

Launch of the Equality Duty Enforcement Project – December 2017

With the help of a grant from the Baring Foundation the CAJ has established an Equality Duty Enforcement Project. The project aims to support the work of the members of the Equality Coalition to (i) take forward complaints and other interventions to ensure Northern Ireland's "Section 75" public sector equality duty is complied with; and (ii) share and embed the CAJ's human rights based approach and legal expertise with other Equality Coalition members. The project and the newly appointed Equality Duty Enforcement Coordinator were launched on Tuesday 12 December 2017 at a seminar organised by the Equality Coalition.

Equality Coalition Co-Conveners Daniel Holder of CAJ and Patricia McKeown Regional Secretary of UNISON also presented and facilitated a discussion on the Equality Coalition's research report "Equal to the Task?" – a report which analyses the current application and impact of enforcement powers over the "Section 75" equality duties. The report includes analysis of the approach to enforcement through the investigation powers vested in the Equality Commission for Northern Ireland (ECNI). Methodologically; the research was taken forward through a combination of desk based research with the inclusion of significant expert input from Equality Coalition members. They detailed their experience of Section 75 compliance and the ECNI's and Court's approaches to enforcement (one of these organisations alone having responded to over 3000 government consultations with regards to equality). In summary, the report concludes that:

- while there are pockets of good practice, there is widespread flouting of equality schemes compliance;
- only more effective enforcement of the duties can reverse the patterns of non-compliance; and
- whilst enforcement powers could be strengthened, they are very underused by civil society and the ECNI.

The report makes recommendations in respect of how the ECNI could better use its existing powers of enforcement and also recommends that civil society and individuals make better use of the powers.

The Chief Commissioner of the ECNI, Dr Michael Wardlow, addressed the meeting to give the ECNI's response to the report. The ECNI concurs with the Coalition that there are significant issues regarding public authorities' compliance with the Section 75 duties. The ECNI has now agreed to review the use of its investigation powers in this coming business year in furtherance of its statutory remit to keep the effectiveness of the Section 75 duties under review. At present however the Chief Commissioner emphasised that the ECNI prioritises its advisory work, mentioning that investigatory work can be perceived as "adversarial". Equality Coalition members in the audience however tended to emphasise the important role enforcement plays in ensuring statutory compliance with the equality duty. In light of the deep uncertainty Northern Ireland is currently facing as a result of BREXIT and the collapse of the devolved institutions, a final contributor rightly highlighted the crucial role equality plays in maintaining peace in Northern Ireland: equality underpins all human rights. **contd...**

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Notably in the absence of the Northern Ireland Executive and Assembly the Equality duty is one of the few tools and safeguards available to civil society.

One of the Equality Duty Enforcement Project's first pieces of work has been the submission of a Section 75 compliance complaint against the Department for Communities for the Department's failure to equality screen the "two child rule" in Universal Credit. The Department's justification for not having equality screened the rule under Section 75 being that the legislation was passed in Westminster and thus is not within its "functions". Our Section 75 complaint is one of many potential challenges which we hope will eventually result in the two child rule, which will exacerbate child poverty and gender inequality, being reconsidered.

However, we see the challenge as particularly important for upholding Section 75 for two reasons. First, the legislation will have a significant detrimental effect on several protected groups in Northern Ireland (and uniquely to NI will impact Catholic families more than Protestant families). It is vital that the NI specific equality implications are considered. Second, the Northern Ireland Executive remains suspended and we are currently facing the possibility of direct rule from London. If a local government department were able to abdicate its Section 75 responsibilities on the basis that a particular policy was based on legislation emanating from Westminster, this would effectively strip the Northern Ireland population of Section 75 protection on a wide range of matters.

Our work on the two child rule is also an example of how the Project aims to provide support to Equality Coalition member groups who may have a knowledge or skills gap on Section 75 enforcement. Some groups may have felt ill-equipped to raise a complaint on this legislatively complex issue but we hope that the work of our Project on the two child rule and other policies effecting socioeconomic rights will equip and embolden member groups for future challenges.



Caroline Maguire - CAJ's new Equality Duty Enforcement Project Coordinator

CEDAW and the Security Council: Enhancing Women's Rights in Conflict

Recent years have seen a rapid increase of legal and policy developments under international law to advance the rights of women in conflict-affected settings. These developments are accompanied, however, by acute concerns about their efficacy and enforcement. One significant development towards improving overall implementation, enforcement and state compliance with women's rights in conflict is the increasing engagement by the CEDAW Committee with the Women, Peace and Security (WPS) Agenda of the United Nations Security Council. The pursuit of synergies have been advanced in important ways with the CEDAW Committee's adoption of its General Recommendation Number 30 (GR30) on the rights of women in conflict prevention, conflict and post-conflict situations in 2013. In our new research article, 'CEDAW and the Security Council: Enhancing Women's Rights in Conflict', we consider practice to date, and future potential, towards productive synergies between CEDAW and the Security Council. We argue that such synergies offer unique potential because they combine the CEDAW Committee's women's rights commitment and focus on state accountability with the unique international enforcement activities of the Security Council.

Our research finds that there are several immediate practical ways in which the CEDAW Committee and Security Council might support the mutual implementation of both the CEDAW and WPS commitments to enhance women's rights in conflict. Firstly, there are considerable opportunities for enhanced data-sharing, such as the data gathered by the CEDAW Committee through state party monitoring could be of use to the Security Council as it makes decisions on country situations on its agenda. (This is a particular opportunity for civil society, a constituency with considerably fewer opportunities for formal engagement with the Security Council than the CEDAW Committee, to have their insights and outputs considered.) Secondly, through its monitoring activities, the CEDAW Committee can make recommendations that drive state-level implementation of WPS resolutions towards substantive equality and human rights for women, in conflict-affected and donor countries. Likewise, the Security Council can — through the Secretary-General's annual reporting on WPS — play a role in enhancing the state-level accountability of UN member States that are not party to CEDAW, or rely on reservations to CEDAW. Thirdly, the Security Council can more comprehensively integrate CEDAW-led interpretations of women's rights in the implementation of its mandate, such as utilizing the Security Council's sanctions regime to more effectively enforce women's rights in conflict.

The pursuit of effective synergies between CEDAW and the Security Council on women's rights in conflict is arguably of particular relevance to Northern Ireland. The UK has to date resisted the application of the Security Council's WPS commitments to Northern Ireland, and has therefore managed to evade the Security Council's assorted implementation and reporting mechanisms attached to the WPS agenda. As a party to CEDAW, the UK government cannot contest the Convention's application to Northern Ireland. Moreover, with GR30, the CEDAW Committee has advanced a broad definition of 'conflict' (and thus 'postconflict'), which includes protracted and low-intensity civil strife, ethnic and communal violence and states of emergency. In light of the upcoming periodic review of the UK by the CEDAW Committee, we propose the following areas in which synergies between the UNSC WPS agenda and CEDAW might most effectively be exploited:

1. Addressing continuities between pre-, during and post-conflict violence against women (VAW). The CEDAW Committee has advanced an understanding of VAW as a form of gender discrimination. On this basis, GR30 clearly articulates the need to address the relationship between VAW occurring within and outside conflict. In doing so, it goes beyond the Security Council's approach, which narrowly defines VAW according to its own mandate to maintain international peace and security. As the CEDAW Committee situates VAW within the broader exacerbating effects of conflict on gender inequality and women's vulnerabilities to all forms of violence, the next periodic review could provide an opportunity to prompt attention to the link between public and private sphere violence in a context such as Northern Ireland.

2. Including women and integrating gender into dealing with the past. The inclusion of women and accountability for women's rights violations has been a priority to date of the CEDAW Committee in its state party monitoring, in particular since its adoption of GR30 (for example, in Iraq and Syria). Proposals for investigation, truth-telling, potential prosecution and reparation for conflict-related killings and human rights violations in Northern Ireland could be usefully scrutinized by the Committee. (The Gender Principles on Dealing with the Legacy of the Past, developed by a civil society-academic alliance in response to the Stormont House Agreement, would likely be of considerable interest to the Committee.)

3. The obligation to include women and women's civil society in all post-conflict peacebuilding activities. While it is a stated priority of the Security Council's WPS agenda, it is the CEDAW Committee that has actually brought useful scrutiny to the exclusion of women from peace processes in, for example, Georgia and the Central African Republic.

4. Reporting and monitoring. Through its state party monitoring, the CEDAW Committee has encouraged the development of WPS National Action Plans (NAP), and challenged their deficiencies and exclusions where relevant. In GR30, in particular, the Committee calls on state parties to report on their implementation of their WPS commitments as constitutive of their overall obligations under CEDAW. The recently launched UK NAP (2018-2020) commits the UK to 'tackling the obstacles to women's leadership and meaningful political participation such as the lack of public/social support and political party support; entrenched patriarchal views; gender, age and ethnic discrimination; violence and intimidation; lack of an enabling environment for women's rights organisations and women human rights defenders to mobilise freely' (p. 8). We see here considerable potential to utilize CEDAW state party monitoring to foster new and improved engagement by the UK on its post-conflict peacebuilding activities for women's rights in Northern Ireland, concurrently fulfilling its commitments under its NAP and under CEDAW.

Catherine O'Rourke and Aisling Swaine

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CAJ will be reporting on the need for UNSCR 1325 Women, Peace and Security to be applied to Northern Ireland in their list of issues to the CEDAW committee in July 2018. It will also form part of our shadow report to the CEDAW Committee in Feb/March 2019 for the UK State examination.

Previous UNSCR 1325 submissions and CEDAW reporting can be found on the website under Equality.

Death of Donal Barrington, advocate for the underdog and first President of Irish Human Rights Commission

The death took place on 3rd January of Donal Barrington, one of a handful of lawyers who transformed the legal system in the Republic in the 1960s and 1970s. He went on to be a Supreme Court judge and the first President of the Irish Human Rights Commission (IHRC) and co-chair of the Joint Committee of the IHRC and the Northern Ireland Human Rights Commission (NIHRC).

Born in 1928 Donal Barrington qualified as a barrister in 1951 but with no legal connections it was two years before he got his first case, an experience that may have influenced his lifelong sympathy for the underdog. In the 1960s, however, he took the first of a series of cases that challenged the deeply conservative nature of Irish society at the time. In the *Nicolaou* case in 1963 he challenged a law which allowed the adoption of a child born outside marriage without the consent of the father. They lost the case but he would go on to challenge other aspects of the harsh and moralistic laws about marriage and sexuality.

In 1966, in *Byrne v Ireland*, he successfully challenged a rule under which State agencies could not be sued for any damage they did, thereby laying the basis for much modern public interest law. And in 1972, acting for Mrs May McGee, who had been advised by her doctor that she could not have any more children for health reasons, he successfully challenged a ban on the sale or importation of contraceptives – the first chink in the clerical control of all matters to do with sexuality. This was human rights lawyering before the term was invented and did not make him popular with elements in the Government, the Catholic church or some of the judiciary. After that he was seen as the lawyer for the marginalised and acted for Dunnes Stores workers wrongly accused of theft, successfully challenged the exclusion of women from juries and represented David Norris in the early stages of his challenge to the criminalisation of homosexuality. He was appointed to the High Court in 1980, to the EU General Court in 1989 and to the Irish Supreme Court in 1996 but did not stay long there before retiring in 2000.

As a barrister Donal Barrington regarded the Irish Constitution as a living document that should adapt to changing times so as to protect people's rights, not as a legal straitjacket to restrict them. He was liberal and reformist in his views outside the courts as well. He was a founder member of a liberal thinktank called Tuairim in the mid-1950s and wrote a pamphlet about policy on Northern Ireland that foreshadowed some of the aspects of the Belfast/Good Friday Agreement. He spoke out bravely against a boycott of Protestants in Fethard, Co. Wicklow, in 1957 and was a founder member of the Irish Council for Civil Liberties in 1976.

When the Irish Government somewhat reluctantly set up the IHRC 2001, as required by the Belfast Agreement, they appointed him as its first President. They may have thought that after 20 years as a judge, his youthful radicalism would have dimmed. If so, they underestimated him. When there was a major row about the selection of some members of the Commission (including this writer), he made his displeasure known and they were all appointed.

He was full of enthusiasm about his new role and the IHRC produced a flood of policy documents in its first 18 months: on incorporation of the European Convention on Human Rights, an independent police complaints body, the UN Convention on Disability Rights, and anti-racism measures.

He was particularly enthusiastic about the Joint Committee with the NIHRC, as proposed by the Agreement, and the idea of a Charter of Rights for both jurisdictions in the island of Ireland. Unfortunately, due to the failure of the UK and Irish governments to provide funds for a permanent secretariat for the Joint Committee, it has not so far played as important a role as he wished. Donal Barrington retired from the IHRC in July 2002 for health reasons. He was a courteous and generous man with a passion for social justice and he helped to lay the foundations of the human rights movement in Ireland as it exists today.

Michael Farrell

Immigration control functions within the public and private sector

Introduction

Seeking to create a “[really hostile environment for illegal immigrants](#)”, the Conservative Government introduced legislation which extends immigration control into various spheres of people’s lives via the public and private sectors. As a result, non-state agents are increasingly being forced to make decisions about a person’s entitlement to essential services based on the complex issue of one’s immigration status.

We have heard many times that there will be a frictionless, seamless border on the post-Brexit island of Ireland, that free movement within the Common Travel Area will be maintained. The [government’s Northern Ireland and Ireland Position Paper](#) sets out that third party non-State agents will be one means used to achieve that goal:

(I)t is important to note that immigration controls are not, and never have been, solely about the ability to prevent and control entry at the UK’s physical border... controlling access to the labour market and social security have long formed an integral part of the UK’s immigration system.

Therefore, whilst immigration control may not happen routinely when one crosses from the South into the North of Ireland, as the only part of the UK which will share a physical border with the EU after Brexit, Northern Ireland, it appears, will itself become one large border.

With Brexit looming, the extension of immigration control functions beyond the Home Office raises concerns on many grounds, not least the increased risk of racial discrimination, including racial profiling (the form of racial discrimination whereby persons are singled out on the basis of skin colour or other ethnic indicators) against BME communities, isolation as well as increased suspicion and criminalisation of those communities and the negative impact on social cohesion in NI. To understand the extent of the potential impact on people’s lives, we set out below some of these legislative and policy provisions in relation to accessing services.

Bank and building societies

The [2014 Immigration Act](#) precludes most lending institutions from opening an account where it is considered that a person does not have the necessary immigration permission to be in the UK. Since 1st January 2018, in accordance with the [2016 Immigration Act](#), these institutions must carry out quarterly immigration checks on existing current accounts against a Home Office database via Cifas, an anti-fraud organisation. Upon notification of the outcome, the Home Office may apply for an order to freeze an account or require the institution to close an account. In “[the majority of cases](#)” the Home Office will instruct the institution to close all relevant accounts.

[Home Office Guidance](#) states that where documentary evidence, including a passport, is produced which demonstrates that the person is “lawfully present” in the UK, the institution can “contact the Home Office to confirm if the data held by Cifas is correct. *This course of action should only be taken in exceptional circumstances....There is no requirement to make this check and the default position should be to refuse the application.*”(emphasis added)

Determining a person’s immigration status can be a complex process and one in which the Home Office has a proven track record of making mistakes. One’s ‘right’ to remain in the UK is very often established after a lengthy appeal process. As further evidence that Home Office data is not reliable, the [2016 report](#) of the Independent Chief Inspector of Borders and Immigration found that of the 169 cases examined, 10% were incorrectly identified as individuals who were not entitled to an account.

The [Financial Services Authority](#) monitors and enforces compliance with these provisions. There is also concern that a chilling effect will result in institutions erring on the side of caution, refusing to open or continue to operate accounts for fear of falling foul of these provisions. This, coupled with Home Office mistakes and the risk of staff discriminating against individuals, will lead to people being denied access to their accounts potentially resulting individuals and families becoming destitute.

Driving licences

The 2014 Immigration Act amended the Road Traffic (NI) Order 1981 to impose a duty on DVA staff to determine a person's immigration status and, where it is considered that the person does not meet the [immigration residency requirements](#), either [refuse](#) to issue a driving licence or [revoke](#) a licence already issued.

In Britain, the Home Office Information and Sanctions Directorate carries out data checks at DVLA's request. Where a person is listed by the Home Office as being in the UK without immigration permission, DVLA refuses to issue or revokes an existing licence.

The 2016 Independent Chief Inspectors Report was again critical of the quality of data held by the Home Office when it found that 259 licences revoked in 2015 had to be reinstated due to mistaken immigration status information.

A driving licence not only enables you to drive lawfully but is a recognised form of identification for accessing essential services in NI. However, according to the 2016 Report "the Home Office did not appear to appreciate the seriousness of such errors for the individuals affected".

NHS services

The English [National Health Service \(Charges to overseas Visitors\) \(Amendment\) Regulations 2017](#) require healthcare staff to check a patient's immigration status to determine whether payment for medical treatment must be paid upfront. For those considered not eligible for free NHS treatment, hospital staff must now determine whether the treatment is immediately necessary (payment after treatment), urgent (full payment or deposit received before treatment) or non-urgent (charge in full before treatment). This creeping step towards NHS privatisation imposes a statutory requirement on NHS staff to police access to healthcare when they are already under-resourced and ill-equipped to determine the complex issue of a person's immigration status. These provisions will impact disproportionately on BME communities when they are most vulnerable and will deter ill people from seeking medical treatment due to a fear of being reported to the Home Office.

There is a significant risk that mistakes will be made and people will be incorrectly refused treatment or make payments for treatment they are entitled to free of charge. The already over-stretched accident and Emergency (A&E) departments which are exempt from these provisions, could see an increase in patients presenting for treatment as a way of avoiding this form of control.

General duty to disclose

The [2016 Immigration Act](#) imposes a far reaching duty on various public sector bodies in NI to disclose a 'nationality document', defined in [Guidance](#), when requested to do so by the Home Office. The NI public bodies bound by this duty, listed in [schedule 9](#) of the Act, includes the Health and Social Care Trusts, educational institutions, the Registrar General and the NI Housing executive.

Conclusion

We anticipate the imminent publication of an immigration Bill. The details remain to be seen but from what the Conservative Government has already set out in relation to Brexit and NI, we expect it to contain measures which will seek to further extend immigration control functions across public and private sector agencies thereby creating one big border within Northern Ireland.

Civil Liberties Diary - December

27th December

An investigation has been called for in the wake of a report that thousands of government papers relating to controversial periods of British 20th century history have vanished from the National Archives. Records covering the Northern Ireland Troubles are amongst those that have disappeared.

14th December

Politicians in Ireland have voted to end the constitutional restriction on abortion and give women access to the procedure up to 12 weeks into a pregnancy. The Oireachtas Committee on the Eighth Amendment urged repeal of Article 40.3.3 of the constitution and urged new laws to be passed that decriminalised abortion under certain circumstances. It is hoped the public will vote on the radical reform in May 2018.

14th December

Teachers have warned they will continue their industrial action over pay. The action has continued since January 2017 from which teachers have since rejected a pay offer that saw staff receive no across-the-board pay rise for 2015/16 and 1% cost of living uplift for 2016/17. Unions have since submitted a claim for a 5% cost of living pay rise this year.

12th December

Leading cancer charity, Marie Curie, has raised concerns about a controversial proposal to introduce means testing for patients requiring care home packages and warned that it could impact those with terminal illnesses. The charity was responding to a high-profile report that was published into adult social care services, in which recommendations were made to prevent a collapse of the current system.

8th December

A report commissioned by the Senator George J. Mitchel Institute for Global Peace Security And Justice at Queen's University on behalf of Stormont's Executive Office has found that more needs to be done to help integrate refugees into Northern Ireland. The report noted that Northern Ireland was relatively inexperienced in relocating refugees and researchers stressed the need for a specific Stormont strategy that aimed to support integration.

6th December

The Maria Stopes clinic in Belfast has announced its closure after the UK government announced it would fund abortion treatment for Northern Irish women in England. The managing director of the clinic, Richard Bentley said that Marie Stopes could better serve Northern Irish women through the clinic's national referral service rather than through an independent clinic in one part of Northern Ireland.

Compiled by Sinead Burns from various newspapers



RightsNI.org

The RightsNI Blog has had a makeover and as part of the re-launch will have blogs every day on the week of 5th Feb on a range of equality and human rights issues. Check it out at RightsNI.org or follow on Twitter and Facebook.

If you would like to write a guest blog please get in touch on rightsni@gmail.com

Just News

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