

JONES CASSIDY BRETT SOLICITORS

24 January 2017

Supreme Court rules on NI Brexit cases

The applicants in *Agnew and others* welcome the Supreme Court's decision that the Government cannot trigger Article 50 without Parliamentary legislation. This was the principal argument made by the applicants to the High Court in Belfast, but rejected by that court.

The majority of the Supreme Court has held in the related *Miller* case that the European Communities Act 1972 has constrained the Government's powers to trigger Article 50, without legislation, principles that the applicants also argued applied to the Northern Ireland Act.

The applicants welcomed the Supreme Court's recognition of the vital role that EU law, and EU-based rights, play in the Northern Ireland devolution settlement. The Supreme Court said, at paragraph 132:

“It would ... be incongruous if constraints imposed on the legislative competence of the devolved administrations by specific statutory provisions were to be removed, thereby enlarging that competence, other than by statute. A related incongruity arises by virtue of the fact that observance and implementation of EU obligations are a transferred matter and therefore the responsibility of the devolved administration in Northern Ireland. The removal of a responsibility imposed by Parliament by ministerial use of prerogative powers might also be considered a constitutional anomaly.”

The applicants were disappointed that the Supreme Court did not accept their argument that the consent of the Northern Ireland Assembly was legally required. According to the Sewel Convention, the UK Parliament will not normally legislate in areas affecting devolution without the consent of the Northern Ireland Assembly. The Court accepted the “important” constitutional role that this convention plays but held that it had no role in enforcing it.

The applicants emphasize the importance that the decision will have in the future in protecting the role that the European Convention on Human Rights plays in the Northern Ireland Act 1998.

Notes for editors:

Our clients:

- The following clients are politicians and Members of the Northern Ireland Assembly:

Steven Agnew MLA, Member of the Northern Ireland Assembly for North Down, Leader of the Green Party in Northern Ireland

Colum Eastwood MLA, Member of the Northern Ireland Assembly for Foyle, Leader of the Social Democratic and Labour Party, former Mayor of Derry (2011-2012)

David Ford MLA, Member of the Northern Ireland Assembly for South Antrim, Leader of the Alliance Party of Northern Ireland, formerly Northern Ireland Minister of Justice (2010-2016)

John O'Dowd MLA, Member of the Northern Ireland Assembly for Upper Bann for Sinn Fein, former Minister for Education (2011-2016), former acting deputy First Minister (2011)

- The following clients have close associations with the voluntary and community sector in Northern Ireland:

Dessie Donnelly, Director (Development) of Participation and the Practice of Rights, an Irish citizen living in Belfast, married to a French citizen

Dawn Purvis, former Member of the Northern Ireland Assembly for Belfast East (2007-2011), former Leader of the Progressive Unionist Party (2007-2010), former Programme Director of the Marie Stopes Belfast Centre (2012-2015), former Independent member of the Northern Ireland Policing Board (2006-2007)

Monica Wilson OBE (received for services to people with disabilities), former member of the Equality Commission for Northern Ireland, and past president of the European Union of Supported Employment

- The following client is an independent human rights organisation with cross community membership in Northern Ireland:

Committee on the Administration of Justice

- The following client is a charity with over 160 member organisations from across all communities in Northern Ireland who work together towards a human rights based society which includes a strong and inclusive Bill of Rights:

The Human Rights Consortium