavily on the UNCRC, the UNCRPD and the ECHR in all our policy advocacy. I am conscious of time but I want to give you a couple of quick examples.

I have already mentioned above that s98 of the Justice Act (Northern Ireland) 2015 amended the aims of our Youth Justice system to include the best interest principle. The implications of this are likely to be far reaching when fully implemented. This we believe was in no small measure due to the policy engagement of CLC citing both the UNCRC and the ECHR as interpreted in T&V and other case law. It is highly unlikely that such a welcomed legislative development would have been possible in the absence of the HRA and subsequent case law

In CLC's response to the Department of Health Social Services and Public Safety (DHSSPS) Consultation on the Draft Cross-Departmental Autism Strategy (2013–2020) and Action Plan (2013 – 2015) CLC argued on the basis of its case work that the DHSSPS's proposals didn't fully protect the ECHR rights of children with autism.

Children of all ages with autism are, in our experience, frequently "informally" and formally excluded from school on the basis of "behaviour" when in fact the issue will often be that the child may require a package of education, health and social services support to ensure equality and inclusion of the child at school and in the wider community. This is in breach of their right to education under both the ECHR and the UNCRC.

We are aware of many situations where parents/carers are asked to remove children from school on a daily basis; children being placed on shortened timetables and children at crucial stages of their education are being left at home for significantly extended periods of months or years with no effective educational provision and no possibility of meeting their full potential, as is their legal right.

Families tell us that they are having difficulty in accessing appropriate health and social care for their children, including unexplained delays in diagnosis, failure or delay in the conducting of carer's assessments and difficulties accessing therapies within mainstream school environments.

Lack of coordinated, specialised autism specific support often, in the matters we deal with, impacts on family life, threatening the integrity of the family unit as well as impacting negatively on the mental health of the child and family members. The child and families Article 8 ECHR Right to Family life are engaged. Neglecting to intervene early is undoubtedly a major cause of disproportionate emotional and mental health difficulties in children who have autism.

We submitted in our policy response that failure to intervene early can in certain cases engage, for example, **Article 2, ECHR** (right to life) and **Article 8, ECHR** (right to respect for family and private life) together with **Article 14, ECHR** (non-discrimination).

It is the experience of the CLC through casework and legal challenge by way of judicial review, that autistic children and young people and their families frequently experience barriers to equality of opportunity in relation to the enjoyment of the right to life, the right to family life, the right to private life, the right to personal integrity, the right to education, the right to healthcare, the right to habilitation and rehabilitation. They are also obstructed or denied their right of access to justice because of procedural flaws in the operation of the legal and administrative systems set in place to protect their interests and because of incompatibility of current policy and practice with legally enforceable domestic and international human rights standards.

All of these human rights are given specific protection within the **UNCRPD** and **UNCRC** in tandem with the **European Convention of Human Rights**. We argue strongly that it was incumbent upon the DHSSPS, to address urgently the serious consequences of failure to take into account the impact of human rights abuses perpetrated regularly within our administrative systems, against children with autism and their families. **The UNCRC, the UNCRPD and the ECHR should have been the starting point in the development of this strategy.**

I would like to leave you with some positive developments in legal proceedings . CLC has long championed the voice of the child in all matters impacting on their lives including in legal proceedings. We have therefore been encouraged by the emerging body of case law in NI in respect of Article 8 ECHR in relation to family law proceedings where the voice of the child is being heard as an intricate part of ensuring procedural fairness for the child. This caselaw reflects the willingness of our judiciary to consider UNCRC Art 12 alongside ECHR rights within the framework of the HRA.

By way of example, there was a case in 2001, *TV v Community Hospital Trust*, where Mr Justice Gillen, now Lord Justice Gillen, Mr Justice Gillen at the time, said "it is incumbent upon the courts increasingly to ascertain and duly take into account children's own views and wishes consistent with Article 12 UNCRC."

In a 2005 case *RE S, N and C* which was a Non-Hague Convention case, concerning a 13 year old the judge in that case said "if this court is to play more than lip-service to the contents of Article 12 of the UNCRC then I must take this child's views firmly into account when making my decision."

Again in 2005 in *RE E, (Voice of the Child)* involving a child aged 12, the judge said "A child's fundamental rights including the right to be heard must be respected in all forums including the confines of the Hague Convention as well as domestic law."

In a particularly complex *Donna*, (No. 7) (which is a pseudonym) there was an application for the discharge of a care order. This case was particularly child-centred case involving Article 6 and 8 of the

ECHR read alongside Article 12 of the UNCRC. As I said it was a particularly complex case, originating in non-attendance at school and involving proceedings in residency and care order applications. The relevant issue included the right to fair trial, the right to be heard and the right to private and family life. While the decision in the case was to refuse the child's application to discharge the care order, the judgment reflected the courts willingness to accept emerging case law and jurisprudence in this area and to ensure the child had the opportunity to participate in her case. I think Judge Stevens's remarks in the case are particularly relevant when we're thinking about the impact of the Human Rights Act in giving effect to Article 12 in domestic jurisprudence. He said:

“this second occasion on which I have met Donna has provided me with a further opportunity to understand and appreciate her character, understanding and motivation. Also to hear at first hand her wishes and feelings. The meeting also importantly afforded her the opportunity of assessing amongst other matters the care, the independence and the human concern afforded to her.”

This is, the Children's Law Centre would submit, the reality of the positive impact of the Human Rights Act on some of our most vulnerable children in our society. The repeal of the Human Rights Act would conversely impact negatively on all aspects of children's lives, and reflecting on the Council of Europe Commission of Human Rights words on the 3rd of May 2010, which are up here, we would say in the Children's Law Centre that human rights is fundamental to protect the children who are often the most vulnerable in our society. Thank you.

Edel Quinn, Strategic Policy Advisor, Age NI

I am delighted to be here today and thank you for the invitation to speak to you at this important event. We have already heard much to inform, motivate and inspire us today in bringing human rights to life, and quite a bit by way of challenge too.



I've been asked to talk about the impact the Human Rights Act has had in regards to the rights of older people in Northern Ireland and how Age NI uses the Act in our work.

Before I do that I'd like to very briefly tell you a little bit about Age NI.

What Age NI does

Age NI is the leading charity for older people in Northern Ireland. Our vision is a world where everyone can love later life, and our mission is to help people enjoy a better later life.

At Age NI we celebrate ageing, we create opportunities for people in later life, we promote the human rights and dignity of older people and we challenge disadvantage and discrimination experienced by our ageing population. Age NI is working with older people to challenge the view of what it means to be older – and massive change is needed.

The charity provides a range of services across Northern Ireland including the Age NI Advice and Advocacy Service which deals with 10,000 enquiries every year; support for 11 sub regional older people's networks to increase the voice and sustainability of older people's groups at a local level; day, residential and domiciliary care to 1,200 clients every week in centres from Omagh to Castlewellan; policy and influencing activities to ensure that policy decisions made today will support more older people in Northern Ireland to love later life; a 1-2-1 service, First Connect, which supports older people who are in need of direct emotional and practical help in their lives at a time of crisis, perhaps through bereavement or illness; and products and services such as the Age NI personal Alarm, tailor made to support people over 50.

Age NI places the voice of older people at the heart of everything it does. We had over 115,000 engagements with older people last year through our advice and advocacy service, as a care provider, through our Peer Facilitator process, our Consultative Forum and through our policy and engagement work. We work in partnership with 11 Sub-Regional Networks, who represent over 2,000 older peoples groups across Northern Ireland.

Ageing Society

The number and proportion of older people in Northern Ireland is steadily and consistently increasing. There are more people over the age of 50 than under the age of 19 living here today. The number of adults aged 65 and over is projected to increase by 12.5%, from 279,100 to 312,900, between 2013 and 2018, and by 63.3% (to 455,700) between 2013 and 2033. The number of oldest old – that is people aged 85 and over is increasing too – and is expected to more than double from 33,000 in 2013 to 79,000 by 2033.

Ageing is an increasingly complex issue both here and across the world. Indeed in a 2013 report, Ready for Ageing, the UK House of Lords Committee on Public Service and Demographic Change warned that the Government and our society are woefully underprepared for ageing. The Committee highlighted the collective failure to address the implications of ageing. There is no evidence to suggest that the picture is

any different here. Indeed Northern Ireland has been described as having ‘the most disjointed and limited approach to ageing issues in the UK’.

The fact that people are living longer is something to celebrate, so long as it is accompanied by opportunities to participate, good health and well-being, support to remain independent and respect for rights. Many older people do indeed live lives that are for the most part dignified, fulfilled and engaged.

Sadly many others do not. Ageism and negative attitudes to older people continue to pervade our society, causing harm and exclusion to individual older people.

Navi Pillay, former United Nations High Commissioner for Human Rights has stated: the irony of the elderly being excluded from the very societies and institutions that they have built is too tragic to ignore.’

Set against this backdrop, human rights and the HRA is extremely important and relevant to the lives of older people and consequently to the work of Age NI.

As we’ve heard many times today already, human rights in essence are a safety net – a set of basic minimum standard below which government should not go. They are there to protect when things go wrong and to promote and fulfil rights, to try to get it right from the start. Older people have a right to live as equal and engaged citizens and to have full enjoyment and protection of their human rights.

Currently, older people lag behind in terms of human rights protections. There is currently no UN Convention on the Rights of Older People, although work is ongoing in this area and it is gaining momentum. Realistically however, it is likely that this will be some time off. And while other binding international human rights instruments apply to older people, explicit references to older persons are scarce, and they are largely invisible in monitoring and reporting processes.

It is also important to make use of existing international and European non-binding instruments including the UN Principles for Older Persons. Although it does not have any associated enforcement or monitoring mechanisms, the principles are an important and powerful statement of the human rights protection afforded to older people, and are designed to influence national policy. There is certainly scope for wider use of these principles in Northern Ireland in policymaking and practice.

There is currently a lack of strategic and consistent rights based approach to policy development and ageing in Northern Ireland, despite the existence of human rights tools and the UN Principles for Older Persons. In order to address outdated and ageist perceptions of older age, a human rights approach needs to be mainstreamed in policies and services that relate to older people.

HRA

I have chosen to focus today mostly on health and social care - victimisation or neglect of older people within the health and social care system raises important issues of substantive human rights law under the Human Rights Act 1998 (HRA), the European Convention on Human Rights (ECHR) and other international law obligations such as the prohibition of ill-treatment, the right to respect for private and family life, physical and psychological integrity and the prohibition on discrimination (including the provision of healthcare on equal terms with the rest of the population). It is also potentially in breach of common law principles such as dignity, humanity and equality and, in particularly serious circumstances, the criminal law. At their most severe, poor treatment could lead to an infringement of the right to life.



Human Rights issues in care:

The NIHRC conducted an investigation into nursing homes in 2012 and found that 'There is a risk of multiple forms of human rights abuse' in nursing homes here. The report, 'In Defence of Dignity' made recommendations around quality of life, personal care, eating and drinking, medication and healthcare and restraint, finding that there were 'significant structural barriers to the implementation of the human rights of older people in nursing homes'.

Previous and subsequent enquiries and inspections in NI and across UK - RQIA Cherry Tree House Report, 2014; NIHRC Inquiry into Emergency Health Care; Equality and Human Rights Commission (EHRC) in England, Closer to Home: An Inquiry into Older People and Human Rights in Home Care; have found repeated failure to meet minimum standards, poor practice, and breaches of human rights.

The Inquiry raised some very poor practice involving physical and emotional wellbeing, including support with food preparation, eating and drinking, physical abuse, neglect of personal care, financial abuse, lack of autonomy and choice, inflexibility of services, lack of respect for privacy, lack of personal security and insufficient attention to diverse needs.

In 2014, the NIHRC undertook and found human rights violations which did not amount to systemic abuse. There was evidence that raised breaches of human rights including unnecessarily prolonged waits without medical reason for pain relief, food, or fluids, people placed on trolleys in circumstances that exacerbated existing conditions, patients unsupported and as a result unable to get to the toilet or have their other care needs met, and treatment and care which did not respect dignity or privacy. Issues also arose in regards to inappropriate transfer from nursing homes to Emergency departments, information and participation including consent, long waiting times, lack of time and appropriate care of dementia patients, evidence of discrimination including de-prioritisation of older people, discharging older people with dementia to nursing home alone at night by taxi.

Some of the issues which raised concern included:

- Malnutrition and dehydration (Articles 2, 3 and 8 ECHR)
- Abuse and rough treatment (Articles 3 and 8)
- Lack of privacy in mixed sex wards (Article 8)
- Lack of dignity especially for personal care needs (Article 8)
- Insufficient attention paid to confidentiality (Article 8)
- Neglect, carelessness and poor hygiene (Articles 3 and 8)
- Inappropriate medication and use of physical restraint (Article 8)
- Inadequate assessment of a person's needs (Articles 2, 3 and 8)
- Too hasty discharge from hospital (Article 8)
- Bullying, patronising, and infantilising attitudes towards older people (Articles 3 and 8)
- Discriminatory treatment of patients and care home residents on grounds of age, disability and race (Article 14)
- Communication difficulties, particularly for people with dementia or people who cannot speak English (Articles 8 and 14)
- Fear among older people of making complaints (Article 8)
- Eviction

How it is used on a day to day basis, increasingly – case study

Case Study 1:

Community Care Belfast Trust OT Department

Client is 84 years of age; he has severe mobility impairment following a stroke and degeneration of the spine. He is prone to falls. His wife also has mobility difficulties and fractured her hip following a fall, requiring a hip replacement. Access issues at their home were so difficult that she required an ambulance to take her to hospital appointments.

The lack of safety railings meant that he and his wife were increasingly housebound. An OT assessment determined the need for railings. However, he was told by the OT that the Trust would not finance the railings. Instead he should apply to the Northern Ireland Housing Executive for a Disabled Facilities Grant which is means tested. The reason given was that it would cost £700 and aids / adaptations in excess of £500 would not be funded by the Trust.

He contacted Age NI by email stating that OT had refused to install a handrail at the front of his house. He asked how he could have the decision overturned.

A letter was sent to OT Department, outlining:

- their absolute and specific legal duty to meet assessed need [R v Gloucestershire County Council and Sec of State for Health, ex parte Barry [1997] AC 584

- there cannot be a blanket policy as it fetters the discretions of the Trust, contrary to principles of administrative law
- Possible breach of article 5 and 8 of the HRA.
- The response from OT was that this is 'Belfast Trust Policy'.
- We asked for a copy of this policy but none was forthcoming.
- We followed up with a letter to the Chief Executive and copied it to the Director of Older People's Services.
- Response received from the Belfast Trust is that they have reconsidered and they are going to provide funding to meet the cost of the rails on a 'without prejudice' basis.

Policy Case Study: Care Act

One issue we have worked successfully on has been the extension of the definition of a public authority. The scope of the Human Rights Act for people receiving care has recently been extended through the passing of the Care Act 2014, which now protects all those receiving social care – both residential and domiciliary – which is publicly arranged or funded. While this is a very welcome development, unfortunately, people whose care is entirely privately arranged and funded are still excluded from the protection of the HRA. This remains a cause for concern, as two people living in the same care home could have different levels of protection under the law.

Age NI's work with older people in nursing homes

In 2014 Age NI's Peer Facilitator project undertook work in a number of nursing homes. Issues emerged in regards to institutionalisation, privacy, food, spirituality and complaints.

The overarching issue which emerged was the need for **older people to be seen and treated as an individual**. A significant proportion of older people expressed a strong sense of **becoming part of an institution** when they came to the nursing home, with little sense that their individual needs, wishes and desires were taken into account. Phrases such as 'every day is the same'; 'visitors are not allowed during mealtimes' 'Bored...my activity is my TV which I watch mostly in my room', and 'This is my world now... there is nothing else for me' portray the acceptance of their life as it is now.

While others were deeply unhappy with their current situation and would rather be in their own homes – 'the home is like a prison'.

A key theme in the conversations was the importance of **spirituality** for older people. Many had spent a lifetime of weekly tradition with their church, and there was a **palpable sense of loss** evident in many responses, owing to people not being able to 'get out' to a Sunday service.

Privacy

Issues also emerged around privacy with serious potential human rights breaches identified including opening of people's mail.

- 'They open my mail before I get it – I don't think anyone has the right to open my mail.'
- 'I find it difficult to ask for a 'private space' to have a private conversation.'

However, others had more positive experiences:

- ‘My visitors are made very welcome – I can have them in my room, or in a quiet corner of the living room.’

Complaints:

There was a common trait of not wanting to ‘complain’, or speak up about things which were not going well for people.

‘I don’t complain....there is no point, my life is not going to change.’

‘ Things would have to be very serious before I would complain, or take it that far...’

Breaches are familiar, and often carried out by people who are in a caring role

What would be the gap is the HRA was appealed and not there –

- One of the HRA purposes is to grant the power to service users to hold public authorities accountable to respect convention rights and to do this through the UK courts rather than having to pursue cases directly through the Strasbourg court, a long, costly and time-consuming process for anyone but even more difficult for older people who may be vulnerable - so it would have been much more difficult for man to get his modification as it is based on competing resources and need, rather than on Article 8 right to private and family life.
- The HRA also provides a legal framework for public authorities to use when they are providing public services. By adopting this framework the services themselves should be improved for everyone. They HRA requires public bodies to act preventative to ensure that the right systems are in place rather than, as is the case under common law, seeking to take action after things have gone wrong. The Act therefore provides a framework to encourage good practice but, because it has the force of law, it also acts as a backstop in helping to make sure that a positive approach to respecting human rights becomes the norm.
- The HRA also provides a legal basis for some concepts fundamental to the well-being of older people. For example, although dignity does not appear explicitly in the 1950 ECHR, the ECtHR has acknowledged that protection of dignity and human freedom is the very essence of the ECHR. The HRA now provides a legal framework for service providers to abide by and to empower service users to demand that they be treated with respect for their dignity.
- Another reason why the HRA is so valuable for older people is due to the lack of comprehensive legislation underpinning guidance on safeguarding adults. –patchwork. The HRA provides older people with a valuable legally enforceable safety net. However the value of the HRA will continue to apply even after safeguarding legislation is enacted.

CLOSING REMARKS & REFLECTIONS



Les Allamby, Chief Commissioner, Northern Ireland Human Rights Commission

I think I've got two roles. One is to summarise the day and the other is to issues a rallying call. Before I do that I want to say how heartened I am at the turnout for the day.

There are two dimensions to being heartened. One is the spread of people who are in here today. I recognise people from journalism, from NGOs, lawyers, academics. It is a very different spread than I am used to seeing. There are also a number of faces that I don't recognize here either, and I think, that as someone who is long in the tooth, who has been around at these events for many years, I think that is something that is very important.

I see a number of people here from public authorities and I think that's really important too. So well done, both to the Consortium for organising this and to people for coming.

I think I have heard today three dimensions about the Human Rights Act. The first is the international dimension. The UK is part of the Council of Europe and in its, kind of hubristic, early proposals and it is still potentially on the table that they might leave the Council of Europe if they don't get what they want.

The idea that we don't really want to abide by Strasbourg judgments, that that will be something that we want Parliament to pick and mix, and vote on, is entirely contrary to Article 46 of the Convention which is signed up to by the UK Government; which is to agree to abide by judgments of the court. I think, and I hope, that one of the battles has already been won. Brian mentioned about the importance of not waiting for this consultation but working in the meantime.

The UK Government is very sensitive to how it is seen by others on the international stage. It has an almost bipolar, if I can use that phrase, approach to these issues and what I mean by that is simultaneously the UK Government manages at times to traduce European and international institutions on the one hand and be working enormously hard to try and influence them on the other.

In regards to the European Court of Human Rights and reform, the UK Government has been very active in looking for reforms in that and, therefore, you have this strange approach that they take to these things. And they are very sensitive on the international stage to how others see them so that is an important dimension.

The second is the constitutional significance, outlined very well by Chris this afternoon. The one comment I'd make there, the Belfast Agreement is extremely important in terms of this. There is a specific Northern Irish and broader Irish dimension to this. This is one that the UK and Ireland are both guarantors to the Belfast Agreement. It's an international agreement that has been lodged with the UN, therefore, the Irish government has a role and a responsibility as part of the guarantor of the Belfast Agreement.

So we need to utilise that, that dimension. The second point I want to make is that it is not just about the Belfast Agreement. One of the points that has been made occasionally, in political circles, is not everybody signed up to the Belfast Agreement who are currently in power. But, if you look at the St. Andrews

Agreement, and what was said in the St. Andrews Agreement, it reaffirms the centrality of human rights and all of the parties that currently sit round the table in power signed up to the St. Andrews Agreement. So there is a very important dimension to this when you get into some of the debates.

The third dimension is the practical implications of all of this. I'm tempted, I mean I have a list of my top twenty human rights cases, but in the interest of time I will spare you them but what I do want to say is it struck me today, it felt a bit like, those of you who have ever watched 'Life of Brian' where they gather and say 'What have the Romans ever done for us?' So you start with nothing and you end with aqueducts, roads and a variety of other things.

I am tempted sometimes when I am in debates with other people who are against the Human Rights Act who say 'What's it ever done for us?' and by the time you've looked at prison conditions, what you need to do a proper investigation into deaths by police or army, or in mental health intuitions or hospitals...if you look at issues like access to terminations in certain contexts, the right to be considered for adoption if you are unmarried or a same-sex couple etc. etc. you really are looking at 'What has the Human Rights Act ever done for us?'

So that important legal dimension to this... I want to sound a, kind of slightly sanguine, note of caution. Judges are not the answer to all ills of social, economic, political, and civil rights. I could probably give you a top twenty of cases that weren't won before the courts. Nonetheless, that's a really important dimension.



The second, ancillary, point to that is... what the courts have begun to do, perhaps slightly unusually, at the more senior end is then start to look at other international human rights treaties; treaties that are not immediately justiciable, the UN Convention on the Rights of the Child being an example, and in a number of social security cases recently. It's clear that in a gentle, but important and expansive way, that other international treaties are being looked at in important ways in terms of the jurisprudence of the courts in the UK.

The second dimension to this, and it's been touched on by a number of people today, is the importance of the Human Rights Act in terms of the role of public authorities and how they roll out and deliver their services. The Human Rights Act has a dimension that says not only are public authorities covered by the Human Rights Act but, in certain circumstances, public functions delivered by people other than public authorities may be covered as well and that has been an important set of case law issues but as Edel mentioned, quite rightly, for example in health and social care it is

now very clear that in nursing homes and residential care, private providers who are delivering public functions are covered by that Act.

All of that is really important because it concentrates the minds of public authorities about human rights in delivering their services. I think Margaret made the point that some are better than others and I drew an enormous amount of comfort today, and it's not the first time I have heard him say it, from what George Hamilton had to say about the Human Rights Act.

The police, in my view, are ahead of the curve. I would bag what I heard today. I will be working very hard to make sure the PSNI do, whether they do it publically or privately, do put in a consultation to this response because I think it is very important that the UK Government hear from bodies like the PSNI to say why the Human Rights Act is important.

The Commission has done a lot of training with gold and silver commanders of the police service, with civil service commissioners, with probation service. We are currently in work, just at an early stage, with both the Belfast Trust, Health and Social Care Trust and the Northern Health and Social Care Trust, the former in looking at what a human rights based approach might look like in emergency departments and hospital care and involved in the training element of that and, with the Northern Trust, in terms of what a participatory model in human rights terms might look like in practice.

So there are some good signs, in a very unpropitious climate in terms of resources, of public authorities taking their human rights responsibilities seriously and running back from that would be a really serious retrograde step.

The third is about building a culture of rights and a discourse of rights in local communities. From where I remember, starting my life in an NGO in the early 1980s, pretty much the discussions about human rights, and rights in general, were left to a relatively cloistered group of people; academics, one or two journalists, one or two NGOs and not much more than that.

Well in 2016, and I don't always recognise the entire veracity of some of the 'my rights are', but there is something very important and very positive in my view that we now talk about rights in a discourse of human rights and that's one of the things that many people in this room have contributed to and it's really important to remember that.

And my single thing I'll say, before we look at where we go from here, is that when I get arguments against rights in general and human rights in particular, I am nearly always struck by, those arguments are made by people who have access to economic influence or economic power and those who actually benefit from the Human Rights Act and a rights discourse in general are nearly always those who have neither economic influence nor economic power and, therefore, that is a really important dimension to remember.

So when we hear the rights and responsibilities discussions, and I am perfectly comfortable with the idea that some human rights carry with them responsibilities but not where those responsibilities are being used to stifle the human rights in the first place. So it's very important to remember that as a touchstone.

Where do we go from here? I think there are a number of things. First of all, there is a very specific Northern Ireland dimension to this debate. The Sewell Convention is taken pretty seriously and one of the reasons I say that is that the recent discussions around Fresh Start and around resolving social security reform, welfare reform, one of the issues that was on the table that prevented the UK Government simply from saying well we'll take it out of your hands and legislate without getting some agreement with all of the parties was because they knew they would have to put a legislative consent motion back.

And they knew they had to do that for two reasons. One was the possibility of a legal challenge but the other was actually a dimension around Scotland. They knew that Scotland would be very, very nervous if they saw a kind of land grab followed by, 'we will sort out the social security problems', and 'we will dispense with the Sewell Convention as an exceptional basis' because they knew it wouldn't wear in Scotland. And those were real debates and therefore, the Sewell convention is an important dimension to this.

The Irish Government has an important role to play in this and it is important, therefore, in our lobbying that we do that. The political arithmetic is extremely important in this. We have a conservative government with a relatively small majority.

It's clear from the discussions that the Commission has had that there are a considerable number of conservatives who will not vote with the government over the Human Rights Act and it's not just some very obvious names that have put their heads above the parapet but a number of others as well. Now that makes the political arithmetic of what Northern Ireland MPs do even more important. It is pretty clear where some parties will vote. Other parties have kept their powder dry because they want to, frankly, see what might be on offer if the political arithmetic goes in their direction. So lobbying our politicians can and may become, extremely significant.

And there's the public argument that there is to win. If you think about the reasons that have been outlined for getting rid of the Human Rights Act, these decisions of the European Convention, well Chris alluded to it this afternoon, in 2014 the UK government was taken to Strasburg on 14 occasions, it was found in violation on 4 occasions. Contrast that with Russia who were taken to the Court 129 times in 2014 and found in violation 122 times. Frankly, European Court of Human Rights judges are not running the country from Strasburg under any stretch of the imagination.

If we look at declarations of incompatibility, domestic decisions, they run at about less than 2 a year and the government has acceded to them on every single occasion apart from the blanket ban on prisoner's rights to vote. And, frankly, it's a deliberate political ploy.

The previous Attorney General in Britain, Dominic Grieve, set out a way in which they could have met that in relatively minimalist terms, it would almost certainly have been agreed, and it is for bigger political terms that they haven't agreed to that particular declaration of incompatibility.

That leaves you with the extra-territorial issues that came up this morning. The idea that somehow the reach of the Human Rights Act extends beyond these shores to things like what the armed services do abroad. There are two dimensions to that. One is about whether armed services have impunity from any kind of legal action for their actions abroad and, secondly, in circumstances where people are injured or killed as a result of inadequate equipment or other issues. I'm not sure either of those are touchstones in great populism for people and if the government wanted to deal with that, they could deal with it through an amendment to the Human Rights Act and have a debate on that.

So there is no clear case for changing the Human Rights Act by introducing a kind of British Bill of Rights in its place. This is an opportunity for us to be able to debate both the Human Rights Act and also, remind people, as we're coming up to not that far from the 20th anniversary of the Belfast Agreement, about the one piece of unfinished business, which is a lack of a Bill of Rights for Northern Ireland that is supplementary to the European Convention and not a British Bill of Rights that is an attempt to dilute it. So there is a lot to play for and the organisations in this room can and I'm sure will make a real difference to that debate.

Today has been really useful and in terms of what my own Commission has been doing, we have done a lot of work, both behind the scenes and in front of house. I see this as an absolute priority for us as a Commission, because, frankly, it's a touchstone issue in terms of human rights. Governments are entitled to change legislation but for us the issue is about, and it was mentioned this morning in terms of no retrogression, which is the great human rights language, but 'No reduction in people's rights' will be the clarion call from both actually the Northern Ireland Human Rights Commission but, actually, from the commissions in Scotland and in England as well. So thank you.

ANNEX 1: Q&A FROM SESSION 1



Question and Answer Session following George Hamilton, Brian Gormally and Niall Murphy

CHAIR: Patrick Corrigan:

Ok thank you, thanks Niall and thanks to all of our speakers this morning. We don't have a huge amount of time before we need to break for lunch and there's an awful lot of content in there to examine and cross-examine. But I do really want time for questions, for comments and maybe in doing brief responses, maybe for instance the Chief Constable will want to respond to some of the challenges laid down by the subsequent speaker but it really depends on the questions that you ask. If you don't mind if you could give a name and identify yourself or your organisation that would be helpful as well. So indicate if you have a question for any of our speakers.

Q. Maurice Campbell:

Hi. I'm Maurice Campbell I'm a human rights student at Queen's. Just really for the Chief Constable. A number of times, Chief Constable, you mentioned the rights of individuals and the rights of communities in this society, but I wonder how you go about looking at the rights of communities and then define those. I sometimes feel that by looking at communities we give ourselves problems rather than looking at a single community. And just while I am speaking and while you are here, I couldn't let it pass without acknowledging the suffering of your officers in Lurgan at the weekend. I thought the way they were treated was an absolute disgrace. Thanks.

Chair: Patrick Corrigan

Ok thank you, are there any other comments or questions to get us up and running otherwise we can go straight to getting a response to that one. I think we've one more over here.

Q. Kevin Hanratty:

Kevin Hanratty, Human Rights Consortium. I've already spoken but I thought I'd ask another question just specifically again for the Chief Constable. If the Human Rights Act is removed, it would be interesting to hear your thoughts on what the impact of that would be practically, I suppose specifically in relation to that jurisprudence and case history that has been built up both at a European level and also locally here in terms of how that applies to operational policing. What if any will be the practical impact of that? I know politically it would be difficult for you to comment on the practical perspective of policing what do you think...although we don't know the actual proposals, the concrete proposals, but the fact of withdrawal from the Human Rights Act and withdrawal from the Convention rights, practically how do you think that may impact negatively or otherwise on operational policing in Northern Ireland?

Chair: Patrick Corrigan

Ok we'll take a pause there and give the Chief Constable an opportunity to answer those and again maybe any of the points from the other speakers if you wish as well.

A: George Hamilton:

I'll maybe deal with the last point first. I think the practical consequences if the Act is repealed would be I think hugely detrimental to both the confidence in policing and the confidence of the police to make difficult decisions.

Especially where there are competing perspectives and there is this case of balancing what, depending on your perspective, what are at least perceived to be competing human rights or where people's views are so different that it ends up with conflict and actually the Act or the Convention create a framework for us in making decisions around that.

I need to be careful not to stray into the political arena but it just seems to me that from the initial announcement through to where we are now there has been such a dilution of the political intent around the replacement.

I'm less nervous than I was when it was first announced. It's probably not up to me to say too much about the legislation and whether or not it should be amended. My instinct tells me that if it is repealed and if the British or UK Bill of Rights comes in to place, in practical terms, given that the Convention and the jurisprudence built up over the last sixty years has stood the test of time and it has shown a certain...both the quality of it and its agility and its flexibility to move as society has moved is the strength of it.

And it would be hard to see how any legislature could ignore that and, I don't mean to be too political or too cynical but actually we have seen a dilution, we have seen the Convention stand the test of time and I just wonder if the new legislation would be a repackaging of what we have. Maybe that's overly optimistic given the benefit that the Human Rights Act and the Convention have brought to policing; especially since it was enshrined in domestic law in the '98 Act from 2000.

I guess if all else failed the good thing about being operationally independent, unless I find a better alternative human rights based framework, if I'm not required to use this by legislation i.e. if the Act is repealed, I'll engage with the Policing Board and other accountability bodies and probably be recommending what we've already been doing as a policy framework that would move from legislation to policy.

That's in very practical terms. I did say I was a practitioner rather than a legal expert so that's that.

On Maurice's point. Well first of all Maurice, thank you for the acknowledgement of the difficulties that we faced in Lurgan the other evening and I was quite proud actually of the commentary from the local commander, David Moore, yesterday when he was talking about the complete lack of ideology and strategy from those who were behind the violence and without wanting to wallow in too much self-pity or victimhood in this whole human rights debate, the one thing that I do have a frustration about is that sometimes the public narrative tends to be that everybody's got human rights except the cops.

Well I'm not going to accept that. I'm not going to stand back silently while that narrative is played out on my watch as Chief Constable. When I talk about balancing or considering the human rights of individuals from competing perspectives or communities I'm talking in purely practical terms. I'm probably just trying to be descriptive rather than technically or legally 100% correct.

So typically if you take some of our big events, the controversy of Ardoyne for example and Twadell, and all that has been rumbling on there for what's been years now. Or indeed the anti-internment or the internment commemoration parade or whatever it's called that comes from North Belfast down through the City Centre and through into the West.

For us in planning terms we will try to get individuals from community level who represent or have influence within the competing perspectives that are out there. So when I talk about communities it's probably a very technically inaccurate term for groups of individuals I guess.

And I do think that part of what we're having to contend with is the post-conflict peace where you know we're not a homogenous society, we are made up of many communities and emerging communities and so on and it's really just in practical policing terms an acknowledgement of that rather than trying to argue for it in the legal or technical sense.

Chair: Patrick Corrigan

OK, any others.

Q. Patrick Yu:

Patrick Yu, NICEM. I have two questions for the three speakers. The first question is in relation to the consultation document. So now it is almost the end of January and I think there will be an election this year. If the British Government or the Tory Government put forward a consultation paper would it then, you know, violate our democratic principles not being consulted as the Scottish Parliament, our Assembly or Scottish Assembly, and it also will be closed during the whole period until we know May/June if there is an election.

The second question is about the repeal of the Human Rights Act. I'd just like to explore Kevin's question further, in particular to focus on ethnic minorities. My understanding is yes they could repeal the Human Rights Act but they couldn't stop the administration here under the freedom of government to implement you know the Convention rights or incompatibility in relation to both law and policy. Now the trouble is that most of the immigration laws are under Westminster, a reserved matter, which will have differential treatment between different regions. So what will be the position if that legislation is enforced in Northern Ireland?

Secondly I ask the two other speakers, what would be the best way to square the different articles. Like for example Article 8 (the right to family life) with Article 14 in all those asylum cases? Thank you.

Chair: Patrick Corrigan. And Kevin at the back there. Any others? We might not have a chance for another round. We'll see how the time goes.

Q. Kevin Cooper:

Kevin Cooper, I'm a free-lance press photographer, and member of Amnesty International. I want to more widely talk about freedom of speech issues which really haven't been touched on in terms of the operation of the media, and operation of the ability to report.

And I'm talking in terms of both jurisdictions, in terms of Northern Ireland and Britain and the Republic of Ireland. I'm aware for instance of the use, which has become a major problem for journalists at the moment, is the use of super injunctions, such that you can't even mention the case, you can't discuss anything to do with it.

You can talk about them in their entirety but you can't actually say how many of them exist around a number of issues. And Britain and Northern Ireland are becoming now an international centre for these super injunctions for a number of people who aren't even residential who use these restrictions. Also around issues of the freedom of journalists on the ground not to be interfered with while news gathering. That there has been a number of issues to do with photographers, with journalists out on the ground gathering.

We still have the outstanding case of Martin O'Hagan. Veronica Guerin's case did bring down a prosecution and a judicial process and yet we still have the outstanding case of Martin O'Hagan and other concerns around that case. We also have issues in the broader sense, which has been touched on, in the degree of freedom of information, the degree of information that is available in the wider sense to families who are seeking answers to their questions.

The degree of what information is held in both jurisdictions in terms of this. And I have to say in spite of the assurances of the Irish Government, I have personal knowledge that the Irish Government have not exactly the perfect record in terms of the information and the answers they've given to families around information that they hold in their jurisdiction. And it's the whole issue of the public's right to know.

The other thing is that there is a continued reliance on news gatherers as evidence gathers rather than the police gathering their own material and journalists gathering news, for use in news. And I mean that in terms of public order situations where footage and pictures are still sought.

I personally was approached by the PSNI, but I wasn't sued last year, in a case in relation to a job in Northern Ireland, seeking pictures that I had taken and it continues to be worrying that this, in spite of cases like Ed Moloney and Suzanne Breen, that this continues to be a method the police in terms of seeking material that they quite often have more information and more evidence in terms of they're on the

ground with their special surveillance teams well why then is there thought to be a need to pursue journalists.

So it's about wider questions of the freedom of the press, the right to information for the public and also the freedom of expression and I have a number of concerns around the creep of the legislation which has already been touched upon which is the fact that journalists in terms of UK legislation which is now being used against journalists.

Chair: Patrick Corrigan.

Thanks Kevin I think we've another question here at the front from Paddy and I think that probably will be are last question. There's a lot of substance to get through in the answers as well.

Q. Paddy Kelly:

Thanks very much. Paddy Kelly, from the Children's Law Centre. Can I firstly thank all three speakers for very engaging and informative presentations. I've two questions one of them is for the Chief Constable and the other is for the panel generally. I noted Chief Constable that you said in your opening remarks that there was 80% public satisfaction with policing.

The Children's Law Centre in partnership with Youth and CLC, our youth group, did a piece of recent research which would indicate here the level of satisfaction for children and young people doesn't reach those significant heights.

In fact, there's a lot of dissatisfaction among children and young people with policing and they identified it as one of the key human rights issues that are of concern to them. As you'll know, 70% of policing is contactless with children and young people. And in that context I know we've had conversations before about these issues and I do have good knowledge of the overall engagement of the police with the children's sector around children's rights and policing. But 70% of this is contactless with children and young people.

And in that context I think we both recognised there was an overrepresentation of say 15 and 17 year olds in stop and search which raises children's rights and human rights issues. In that context, and I recognise budgetary constraints, would you not think that it would be a significant investment by the police to invest in children's rights training for all policing from the top down, or the bottom up.

My second question is as I said for the whole panel. And it's in the absence of political agreement in how we deal with the past and how it can affect to impose structures and processes of dealing with legacy issues under the Stormont House Agreement. And to come back to the past views if the current methods of dealing with legacy issues are Human Rights Act compliant, and in particular I'm thinking of the Legacy Investigation Branch (LIB) and do you think that the LIB is human rights compliant?

Chair: Patrick Corrigan

Ok thank you. That is our last question for the morning session. There's an awful lot of issues to get through and probably most of the responses in a way, or the questions were directed at the Chief Constable but I'm going leave him to the end. I invite Niall and Brian to respond to the ones they think they have something particular to contribute to.

A. Niall Murphy:

Thank you, Patrick. If I can probably start with the last question first and just dealing with whether or not we consider the LIB to be Article 2 compliant. I don't, CAJ don't, but more important than that Her Majesty's Inspector of Constabularies last year reported that they do not consider the LIB to be Article 2 compliant.

Nor did the Joint Committee on Human Rights at Westminster in a report in March and I did take the opportunity of googling it while Brian was speaking and the HMIC Inspector of Constabulary, Michael Cunningham, stated that the fact is that the LIB is an integral part of the PSNI and that does cause a problem for some sections of the community around three areas; independence, accountability, and transparency. 'We the HMIC believe that those issues around independence remain issues that need to be addressed' and the Inspector of Constabulary, Michael Cunningham, proposed three key issues that would rectify those matters;

1. the vetting of staff to ensure independence
2. the management of intelligence
3. openness and accountability.

HMIC's report was on the 24th June and then prior to that on the 10th March the Parliamentary Joint Committee on Human Rights observed that 'as well as having fewer resources at its disposal than the predecessor, the HET, the LIB cannot satisfy itself as to the requirements for Article 2 of the Convention because of its lack of independence from the police service'. So I would concur with the HMIC and the Joint Committee on Human Rights at Westminster that the LIB is not Article 2 compliant.

And if I might pick up on one matter from Kevin Cooper, albeit not perhaps on the point that Kevin had proposed but he raised the case of Martin O'Hagan. Our practice represents Mr O'Hagan's brother Fintan, who presently awaits an investigation report from the Police Ombudsman and Mr O'Hagan's experience is reflective of many families who have engaged with the Police Ombudsman and of course the Police Ombudsman is one of the institutions proposed by the British Government to discharge its Article 2 obligations along with the inquest system and the vacuum which we await the HIU to fulfil.

But it's an unfortunate fact that the PSNI's cooperation with the Police Ombudsman was such that Dr Maguire felt compelled, in a massive judgment on his behalf, to take judicial review proceedings against the then Chief Constable Matt Baggot and it's to Chief Constable Hamilton's credit that he conceded the judicial review when he assumed office and that's a positive step, I consider, under the new tenure.

But the facts which emerged from that judicial review caused a concern. In reply to the application for leave, senior crown council stated that there had been an exponential growth in requests for sensitive information which was quite radical in the past two years under Dr Maguire in comparison to Al Hutchinson.

When the volume was identified by police they had concerns about the nature of it and how it was to be handled which was a remarkable observation for any Senior Counsel representing the police to make with regards to the superintendents that the Police Ombudsman has. It was later confirmed that the request for sensitive information had increased from 4 in 2011 under Al Hutchinson to 21 in the last 6 months following Dr Maguire's appointment in 2012 to 69 in 2013 and for the first 3 months of 2014, 38.

Now those statistics tell me that Dr. Maguire was doing his job and that perhaps his predecessor wasn't making the appropriate enquiries. When these facts became apparent the reactionary position was

"You're not getting it". There were circumstances whereby Police Ombudsman staff weren't even allowed into police stations.

Now as I've said, Chief Constable Hamilton, correctly conceded all those points on the 5th September. Whereas the application, those facts emerged on the 13th June 2014. But then what did we have, a Police Ombudsman wanting to do his job he had his funding cut, so on the 5th September he asserts his investigative role and by the end of that month far be it from being accommodated in an application for additional funds to increase his compliment from 44 to 55, which is miniscule compared to the work that is required from his office, that was refused and he was imposed with a further cut and his investigatory compliment went down to 27.

So the State's response was to remove his ability to do the job and it's a fact that, and Fintan O'Hagan unfortunately is a recipient of one of these letters, that many families will not now receive a report until 2025 which simply is not good enough.

Chair: Patrick Corrigan

Thank you, I was going to ask Brian to contribute next but we are a little bit past our time and past time we said the Chief Constable could leave us. So I'm going to maybe move to George next to respond to some of the questions raised.

A. George Hamilton:

Ok, a couple of sort of broader points, I'm trying to capture maybe some of the themes rather than take the hour to go through all of those questions.

I think in terms of the freedom of the press, one of the things that leads to good policing is accountability and I'm not just talking about, important though they are, the institutions of accountability like the ombudsman Niall has referred to, or the Policing Board or locally through the PCSP structures, when I talk to my own people and try to get leadership round this they talk about accountability of explaining, of answering, of telling our story and actually to do that we rely on the press.

Kevin raised this issue about the police taking material or seeking material from journalists to use as evidence, well unfortunately we have to investigate to a certain standard and if there's material there and we're aware of it then we have to respond to that.

Now there are processes in place around journalistic material and that that can be protected in some circumstances and all the rest of it but I do think that some of the initiatives taken and the good investigative journalism has led us into actually uncomfortable arenas at times.

The whole Boston Tapes thing for example, we didn't know about them actually. Ed Moloney and others published a book. We read the book and realised that we had an obligation under Section 32 of the Police Act to do something about it. So I think journalism plays and interfaces with the criminal justice process in a certain way and I think there are legislative provisions to protect journalistic material where that needs to happen but point taken.

We'll certainly not become lazy around evidence gathering depending on you guys within journalism. But at the same time if there is footage or still photography there that we need to use we'll at least have to consider that possibility. It would be a dereliction of our duty not to do so.

Around the whole independence thing and the Article 2 compliance, I did say in my speech earlier that I looked forward to judicial clarity on this because if you listened carefully actually to the words that Niall quoted from Mike Cunningham from HMIC, he did not say that he believed that it was not independent.

What he acknowledged was, and I acknowledge this and I accept the HMIC's finding in this, he recognised that there was perceptions of a lack of independence out there within communities or some communities and I accept that and regardless of what the technical and legal implications are there are various strands to this independence; one of which is practical independence and that touches upon this perception of the citizen and the confidence that they can have.

I know there's a deficit there, but you know what, I didn't create the arrangements of the legislative framework and I'm up for whatever it's going to take to promote confidence in police investigations. What I can say is we will act in good faith and where problems have happened we will acknowledge those. I won't try to defend the indefensible nor will I let history be rewritten.

So in fact I'm not even going to get into a ditch over this independence issue I accept that there is a clear perception out there. I did say also in my opening comments about human rights are defined by their nature.

They're a universal, they're interrelated, they're interdependent, they're indivisible. Popularity or doing what the majority of people want are not the terms that define human rights but, having said that, it would be really good if I could be doing investigations that the citizen has confidence in.

So in some ways there's not the gap between me as Chief Constable and some of the other people who are suggesting that there is a lack of independence around this. I do think that there's a number of cases before the courts at the moment that will bring judicial clarity to this and the problem is that we can all look back to jurisprudence and other stated cases and be selective and pick out the bits that we want.

The Bracknell Case for example that said that the PSNI was institutionally independent and separate from the RUC and all the rest of it and of course the PSNI of itself, the Article 2 obligation is one for the State.

As a public authority clearly we have obligations not to be in contravention of that but actually there's a much broader issue around independence that rests in this jurisdiction with the UK State. I'm not going to take responsibilities for short comings in that regard.

The piece Paddy as well that you introduced around children and young persons, I know that that's a challenge around confidence rates actually rather than satisfaction rates that I was quoting research in and I accept that both in relation to young people and in relation to other sectors, especially where inequality, economic and social inequality exists in what have been termed working class areas both within Republican and Loyalist communities.

I am not naïve and I know that we wouldn't be near that 80% but this was across the jurisdiction, a credible sample by an independent research company who came up with that figure. I have worked with you for a few years now and I think you know that I'm happy to consider anything.

I do need to balance the books and all the rest of it. I do take human rights seriously. Hopefully I've tried to convince you of that this morning and the rights of the child, I think, if we're going to get it right at all we have to be getting it right for the most vulnerable in society and children is a good place to start. So I'm open to that. We could maybe have another conversation to further what that might look like and what the delivery mechanism and costs would be. I think I probably need to leave it there.

I think on Patrick's point around the consultation process and so on, I think I can say more in submissions and consultation around legislation than I can say publicly.

Once I go public with this it brings me into a political space, but I do have a voice and we are consultees as long as the timescales and so on permit and elections don't get in the way. So I'd like to reassure this audience that we'll not be silent on offering views on these but it's the context in which we make those representations that means I can't move into a political space and I hope you understand that.

Chair: Patrick Corrigan

Ok thanks Chief Constable, we'll let you go now.

A. George Hamilton: I need to be somewhere else at 12:30. I'm not running away because the questions are getting difficult, alright, I just need to be somewhere else at half twelve.

Chair: Patrick Corrigan

Thank you Chief Constable I appreciate the time you've given to us. We'll let you slip away and maybe, because we also need to draw to a conclusion, go to Brian for final responses to any of those points.

A. Brian Gormally:

I'll not keep you from your lunch much longer. Just around the whole consultation thing and delays and so on. Don't underestimate the effect that the campaign against the repeal of the Human Rights act has already had.

You know sometimes when we sit in conferences like this we think 'Who's listening out there?' But actually I do believe they have been listening. It's not the force of our arguments necessarily but it's the extent of the resistance and the constitutional implications I think, so let's not underestimate the importance of actually coming together in campaigns like this.

I did want to just say on freedom of speech and the whole right to information. At the minute we're looking at Article 10 and seeing what substantive rights to information you have. This is in the context of disclosure from the HIU to families but it might have broader aspects and we want to do a review of the jurisprudence around that, no doubt some people in this hall already know all that but we want to try and systematise it. The only other thing I want to say is just, which wasn't really a question but which was referred to in terms of the Lurgan events and the Chief Constable in his opening speech said that 'well when it comes to public order policing, sometimes we get it in the neck from both sides and maybe we're doing something right.'

And actually that has a level of truth in it, but at a deeper level the propensity of people to shout 'political policing,' particularly in regard to public order situations, whenever something happens that they don't like, is a fundamental undermining of confidence in the rule of law, if it isn't actually political policing of course. But that's why for example we're in a month or two will be publishing a guide to public order policing because I definitely believe firmly that in most circumstances, if you got an overarching human rights framework, then that can transcend the division in society and actually provide a framework for decision making and problem solving that can have application right across all sectors including in a very kind of sharp and controversial way in terms of public order policing.

And that's what we're looking for in general in a human rights framework for this society. So fighting the repeal of the HRA's part of that.

Chair: Patrick Corrigan

Ok thanks Brian and just to add to what Brian has said I know that colleagues of mine have been engaging with some senior conservatives who are privy to the machinations around proposals around the repeal of the Human Rights Act and they are very alive to and somewhat concerned with the devolved dimensions to this, how do they get over those devolution hurdles.

And I think that may also point to one of the reasons why the process of repeal is rather slower than they first suggested so there is a good fight to be had here and the role that we have as people concerned with human rights here in Northern Ireland is a very important one in terms of defending and protecting rights not just here but across the wider UK jurisdiction so there's lots for us to do in the months and years ahead.

For now though, thank you for your concentration, for your participation in this session and in his absence thank the Chief Constable for his commitment of time and effort to this and also Niall Murphy, Brian Gormally, and we'll break for lunch. But first of all a round of applause for our speakers.

ANNEX 2: Q&A FROM AFTERNOON KEYNOTE SPEECH



Chair: Patricia McKeown

Thank you very much Chris, complex it may be but I heard there's something we can do. It's open to the floor for questions or interventions. We've got people again moving around with portable microphones, would you indicate. Who wants to start?

Q. Brian Gormally:

Sorry Chris, this is a really nerdish point. Just in terms of the Sewell Convention, there's, I don't have it in front of me I'm afraid, the guidance note on devolution talks about anything interfering with the powers of ministers or the devolved assembly and so on. Would, because, the assembly ministers are subject to the Human Rights Act effectively, would the Sewell Convention not automatically be triggered by repeal?

A: Chris McCrudden:

So, now, you're right it's a nerdish question, but, I invited nerdish questions. So, the problem Brian is that there are two different pieces of paper. So, there's a potential conflict between these two different pieces of

paper and there's also a further question as to whether subsequent practice has altered in some way the practice under the Convention. So, in other words, Scotland has got, NATS at the moment are arguing that the Sewell Convention has effectively been changed over time by practice. But in terms of the documents here there are two different documents. One document is the Memorandum of Understanding between the devolved administrations in 2001. So that's the agreement between the devolved administrations among themselves and with Westminster, and, that says, paragraph 13 "The UK Government will proceed in accordance with the Convention that the UK parliament would not normally, would not normally legislate with regard to devolved matters, except with the agreement of the devolved legislature".

The other document that you're quoting, if I'm right, is the devolution guidance note, number 10. It provides as following "consent need only be obtained," and, I should say before I read this out this is the UK government's devolution guidance. This is not the memorandum of agreement between the devolved administrations and the UK Government. So this is clearly the UK government putting its own position.

So it says " Consent need only be obtained for legislative provisions that are specifically for devolved purposes, although, departments should consult the executive on changes in devolved areas of law, which are incidental to or consequential on provisions made for reserved matters." So, there's a difference in interpretation therefore, as to whether the convention relates only to specifically devolved areas or whether it applies in the general area of devolved issues. There is a difference between the two.

The reason why that's important is because of the other argument I suggested, which is, repeal of the Human Rights Act narrowly defined is not in an area of specifically devolved powers, because, the Northern Ireland Assembly doesn't have power over the Human Rights Act. That's where the problem lies. But come back if I've misunderstood the question Brian.

A. Brian Gormally:

Well there's a bit in that guidance that talks about any legislative measure that changes the powers of responsibilities, it's in the guidance.

A. Chris McCrudden:

I've got it now. So, here we have an additional difficulty. So, bear with me for a minute. The Northern Ireland Act, when it specifies the powers of the assembly and of ministers, specifically talks about those powers being limited by the Convention, the Human Rights Convention, not by the Human Rights Act but by the Human Rights Convention.

So, on that reading, even if you were to get rid of the Human Rights Act the limitations on the assembly and on ministers in the Northern Ireland Act would continue, because, they refer to the Human Rights Convention not the Human Rights Act.

So, even if you got rid of the Human Rights Act you would still have restrictions on the Northern Ireland administration. With me so far? However, the term Human Rights Convention is defined in the Northern Ireland Act by referring to the Human Rights Act. What does that mean?

Well, it means according to one argument that in the absence of the Human Rights Act there is no meaning to be given to the Human Rights Convention terminology in the Northern Ireland Act and, therefore, has no affect. Right, so all of this adds complexity to complexity because of this funny way of drafting the legislation.

So, to answer your question, if you're getting rid of the Human Rights Act there is a dispute between the narrow and the broad understanding of the Convention. However, if you are replacing the Human Rights Act with a bill of rights, domestic bill of rights, whatever, then that would be subject to the Sewell Convention, because, you would be directly affecting the powers of the Executive in the assembly on the assumption that you then referred to the Human Rights Convention as having the meaning that is set out in the new bill of rights, or, you replace the whole Human Rights Convention reference to a British Bill of Rights itself.

Then you are directly affecting the powers of the assembly and its ministers and that is an area in terms of affecting devolved matters.

Chair: Patricia McKeown Can we pass the mic to Les please?

Q. Les Allamby:

Two quick observations and a question, the first thing I think is it's pretty clear that the delays have been a product of a number of things. One is a remarkable lack of enthusiasm in parts of Whitehall for this change. The second is the legal complexities and I'm pretty convinced that they are doing all of those legal machinations that you've just outlined, themselves already. This is why I tend to take the view that it's actually worth putting those legal complexities out there now rather than keeping your powder dry until late in the day.

What interests me, I guess, is your thoughts on, removed from, well we'll have to wait and see the colour of the Government's money, but from a very expansive change you might get out of the Council of Europe, that seems to be somewhat more modest ambitions, partly motivated by political considerations and partly the complexity of all the other things that are going on. But, if you move to the even less expansive role, which, looks to be some kind of how you interpret the Convention and whether it's by way of existing courts or a new court structure and how that happens. When you see the legal issues lying in terms of attempting if you would like to say, 'we will put all those Convention rights into a British Bill of Rights and we won't take any of them away,' but, actually what we'll concentrate on is the technical 'how you interpret those rights as best you can,' a Westminster statute to try in some way tie the hands of judges who are there to interpret. Where in that circumstance do you see some of the legal arguments on this.

A. Chris McCrudden:

So, there's a phrase that my mother always used to say, you mentioned my mother earlier on, which is "beware of the curse of the answered prayer". Replacing the existing Human Rights Act with a British Bill of Rights, with we'll assume the same rights as it were put in, it's like the old warning that you're given when you're buying shares right, prices can go up as well as down. At the moment the Human Rights Act is broadly interpreted by the Supreme Court and other courts obviously as implementing the jurisprudence of the European Court.

That means that clearly in some areas of British law that has led to change. You're more familiar than I am and indeed you have been implementing it in some respects, in that way, but, there is also a constraint that it imposes. The constraint is and it's called the *Ullah* doctrine for the real nerds, that the Supreme Court is unlikely to go much beyond the existing jurisprudence of the European Court.

If it is freed of having to deal with the European Court of Human Rights jurisprudence in quite the way that it has then of course it could take the opportunity to expand the rights. So, it depends what you think you're doing when you repeal the Human Rights Act.

If you think that you are guaranteeing, therefore a reduction in rights coverage, so the Prime Minister talks about on various occasions about being embarrassed or having areas that are subject to human rights litigation that just shouldn't be subject to them; if the idea is that you are necessarily going to reduce rights protections by this manoeuvre, I'm not at all convinced that's necessarily going to be the case. So, my suggestion therefore is that it depends what you think you are doing.

If on the other hand you think what you're doing is freeing British courts and the British political system from external interventions, in other words what you really want to do is get rid of the European Court, then that seems to me to be a bit of an exaggeration.

In the sense that it's a disproportionate response, because, the number of cases in which the European Court actually intervenes and actually finds violations is very, very, small in comparison to the proportion of cases that actually go. I mean I have litigated before the European Court and lost, so, I am a standing example of the fact that, you know, the idea that when you go to the European Court you always win as a litigant is just not true.

So, the curse to the answered prayer is you may get rid of the international intervention, yes, to that extent the European intervention, but, you may enliven and empower the domestic courts to go actually rather further than you previously wanted. Does that answer, address the question?

Chair: Patricia McKeown

I'm going to take just one more. We are over. I am suggesting that we ditch the five-minute comfort break and you take your comfort as you need it. Would that be fair enough? Thank you. Then we'll take this.

Q. Natasa Mavronicola:

Thank you so much. Thanks for the talk Chris. I'm Natasa Mavronicola, I'm Chris's colleague and I'm going to be teaching with him this term. I was really taken by your analysis of the different options and I have the following question. Assuming that the Human Rights Act is repealed and we're left with an impoverished set of human rights protection, which isn't necessarily the only scenario possible, you said the UK courts are highly unlikely to step in and set aside a piece of legislation on the basis that it's incompatible with the rule of law under the *Jackson* dicta, perhaps, with the rule of law being given an interpretation that includes international law or a substantive human rights based content, but, we don't have the prospect of UK courts setting aside primary legislation under this Human Rights Act either.

So, what I'm more interested in is what do you think the prospects are for UK courts stepping in and recognising common law constitutional principles and common law constitutional rights and also whether you think that's likely to cause an increase in litigation as well?

A. Chris McCrudden:

Great question, thank you. I mean, let me preface the response with two brief points and then I really will answer the question. The first prefatory remark is that in the Northern Irish context in particular there is a history of when there were attempts to use legal avenues of redress in the absence of legislation and explicit rights protection. So, think of the period between 1920 and 1972. The common law was not a noticeably successful mechanism for dealing with the human rights abuses. So, there is a history. The second point is, prefatory point is that of course a lot of water has flown under the bridge since 1968 and the common law has undoubtedly been developed, and, you will know better than I do that in a series of recent cases the Supreme Court has seemed to indicate that the common law could and should be developed in certain areas.

One wonders whether they did that in part to indicate to ministers that they weren't going to get off scot-free even if they repealed the Human Rights Act. One can imagine at least some of the members of the Supreme Court might have done that with that in view.

There are other comments in other cases that seem to be rather sceptical of developing human rights principles of the common law. So, the essential answer is therefore, we don't know whether the courts would jump one way or the other. One might imagine that certain of the members of the current Supreme Court and I'm thinking of Lord Sumption in particular, would be pretty uneasy about being seen to essentially do an end run around the democratic decision of Parliament to repeal the Human Rights Act.

You can see a democratic mandate question that it's just undemocratic for the courts to do that. I have to say it's an argument with which I have some sympathy. I mean think of the context in which democratic decisions are taken that we agree with that the courts then undermine and I'm uneasy about that as well. So, there would be a real debate at the point about the democratic issue.

So, coming to the last part of your question would there be more litigation? You bet. I mean inevitably, because, all of those questions are questions that my friends at the London Bar and the Northern Ireland Bar are just itching to get at. It would be a paradise for academics like us and practitioners. So, would it reduce litigation? Just as a suspect it wouldn't reduce litigation because of issues going to the European Court of Justice, so I'm sure it wouldn't reduce litigation over the common law questions.

Chair: Patricia McKeown

Ok, on behalf of us all, Chris, I want to thank you very much. Food for thought, it sounds like we've got to do the preparation now. Just a related matter, those of you who also might wish to interfere with Brexit proposals, the Centre for Cross Border Studies is holding a two-day conference on the 18th and 19th of February on the impact of Brexit for Northern Ireland and it does seem to me we're talking about some directly inter related matters, so please take a note of that.

ANNEX 3 : Q&A SESSION FROM SESSION 2



Chair: Patricia McKeown

Q. Nastasa Mavronicola

Thank you very much for those excellent talks which were very informative regarding the significance of human rights both the Human Rights Act and human rights more broadly, for people with disabilities, for children, for older people, for people that sometimes find themselves at the margins of the political arena and other contexts; which is obviously where human rights are most needed.

What struck me in the talk about older people was the mention of LGBTQI individuals and I was wondering if you would like to reflect on the challenges posed by intersectionality in the context of inequality and discrimination? So, talking about for example, persons with disabilities who are also LGBT or persons who are older and poor and also refugees or asylum seekers...something like that.

Because those are persons, those are identities, which often aren't in the mainstream, but probably, your work has also touched on. Also, children who are, perhaps, homosexual or something. So if you had any thoughts on the challenges raised by intersectionality and the prospects for human rights in dealing with them I would really appreciate them.

Chair: Patricia McKeown

Can I take one or two more questions and we will take them all together. Kevin, thank you.

Q. Kevin Hanratty

Just a quick question, Edel touched on, the push to get that recognition for the Human Rights Act and the duties placed on public authorities, you also mentioned that there is a case by case basis under which certain advocacy has been successful but my question for all of the panel: What is your experience of getting those public authorities to take general account of mainstream human rights and public authority duty across all of their work? Is it a bureaucratic issue? Is it a sort of change issue? Is it a general resistance to human rights?

I suppose, a question that we keep asking ourselves at the Consortium and in civil society; what are the difficulties in making that leap from the standards to the practice as a public authority and in terms of service delivery for service users on the ground? So I would just be interested to explore, is it attitudinal? Is it practical? Is it resources? Or whatever, just the panels perspective on that generally.

Chair: Patricia McKeown

Ok thank you very much. We will take it there and we will start with the question around intersectionality or multiple identity of oppression. Who would like to kick off? Any volunteers?

A: Paddy Kelly:

We would argue UNCRC points alongside UNCRC. So a lot of our casework, tribunal representation, judicial review, although we don't do that many judicial reviews, would be coming in around points of disability and arguing UNCRC points as an interpretive tool.

So yes, we do that and I think that is particularly important for us in terms of trying to incorporate via the back door the UNCRC but also I would say that there is a particular issue for us in terms of an ongoing reluctance, despite our best efforts of many people in the room, of an acceptance of children as rights holders and this then goes to the point that Kevin was making: what is the resistance in public authorities?

I think we still have, I mean yes they will look that they comply with the Human Rights Act and they do training on the Human Rights Act. In fact we do training on children's rights for public authorities in relation to that but whenever you scratch the surface I am not convinced that a lot of public authorities still accept children as rights holders.

By way of example, and I would say there are a couple of people in this room waiting to see where I would get this in, we have two pieces of legislation before the assembly, or one before the assembly and one that is in policy holding mode at the minute, which clearly are based on the basis that children are not rights holders and our government does not even recognise them.

One is proposed new mental capacity legislation where, despite all the recommendations of Bamford and in our view, in breach of the Human Rights Act, it is proposed to exclude under sixteens from the Mental Capacity Bill, which we think is a clear Human Rights Act issue. So I think that goes, in terms of Kevin's point, in regards to the public authorities engaged there do not recognise children as rights holders.

The other is the proposed introduction of Age Discrimination Legislation (Age Goods, Facilities and Services) where again it is proposed that it doesn't ...the protections under the current policy, because it has not been introduced yet, would not cover children under sixteen. So I think, for us, in terms of the

children's rights sector we do argue all points available to us and most of our clients have multiple identities in terms of what the breach of their human rights are and, therefore, it's incumbent upon us to do so.

But also, I think that in terms of public authority, I think part of the barrier is we as a society still do not accept and fully recognise children as rights holders.

Chair: Patricia McKeown

Can I just say in respect of that as well, that in terms of the creation of the Human Rights Consortium and the Equality Coalition, all those years ago, became the perfect opportunity to understand not just the individual category of oppression that each member or organisation was dealing with but how it was intersectional.

How any individual in this society is likely to be facing multiple discrimination of some description or another, that's been really important for all of us. And, I think, what we did there was also create a vehicle for, if they wanted to take it seriously, government and public authorities to be able to go and have a conversation that was overarching and that took all the categories into consideration when they were developing policy or implementing it.

There is still a very long way to go on that, I think, but just in my own union, the fact that the LGBT group, the women's group and the black and migrant workers group, the disability group, the youth group and the retired members all do business with each other and deliberately arrange to do business with each other so that they can understand. I think that's very important. Just staying with the panel on the wider question of: Is it bureaucracy? Is it change issue? Is it resistance? We got some view there from Paddy. What about Edel, Margaret?

A: Margaret Kelly

I've worked across a number of different groups. So previously, just before I took up post, I was working with children in care and looked after children. So I have worked with local authorities and public authorities in many different aspects of that and for me there are actually two bits to this.

One is actually at that most senior level, the commitment to human rights and the commitment to seeing those implemented rather than simply a statement that we are committed to it. It's actually about the implementation of that.

The other thing about working with those public authorities is they are not homogenous, and in fact my experience has been that there are different groupings within public authorities that I have found more sympathetic to human rights than others depending on the amount of interaction that they've had with organisations that have supported them moving along that road.

So sometimes I have had a more positive response than others, and sometimes, particularly in this area of work with people with a learning disability there is something, for me, about those public authorities often think that that individual isn't the person who holds the rights but it is somebody else holding it for them. So it's their parent, or their family, or their carer but actually it's not the person.

For me, in this area of work now, I actually think we have a huge journey to go to get some acceptance for that. The final thing for me is actually resources, because you do need resources to make a reality of rights and quite often some of the reasons that rights aren't a reality is to do with resourcing.

A: Edel Quinn

As regards to older people, I think you are starting at a different place. I went into meetings when I worked in the children's sector and there was a starting point, there was a level of acceptance around children's rights that I don't see. That's my experience anyway. The conversation is very much around needs.

We need to move from needs and dependency to rights and duty bearers and that is a train that needs to go and bring older people along. So there's an issue around education and capacity building and awareness-raising with older people as well as with the public authorities.

And it does tie into your question about multiple identities too. When you are talking about older people, we are not talking about... There is a presumption that we are talking about white people, my sense is that we are talking about white and within the two main communities so in our stuff we would use international standards.

We would make the connections around race, LGBT etc. etc. and would also engage directly with older people with multiple identities to inform the work that we do and bring them with us. They would work alongside us because they know what the issues are. I will point to a report that NICEM did, a benchmark on human rights report, which was extremely helpful in regards to issues around race and older people for example.

But I think that there is a big issue around challenging the culture and challenging the narrative that might exist because older people will have lived experience and will either say that human rights is a good thing and they work for me or they're not and their experience will be to live their lives without challenging authority.

Also recognizing that the issue of rights is a contested issue, particularly in this jurisdiction and there is something around getting into that discussion with older people and saying look here, in particular around socio-economic rights, when we are talking about human rights here we are talking about nursing care, we are talking about residential care, we are talking about your access to your benefits, we are talking about housing, housing adaptations... whatever it is. And when you get into those types of conversations you are more likely to bring people with you.

So I think, in answer to your question, it is almost like the conversation that happened way, way back when, when there was all that work done to build capacity and to bring people with you. Whether it's because of resources, or people have got tired and their eyes have gone off the ball, but certainly within the age sector you would recognize that there is an issue as regards capacity and out of that, what people will come with, it's that thing of moving from 'Oh, that's wild' to 'Hold on a minute, that's a human rights breach.'

Rather than, 'that's desperate' and you have a conversation about how desperate it is, and when it becomes about needs, it becomes 'they've got it, why don't we have it?' and it becomes divisive. Whereas if you are talking about the public authority as a duty bearer, it's a much more empowered place to be and knowledge is the first step towards empowerment. For me that is a big part of the discussion.

A. Michelle Millar

I would just like to draw your attention to, Disability Action did a report on attitudes on people with disabilities in the LGBT community and one of the things in that report talks about people with disabilities being seen as asexual. Kind of, heaven forbid, that people with a disability would want to have a sexual relationship or go down that road at all or indeed be gay or lesbian or transgender. So that is a good report that I can refer you to.

In terms of public authorities and resistance of public authorities and legislation for people with disabilities; we did a piece of work, Disability Action was asked if a member of the disability community would like to job shadow a particular Lord Mayor for a day, who will remain anonymous, and we said no problem and found a person who said she would love to do that and their attitude was "Oh, she's a wheelchair user? Umm, but can she not just jump in the back of the Lord Mayor's car and throw the wheelchair in the back?" And we said no, that she can't transfer and their staff were immediately like "Oh well we can't use that person." So we said "Now hold on a second here, you asked and we're telling you." So that conversation took place to the point that we took a human rights based approach to it and then the council were able to sit down and say ok here are the issues and this is what we need to work through.

So, from the very outset, that is about attitudes. That's internal, a particular unit in a particular council having their own way of working and their own kind of bureaucracy. They wanted a particular, a 'nice wee person' with disability to get their photograph taken. That's what they wanted and we said no, this is the reality of disability and you have a duty.

You are duty bound to put these services in place, to put this support in place, to enable this person to have the opportunity to carry out the functions that you asked them to. As a result of the work that we have done, we have been assured that a pot of money will now be set aside in council to support people to participate in public life.

So we have taken that human rights based approach and thrown it back on them. We said this is your own disability policy and you are not adhering to it. So I think really in terms of legislations and public authorities, they almost kind of have a 'get out' clause, and kind of brush it off and we think we need to bring more and more challenges to that.

Thank you.

