Just News

CAJ Committee on the Administration of Justice

Promoting Justice / Protecting Rights

Human rights in Northern Ireland

Spring 2019

Post-Brexit Citizenship Status: Divided by the Rules?

On 4 March 2019, a major conference on citizenship was staged in Belfast, providing a platform for discussion at a key juncture. The one day conference, entitled '*Post-Brexit Citizenship Status: Divided by the Rules?',* took place just a month before the UK's proposed 'exit day' from the EU, amid the general climate of political uncertainty around the process.

Reflecting this, it attracted a capacity audience of one hundred delegates, with many dozens more on a waiting list. The audience included key NGOs, trade unions, civil society representatives, academics and students, senior policy makers from the British and Irish governments, the media, and many others.

The conference was organised by the Equality Coalition, a civil society alliance co-convened by CAJ and UNISON, and BrexitLawNI, a collaborative ESRC-funded research project between CAJ and the Law Schools of Queen's University Belfast and Ulster University.

Held at Queen's University Belfast, the conference examined the risks of hardened entitlement boundaries between different groups of citizens in a post-Brexit Northern Ireland. Should the current Brexit proposals proceed, the existing paradigm of two main citizenship categories in NI will be expanded to include many more sub-divisions (see the explanatory diagram on page 2 for more detail).

Key topics explored during the conference included: entitlements differentials; citizenship status and rights; racial profiling; compliance with the Belfast/Good Friday Agreement; 'hostile environment' measures; the scope of the 'Common Travel Area'; and the retained EU citizens' rights provisions under the EU Settlement Scheme.

The conference featured input from a wide range of experts. One panel explored 'The implications of Brexit for EU26, EEA and non-EU migrants in NI', while another looked at 'The implications of Brexit for British and Irish citizens'. A third panel was comprised of political representatives who put forward their party's view of the issues under discussion.

It is hoped by everyone involved in delivering the event that the expert testimony given on the day will be a useful resource for some time to come. An official report from the conference will be made available at the end of June on the CAJ website: www.caj.org.uk/publications.

The conference received support from the UNISON Campaign Fund and Queen's University Belfast. *(Coverage continued overleaf.)*

Inside this issue of Just News....

Conference diagram on citizenship in Northern Ireland after Brexit

	Citizenship status when in NI	Access to work, public services & benefits in NI		Basic freedom of movement in EU		Other related EU rights, opportunities & benefits	
1	British citizens	✓	Secure under domestic law	X	No – cease to be EU citizens	X	No – no arrangement in place
2	Irish citizens who do not apply for EU settled status before Brexit Day	?	Political promise of some rights under CTA but not currently secured in domestic law	✓	Yes - still EU citizens	X	No – not provided for by CTA & EU-UK Joint Report commitment not in place
3	Irish citizens in NI for 5+years who apply for and get full settled status before Brexit Day	✓	Yes, range of equal rights retained, with (qualified) lifetime guarantee	✓	Yes - still EU citizens	✓	Yes – significant retained rights under settlement scheme
4	Irish citizens in NI for less then 5 years who get temp settled status before Brexit Day	✓	Range of equal rights temporarily; permanent with continued residence	✓	Yes - still EU citizens	✓	On temporary basis
5	Irish citizens who apply but are refused EU settled status	?	Political promise of some rights under CTA but not currently secured in domestic law	✓	Yes - still EU citizens	X	No – not provided for by CTA & EU-UK Joint Report commitment not in place
6	Irish citizens who arrive in NI (including by birth) after Brexit Day	?	Political promise of some rights under CTA but not currently secured in domestic law	✓	Yes - still EU citizens	X	No – not provided for by CTA & EU-UK Joint Report commitment not in place
7	EU26 citizens in NI who get EU settled status before Brexit Day	✓	Yes range of equal rights retained, with (qualified) lifetime guarantee	✓	Yes - still EU citizens	✓	Yes – significant retained rights under settlement scheme
8	EU26 citizens refused EU settled status	X	Heavily restricted	✓	Yes - still EU citizens	X	No (not when resident in NI)
9	EU26 citizens who arrive after Brexit Day	X	Heavily restricted	✓	Yes - still EU citizens	X	No (not when resident in NI)
10 /11	EEA citizens (except EU26) (Norway/Iceland, Lichtenstein & Swiss citizens)	✓	If covered under EEA-EFTA Separation Agreement & Swiss Separation Agreement respectively	✓	Yes - through EU-EEA agreements	?	Subject to EU-EEA agreements and settlement scheme
12	Non-EEA citizens	X	Heavily restricted	X	No - not EU citizens	X	No
13	Frontier Workers in NI (non-resident – CTA only likely to cover residents)	?	Heavily restricted unless EU and covered by settlement scheme	?	Depends on citizenship	?	Depending on status in Ireland/other EU or any settled status

To say there is still confusion about the practical implications of Brexit is an understatement. Across all the presentations and discussions, the '*Post-Brexit Citizenship Status: Divided by the Rules?*' conference explored two key questions: How will the citizenship landscape in Northern Ireland be transformed by Brexit? And what will the consequences of these changes be?

Currently, people resident in Northern Ireland generally fall into two citizenship status categories:

1. EU/European Economic Area (EEA) citizens – who have access to work and services/benefits in NI, plus freedom of movement in the EU and access to other EU rights. This category includes both Irish and British citizens.

2. Non-EU/EEA citizens – who don't have EU rights and are heavily restricted in access to work and services/benefits in NI.

However, the UK's exit from the EU will create many more categories of citizenship in Northern Ireland. Additionally, the draft Withdrawal Agreement – which as it stands does not permit continued freedom of movement into NI – places every group at some form of disadvantage.

The diagram shown above, created by CAJ and used as a centrepiece at the conference, shows what citizenship rights will look like across each category come the end of the Brexit transition period if plans remain the same. The outworking of this new system of complex rules and checks will have major repercussions for Northern Ireland and no doubt be a point of discussion for years to come.

Join us later this month for the conference report launch!

The 60 page report produced from the 'Post-Brexit Citizenship Status: Divided by the Rules?' will be launched in UNISON, Galway House, Belfast, at 1.30pm on **Thursday 27 June 2019**. Shadow Secretary of State for NI, Tony Lloyd MP, is to give a keynote address at the launch. Other speakers and panellists will include academics, equality experts and political representatives.

Full details have been advertised via the CAJ website: www.caj.org.uk/events. If you would like to register to attend, please email events@caj.org.uk.

Manifesto for a Rights Based Return to Power Sharing

More than two years have elapsed since the devolved power sharing institutions provided for under the Good Friday Agreement (GFA) collapsed in Northern Ireland. Additionally, many of the rights based commitments of the peace settlement, including those originally designed as to act as safeguards on the NI Executive and Assembly, remain unimplemented or have been misimplemented.

Fresh cross-party talks to restore power sharing began in May 2019. However, there is little point in restoring the institutions only for them to fail to deliver and collapse again for the same reasons as before. Conscious of this, the Equality Coalition, which is co-convened by UNISON and CAJ, has developed a '*Manifesto for a Rights Based Return to Power Sharing*'.

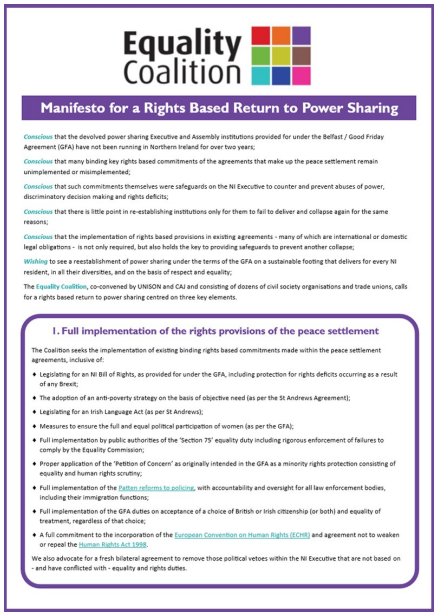
The 80+ groups in the Equality Coalition wish to see the re-establishment of power sharing on a sustainable footing that delivers for everyone in Northern Ireland on the basis of respect and equality.

The manifesto is centred on three key elements:

1. Full implementation of the rights provisions of the peace settlement.

2. Implementing international obligations and addressing 'rights deficits'.

3. Ensuring power is 'working within the rules'.



Equality Coalition

Manifesto for a Rights Based Return to Power Sharing

Conscious that the devolved power sharing Executive and Assembly institutions provided for under the Belfast / Good Friday Agreement (GFA) have not been running in Northern Ireland for over two years;

Conscious that many binding key rights based commitments of the agreements that make up the peace settlement remain unimplemented or misimplemented;

Conscious that such commitments themselves were safeguards on the NI Executive to counter and prevent abuses of power, discriminatory decision making and rights deficits;

Conscious that there is little point in re-establishing institutions only for them to fail to deliver and collapse again for the same reasons;

Conscious that the implementation of rights based provisions in existing agreements - many of which are international or domestic legal obligations - is not only required, but also holds the key to providing safeguards to prevent another collapse;

Wishing to see a reestablishment of power sharing under the terms of the GFA on a sustainable footing that delivers for every NI resident, in all their diversities, and on the basis of respect and equality;

The Equality Coalition, co-convened by UNISON and CAJ and consisting of dozens of civil society organisations and trade unions, calls for a rights based return to power sharing centred on three key elements.

1. Full implementation of the rights provisions of the peace settlement

The Coalition seeks the implementation of existing binding rights based commitments made within the peace settlement agreements, inclusive of:

- Legislating for an NI Bill of Rights, as provided for under the GFA, including protection for rights deficits occurring as a result of any Brexit;
- The adoption of an anti-poverty strategy on the basis of objective need (as per the St Andrews Agreement);
- Legislating for an Irish Language Act (as per St Andrews);
- Measures to ensure the full and equal political participation of women (as per the GFA);
- Full implementation by public authorities of the 'Section 75' equality duty including rigorous enforcement of failures to comply by the Equality Commission;
- Proper application of the 'Petition of Concern' as originally intended in the GFA as a minority rights protection consisting of equality and human rights scrutiny;
- Full implementation of the Patten reforms to policing, with accountability and oversight for all law enforcement bodies, including their immigration functions;
- Full implementation of the GFA duties on acceptance of a choice of British or Irish citizenship (or both) and equality of treatment, regardless of that choice;
- A full commitment to the incorporation of the European Convention on Human Rights (ECHR) and agreement not to weaken or repeal the Human Rights Act 1998.

We also advocate for a fresh bilateral agreement to remove those political vetoes within the NI Executive that are not based on - and have conflicted with - equality and rights duties.

*You can download the full two page manifesto from the CAJ website: **http://bit.ly/2VEEC8n**.*

A large font version of the manifesto is available upon request - call 028 9031 6000.

The manifesto has been sent to the UK and Irish governments, as well as to leading political parties in Northern Ireland. The Equality Coalition is seeking direct engagement with them all on its provisions.

Several productive meetings have already taken place between the Equality Coalition Co-Conveners and local parties. Further ones are planned for the near future.

Visit **www.equalitycoalition.net** to learn more about the Equality Coalition, its membership, and its activities in Northern Ireland.

If your group is interested in joining the Equality Coalition, email **equalitycoalition@caj.org.uk**.

Launch of the manifesto at UNISON

The manifesto was officially launched at a local election hustings held on Tuesday 30 April 2019 in UNISON's Belfast headquarters. Candidates from the SDLP, Green Party, People Before Profit, Sinn Féin and the Workers' Party were present as panellists, with UNISON Regional Secretary, Patricia McKeown, acting as Chair.

Around 50 people attended the event, incorporating UNISON activists as well as representatives from Equality Coalition.

Candidates were asked to respond in turn to a series of questions from the floor. Topics discussed included: Irish language obligations; the privatisation of council leisure facilities; the management of Peace IV monies; the effect of Brexit on funding streams; the availability of free school meals; the role of councils in tackling hate expression; childcare provision at local level; funding for an LGBT Centre in Belfast; and how to ensure the latest abortion guidelines are implemented (among other topics).

Copies of the manifesto were provided for all those present.

Local elections candidates at the hustings respond to a question from the audience. Pictured on the panel is, from left to right, Brian Heading (SDLP), Stephen Maginn (Green Party), Patricia McKeown (UNISON), Fiona Ferguson (People Before Profit), Hugh Scullion (Workers' Party), and Rosie Kinnear (Sinn Féin).

The retention of biometric data by the PSNI

By Les Allamby, Chief Commissioner of the Northern Ireland Human Rights Commission (NIHRC)

In this article, Les Allamby looks at the question of legislation and PSNI's policy of retaining biometric data (including DNA and fingerprints) in the light of a recent High Court case settled by NIHRC in October 2018 and a forthcoming legal challenge to be heard in the European Court of Human Rights (ECtHR) in Strasbourg. Under the terms of the settlement in the former case, the PSNI had to destroy the applicant's retained biometric detail. The PSNI has also agreed to produce and publish a policy that takes into account Article 8 of the European Convention on Human Rights (the right to private and family life). The policy, when complete, should also provide the public with clear guidance on how to challenge decisions to retain biometric data once obtained.

Background to the 2018 settlement

The applicant had been arrested after intervening to keep the peace in a neighbourhood dispute. He was arrested alongside the two protagonists and all three had fingerprints and DNA samples taken. It was accepted that the applicant had been the peacemaker and no further action was taken against him. He had previously been convicted of a common assault 17 years earlier and received a fine of £50. No biometric data had been retained following the earlier conviction. However, on this occasion PSNI decided to retain the data on an indefinite basis because of his earlier conviction. The applicant had attempted assiduously to find out if his DNA and fingerprints were being retained and, if so, on what grounds. He struggled to ascertain what the position was until approaching the Commission.

The lack of a clearly available policy detailing the retention of biometric material and the process for challenging such decisions was before the High Court, alongside the question of whether the practice in this case was compliant with Article 8 of the European Convention on Human Rights.

The law and other legal challenges

Under the Police and Criminal Evidence (NI) Order 1989, PSNI is able to take fingerprints, intimate samples, photographs and other material with or without a person's consent for the purposes of investigating a crime. Where a person is subsequently convicted of an offence, the material taken can be retained indefinitely, though only for a clearly defined purpose including the prevention or detection of crime, the conducting of a prosecution or the identification of a deceased person. There is also a discretionary basis to retain material in circumstances where the samples are taken from an individual who is subsequently eliminated from inquiries save in specific circumstances. Initially, PSNI's position had been to retain all biometric material indefinitely except where there was a statutory obligation to destroy material.

This blanket practice, which also applied elsewhere in the United Kingdom, was challenged on human rights grounds. In particular, in the case of *S and Marper v UK 4 December 2008*. While the (then) practice of retaining biometric material indefinitely was seen as pursuing a legitimate aim, the Grand Chamber of the ECtHR held that in cases involving unconvicted individuals its blanket nature was a disproportionate interference with the applicants right to privacy and was therefore contrary to Article 8.

As a result of this judgement, the law was amended in England and Wales and similar changes were mooted in Northern Ireland through section 9 and Schedule 2 of the Criminal Justice Act (NI) 2013. The relevant provisions received Royal Assent in April 2013, but had still not been introduced at the time the Northern Ireland Executive fell in January 2017. In essence, the legislative position remains unchanged from that considered by the ECtHR in S and Marper. Meanwhile, a copy of the police biometric database has been retained and will be made available to the Historical Investigations Unit for its exclusive use. The powers to retain this data was relatively recently renewed

by the Secretary of State.

A second legal challenge is now before the ECtHR and awaiting a hearing in the case of Gaughran v UK. In Gaughran, the applicant was arrested for being over the alcohol limit while driving. His fingerprints, photograph and a DNA sample were taken. The applicant was convicted, disqualified from driving for 12 months and fined £50. A request to destroy the samples taken was refused by the PSNI. Though the practice of PSNI had changed after S and Marper in relation to those acquitted, retention normally continued indefinitely for those convicted of an offence.

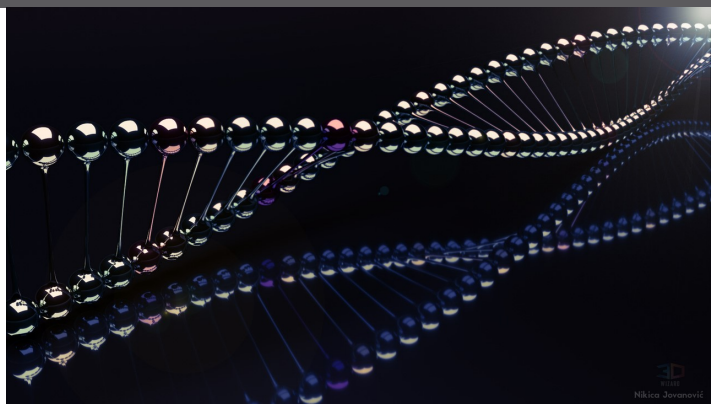
The UK Supreme Court previously handed down a judgment on this case in 2015 (*Gaughran v Chief Constable of the Police Service of Northern Ireland*). The issue before the Supreme Court was whether this blanket approach to indefinite retention of biometric material for individuals convicted was proportionate under Article 8 of the Convention.

By a majority of four to one, the applicant's appeal was dismissed, with Lord Kerr dissenting. The majority distinguished the case from S and Marper, which had concerned non-convicted applicants. The judgment held that while the blanket approach was not automatically compliant with Article 8 it was, nonetheless, proportionate. The arrangements in place governed adults and not children, the potential benefit in resolving crime outweighs the interference with an individual's privacy rights, and the practice adopted was considered to be within the UK's margin of appreciation. A number of countervailing factors covering indefinite retention including failure to consider the gravity of the offence and whether the conviction will be spent did not shift the balance decisively. Ultimately, a blanket approach can be legitimate in some cases, as here.

In contrast, Lord Kerr held the policy was not proportionate as there is a requirement to provide a rational connection between the legitimate objective and the policy. Furthermore, the policy must go no further than is necessary to meet the objective. In Lord Kerr's view neither criteria were satisfied. This decision will now be considered by the ECtHR. No date for a hearing has yet been fixed.

The extent of retention and producing and publishing a clear policy

In March 2014, the PSNI held 123,258 individuals on their database (as reported by *The Detail* in January 2015).



Based on the numbers being added each year it is likely that the database will now contain well over 150,000 individuals' DNA.

What the PSNI has now agreed to do in the case settled in October 2018 is to develop and publish a clear policy. This policy will be based on the proposed legislative approach contained in the amendments in the Criminal Justice Act (NI) 2013. In effect, the PSNI will still seek to retain the DNA of all individuals convicted of an offence. Nonetheless, the PSNI has estimated that implementation of such an approach will mean that around 25,000 individuals' DNA samples and 80,000 fingerprints currently retained will be destroyed (as stated in an interview given by ACC Mairs on Good Morning Ulster, 9 January 2019). In addition, PSNI will provide details of how to seek a review of its Biometric Retention Disposal Committee's decisions.

NIHRC has agreed to contribute its views on the policy, though it will ultimately be the PSNI's policy, not an NIHRC policy. We understand the policy will be completed and provided to the Commission shortly. We have canvassed with PSNI the possibility of circulating the draft more widely to key stakeholders including human rights NGOs, key lawyers, the Information Commissioner's Office and other key stakeholders for comment. A discussion in a round-table event could potentially then follow.

The production and publication of a policy will be welcome in terms of clarity, and the PSNI's preparedness to use the proposed legislation on the drawing board is understandable. Nonetheless, whether the policy will be fully human rights compliant will only become clear once the ECtHR reaches its judgment on the Gaughran case. Depending on the outcome in Gaughran in Strasbourg, the proposed legislative change, as well as any policy in line with it, may need to be altered again by both the Northern Ireland Assembly and PSNI.

Addressing how Counter-Terrorism and Countering Violent Extremism is being used to crack down upon and stifle civil society globally

By Fionnuala Ní Aoláin, United Nations Special Rapporteur Counter-Terrorism and Human Rights

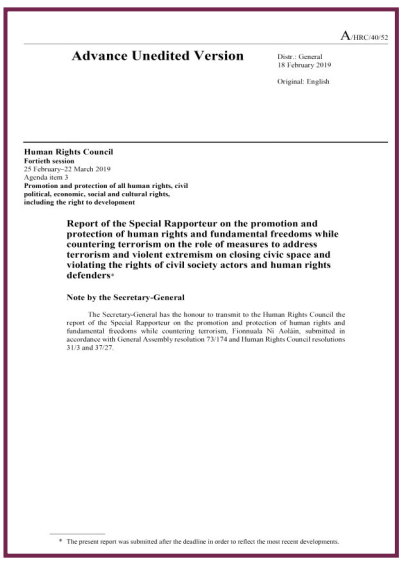
In my Report to the 40th Session of the Human Rights Council, I address the misuse of counter-terrorism, countering violent extremism and extremism law and practice on civic space and civil society organisations. The report is available at: **https://www.ohchr.org/Documents/Issues/Terrorism/SR/A_HRC_40_52_EN.pdf**.

The report makes a number of significant findings. I note that civil society space has been shrinking around the globe. Civil society is stigmatised, sometimes discriminated against, its actors are subjected to smear campaigns, defamation, physical harassment, spuriously charged and sentenced under various laws. Its peaceful actions are criminalised. Its members are simply unable to carry out their work, either because they are detained, tried, or threatened or they are subject to various restrictions on their ability to express themselves, to meet, or to operate. The shrinking space for civil society has become a structural global challenge.

According to CIVICUS, civic space is closed, repressed or obstructed in 111 countries across the world, and only 4% of the global population live in areas where civic space is open. This trend has been accelerating in the past few years, with the International Centre for Not-for-Profit Law recording the adoption of 64 restrictive laws on civil society from 2015-2016 alone. According to Front Line Defenders, at least 321 HRDs were killed in 2018. Other key violations that contribute to the closing of civic space include detentions and arrests; legal action; intimidation, threats, smear campaigns and verbal abuse; physical attacks; excessive use of force; censorship; and the adoption of restrictive legislation. Framed by this broad context, between 2001 and 2018, at least 140 governments have adopted counter-terrorism legislation. To address new or perceived threats, or simply to comply with new international requirements, many governments have adopted multiple legislative and administrative measures to counter terrorism.

The clear link between impact on civil society space and enlargement of the security framework can be seen in the following trends and figures. Since its inception (2005), 66% of all relevant communications sent by the mandate of the Special Rapporteur has related to the use of counter-terrorism, preventing and countering violent extremism (PCVE) or broadly defined security-related measures on civil society. For the last two years, the number is slightly higher, at 68%. This is an extraordinarily high figure, which underscores the abuse and misuse of counter-terrorism measures against civil society and human rights defenders over a decade and a half. This robust empirical finding measured from 2005-2018 affirms that targeting civil society is not a random or incidental aspect of counter-terrorism law and practice. It suggests the hard-wiring of misuse into the use of counter-terrorism measures by states around the globe. The consequences around the world are tangible and must be addressed by states.

As my report shows, increasingly, any form of expression that articulates a view contrary to the official position of the state, addresses human rights violations or opines on ways to do things better in accordance with international human rights obligations, constitutes a form of terrorist activity, violent extremism, or a very broad "threat to national security", which often encompasses both terrorism and extremism. Some states now routinely abuse security legislation as a shortcut for cracking down on civil society, arresting and detaining its peaceful representatives, accusing them under spurious charges, and placing them under the exceptional procedural regimes that are often linked to these qualifications. No region of the world is immune from this trend. The time to call out the mis-use of counter-terrorism law and practice is now. Exposing the actual use of counter-terrorism measures should also demonstrate the over-reach of such laws and practices and constitute a tangible basis to challenge state abuse. Information is power, and the goal of this report was to give tangible and empirical data to those challenging overuse and misuse, and a sturdy basis to call out the practice of states.



A/HRC/40/52

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25 February–22 March 2019
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on the role of measures to address terrorism and violent extremism on closing civic space and violating the rights of civil society actors and human rights defenders*

Note by the Secretary-General

The Secretary-General has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Fionnuala Ní Aoláin, submitted in accordance with General Assembly resolution 73/174 and Human Rights Council resolutions 31/3 and 37/27.

* The present report was submitted after the deadline in order to reflect the most recent developments.

The UK still has torture on its hands

At the start of May 2019, the UK was under the international spotlight as the UN Committee against Torture reviewed its obligations under the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT).

Over a two-day hearing, government representatives, including some from the Department of Justice and the Northern Ireland Office, were held to account by Committee members, who put incisive questions to them as part of the sixth periodic review of the UK under this treaty. The UK ratified UNCAT in 1988 and is required to report to the UN on its progress on implementing it every four years.

CAJ's Solicitor, Gemma McKeown, attended this session to address issues of particular concern for CAJ, together with the representatives from the Pat Finucane Centre, Relatives for Justice, as well as the Northern Ireland Human Rights Commission.

In our submission, we raised concerns about the threatened repeal of the Human Rights Act 1998; the need to implement a Bill of Rights for Northern Ireland, the high use of Closed Material Procedures in legacy cases, and the failure to comply with international obligations to carry out investigations into deaths, ill treatment and torture.

CAJ gave evidence to Committee members in a closed NGO briefing on the eve of the formal two-day session. The issues raised were vast, but all of monumental significance. In addition to the issues highlighted by CAJ, others drew attention to the sexual abuse of children in detention (both historical and current); deaths in custody; accountability for abuses in Iraq; UK complicity in torture overseas; trafficking asylum and immigration procedures; and sexual and gender based violence.

The Committee gave substantial attention to the issues that CAJ raised during its questioning of the UK. It is of particular note that its Concluding Observations on the need for accountability for conflict-related violations in Northern Ireland were the most detailed in this report on the UK. In its commentary, the Committee recalled a raft of outstanding commitments the government has failed to comply with since it was last under review. It again urged the UK to implement the Stormont House Agreement mechanisms, in particular the Historical Investigations Unit. It also suggested amending the Stormont House Bill to ensure that any national security claims over the publication of information are subject to strict safeguards.

The UK was asked to refrain from bringing in amnesties or statutes of limitations for torture or ill-treatments - something which has been a particular issue of concern for CAJ and others working against impunity for human rights violations arising from the conflict. We hope the authorities take note, particularly those in the highest echelons of government who continue to threaten bringing in such measures for the security services involved in the Troubles. It would be a dangerous and untenable path to go down should they give credence to this or repeat the claim that killings by the armed forces during the Troubles "were not crimes", as Karen Bradley did recently, just

days in advance of the prosecutorial decision to prosecute Solider 'F' in relation to his actions on Bloody Sunday.

As well as its wider call for effective and independent investigations into torture, ill-treatment and deaths from the conflict, the Committee paid particular attention to the killing of Patrick Finucane, following the Supreme Court decision in this case in February. In a unanimous decision, the Court held that the government still has not carried out an effective investigation into this murder. CAJ, as well as organisations locally and internationally, continues to support the family in their call for a fully independent public inquiry without further delay.

Committee members were particularly interested in the arrest of Barry McCaffrey and Trevor Birney following their seminal documentary 'No Stone Unturned'. They sought assurances from the UK that journalists and human rights defenders are not intimidated or face reprisals for disclosing information on state involvement in conduct prohibited by the Convention.

The Committee also expressed concern about the use of 'punishment' attacks and child recruitment by paramilitary groups and called for investigations into this, as well as the intensification of efforts to prevent this.

On the issue of historical child abuse in residential institutions, the Committee expressed its profound concern in relation to the findings of the 2017 Historical Institutional Abuse Inquiry report on the extent of physical and sexual abuse in children's homes, and other institutions run by religious and state organisations here. It stated that the UK should provide compensation and other redress as proposed by the inquiry as a matter of urgency to the victims. It is with great regret to CAJ that these victims and survivors are being used as pawns in the political stalemate here and their entitlement to redress continues to be subject to a protracted battle.

While the UK is next under formal review in 2023, the Committee has called on it to provide an update by May 2020 on the issues of sexual abuse of children in detention; investigations into ill treatment and torture in Iraq by UK personnel; and accountability for conflict-related violations in Northern Ireland. The light still shines on the UK and it needs to urgently address these ongoing human rights abuses. There is no room to hide.

CAJ's written submission to the UNCAT Committee is available online here: **http://bit.ly/2WK9cPd**.

A human rights perspective on the Prevent Strategy

By Matilda Bryce, Research Officer, Rights Watch (UK)

First published in 2006, the Prevent Strategy forms one strand of the government's four-pronged counter terrorism strategy, CONTEST. Its aim is to "prevent people from becoming terrorists or supporting terrorism" (though the strategy explicitly does not apply to Northern Ireland-related terrorism groups). While leaving extremism loosely defined as "vocal and active opposition to fundamental British values", Prevent was initially somewhat constrained by a focus on violent extremism. However, in 2011, the government further expanded its scope to "non-violent" extremism, seen as the 'mood music' supporting terrorist groups, and to "all forms of extremism".

Underpinning the Prevent policy is the contentious concept of 'radicalisation', defined as "a process whereby certain experiences and events in a person's life cause them to become radicalized, to the extent of turning to violence". It operates on the assumption that extreme views and terrorism sit as two points on a continuum, such that support for non-violent extremism is an indicator of future participation in terrorism. This is a questionable assumption based on an evidential basis that is impossible to verify, as the government continues to refuse to make public the research base for the Extremism Risk Guidelines 22+. These guidelines consist of 22 risk factors, which psychologists, Christopher Lloyd and Monica Dean, have identified as increasing the likelihood of an individual engaging in terrorist activity.

Most recently, the Counter-Terrorism and Security Act 2015 created the 'Prevent Duty' (see: **http://www.legislation.gov.uk/ukpga/2015/6/section/26/enacted**). This has led to over 500,000 front line professionals including teachers, lecturers and youth workers receiving training to identify apparent signs of extremism and refer their students on to the government's police led panels for assessment on referral to the de-radicalisation Channel programme. The duty does not apply to Northern Ireland.

Following the introduction of the statutory duty referrals have spiked. Shockingly, the total number of referrals the year after Prevent duty was introduced was nearly double the aggregate total of the seven previous years. Despite the government emphasizing that Prevent does not target Muslims, but rather deals with all forms of extremism, it is apparent that only 18% of referrals pertain to right wing extremism. Of the 18% of Prevent referrals who were deemed suitable to be discussed as a Channel panel, only 30% received Channel support. This is strong evidence that significant over-referrals of a discriminatory manner are being made under Prevent. Children are disturbingly overrepresented amongst referrals, with 33% of referrals coming from the education sector, 57% of referrals concerning individuals under the age of 20, and 28% concerning children under the age of 15.

The statutory duty and human rights concerns

While the Prevent Strategy has been the subject of criticism from civil society and Muslim community groups since its inception, the development and enactment of the statutory duty saw Prevent become a source of heightened controversy. Within the education sector, the effects of the statutory duty are particularly concerning. In our report, Preventing Education: Human Rights and Counter-Terrorism Policy in Schools we concluded that Prevent likely contravenes the UK's domestic and international human rights obligations when applied to educational institutions. This report is available at: **http://rwuk.org/wp-content/uploads/2016/07/preventing-education-final-to-print-3.compressed-1.pdf**.

Specifically, Prevent endangers the right to education, freedom of expression, freedom of religion and belief, freedom from discrimination, privacy and the special protections afforded to children by virtue of the Convention on the Rights of the Child. The statutory duty has led to the erosion of educational spaces' function as a safe and nurturing environment, instead creating dynamics in which children, particularly Muslim children, come to be fearful of the setting, and distrustful of their teachers and classmates.

These human rights concerns are exacerbated by the government's decision to characterize Prevent in pastoral terms, suggesting that it is a 'safeguarding' measure: a statutory term, which denotes promotion of welfare and protection from harm. This is problematic from a rights perspective, as Prevent is, and has always been, a counter terrorism policy to address a national security issue.

Establishing an Independent Review

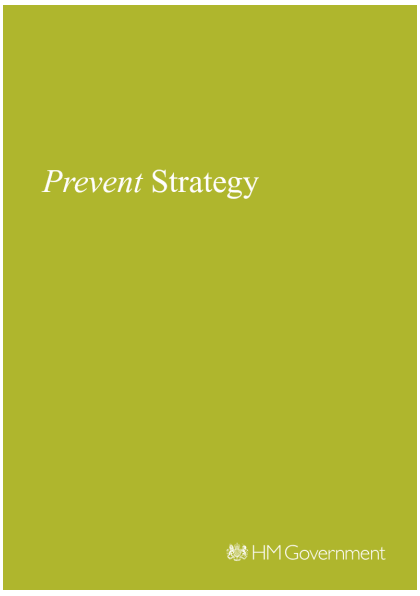
In January this year, the UK government announced it would be establishing an ad hoc Independent Review of Prevent. This is a welcome development, which RWUK has been advocating for over the last three years at the domestic and international level. This review will be the first time the Prevent Strategy has undergone any kind of independent public review, oversight or assessment since the shift in focus in 2011 to non-violent extremism. Accordingly, the review presents a timely and important opportunity to subject the strategy to rigorous, holistic and independent scrutiny.

However, there are also risks that are attached to this Independent Review. The government could establish a review that is narrow in scope (i.e. limited to effectiveness and ignoring the broader societal and human rights impacts of Prevent), and not genuinely independent, transparent and participatory. Any such review will only serve to reinforce the perception of bias in this sensitive field and, further undermine community trust in the government.

The government has committed to appointing, by August 2019, an Independent Reviewer who will report to Parliament within 18 months from the beginning of the review. Importantly, the Security Minister has committed to consulting with all parts of the House on the appointment of the Independent Reviewer, and presumably, the terms of reference of the review. This presents a crucial opportunity for Parliamentarians to push for a review that is genuinely independent and credible.

RWUK recently published a proposed terms of reference for the review (published here: **https://www.rwuk.org/advocacy/joint-civil-society-letter-on-uks-support-for-universal-periodic-review-recommendations-september-2017-2-3-2-2-3-2-3/**). As a first step, RWUK is calling on the government to appoint the Independent Reviewer(s) according to a fair and transparent process, and to ensure they are independent of the government. We have set out six key principles that we consider must underpin the review and from which the proposed terms of reference are drawn. These include: independence, full and effective government cooperation, a consultative and participatory approach, an effectively resources and supported review, transparency and parliamentary oversight, and a truly holistic and comprehensive approach to the review.

RWUK, along with other civil society partners, is working with a range of stakeholders in Parliament and elsewhere to ensure that the review is grounded in the abovementioned principles and thus paves the way for a process that builds confidence with affected communities, rather than undermining it.



The future of welfare reform in Northern Ireland: claimants on a cliff edge

By Megan Millar, Policy Officer, Law Centre NI

The welfare reform mitigations package

Time is running out. The current welfare reform mitigation package expires in less than twelve months' time at the end of March 2020.

Early predictions about the impact of welfare reforms implemented from 2010 were that Northern Ireland (NI) would be particularly affected by changes to the social security system. In response, the introduction of a £585 million welfare reform mitigation package for NI was secured through the Fresh Start Agreement in 2015. The package runs from 2016 to 2020.

There are three strands to the mitigation package:

1. The first strand provided Welfare Supplementary Payments (WSPs) to carers, individuals with ill health or a disability, and families.

2. The second strand provided independent advice to support claimants.

3. The third strand looked forward to the need to alleviate future hardship, with a particular focus on the introduction of Universal Credit (UC).

The impact of the welfare reform mitigation package

The welfare reform mitigation package has acted as a critical protection to those affected by social security changes. However, the full potential of the mitigation package has not been realised. A significant underspend of £109.52 million has emerged when comparing departmental data on expenditure with projections in the Welfare Reform Mitigations Working Group Report.

There has been a failure to operationalise one of the key reforms, the Cost of Work Allowance. The Welfare Reform Mitigations Working Group recommended that this allowance should be available to people claiming either Working Tax Credit or UC in recognition of the expenses those in employment incur, with a special weighting for lone parents to take account of the cost of childcare. Childcare is a particular problem in NI. Employers for Childcare have found that childcare is the largest monthly outgoing for over one third of families, more than their mortgage or rent.

Uptake of payments under the Discretionary Support Scheme and UC Contingency Fund has been low. Despite the fact that there is now less than one year left of the UC Contingency Fund, just £400,000 of the £7 million fund has been paid to claimants. Similarly, there has been a significant decrease in the number of discretionary grants and loans provided to claimants in financial crisis. This suggests that there are difficulties in accessing these payments and a lack of awareness of their availability.

The current package does not mitigate against other key welfare reforms. The largest financial losses to large numbers of individuals and households have arisen from changes to Tax Credits, Child Benefit and a reduction in annual benefit rate uplifts since 2011. None of these reforms have been subject to mitigation measures in NI.

Implications of the end of the mitigation package: the approaching cliff edge

The end of the mitigation package in March 2020 will result in significant financial loss for many claimants and is likely to result in increased poverty in NI. Following his visit to NI in 2018, the UN Special Rapporteur on Extreme Poverty and Human Rights stated that the end of the mitigation package could have "dire consequences for people living in poverty".

Public awareness of the end of the mitigation package in March 2020 is low. Recent baseline surveys released by the Department for Communities (DfC) shows that almost half of respondents were not aware of the date on which their Welfare Supplementary Payment ends. This will exacerbate the impact of the end of the mitigation package, as many claimants are not aware of the 'cliff edge'.

While some of the current mitigations will taper off in certain areas, other protections remain as vital and as relevant now as they were in 2015. Law Centre (NI) recommends a new mitigation package is implemented from April 2020 that sustains the support available to people experiencing the welfare changes and is responsive to new and emerging challenges arising from UC.

It is crucial as political talks are ongoing that all parties involved take on board what is at stake.

The work of the Cliff Edge NI Coalition

Law Centre NI is a founding member and co-convenor of the Cliff Edge NI Coalition, a group of 73 organisations concerned about the impending cessation of the current welfare reform mitigations in NI. In general terms, the Coalition is concerned that NI is approaching a mitigations cliff edge and that it is important that people impacted by welfare reform in NI continue to be able to access support beyond March 2020. This support should take account of the new challenges people are facing, particularly UC. To find out more about the Cliff Edge Coalition, please contact megan.millar@lawcentreni.org.

Whatever happened to the £20 million a year monies from the DUP-Tory deal to "target pockets of severe deprivation"?

By Daniel Holder, Deputy Director, CAJ

In 2015, CAJ prevailed in its High Court judicial review action against the NI Executive for its failure to adopt an anti-poverty strategy on the basis of objective need, as required by the legislation introduced after the St Andrews Agreement.

In an indication as to what the potential blockage in adopting the anti-poverty strategy had been, four of five parties in the Executive ultimately welcomed the decision, and called for the strategy to be adopted. Only the DUP expressed its disappointment at the ruling. The DUP appeared to be particularly resistant to the requirement of allocation based on objective need, to the extent of amending a subsequent UUP-SDLP motion in the Assembly that reiterated the High Court's definition of the concept.

The Anti-Poverty Strategy has not been progressed in the absence of an NI Executive since 2017. However, the June 2017 DUP-Conservative Confidence and Supply Agreement did set out a commitment to provide £20 million a year for five years to "target pockets of severe deprivation". An additional resource is very welcome, provided of course that it is spent properly and is not used to bypass the objective need requirement. What has happened to this particular resource provides food for thought.

In taking stock two years on, we find that a proposed programme developed to spend the monies has not materialised, and the details of it have been kept secret.

Instead, the monies have been used for two successive years to plug gaps in existing programmes (mostly found within the Department of Education (DE)), which presumably had been cut in the context of austerity. The reasons and processes behind this are somewhat opaque, and highlight the lack of accountability on decision making under present arrangements. During the same period, cuts have been announced to programmes like the Department for Communities (DfC) Neighbourhood Renewal Programme, which tackles deprivation.

Back in December 2017, the NI Department of Finance (DoF) produced its two-year 2018-2020 'Budgetary Outlook' paper. This made reference to DfC and the Executive Office having "developed a proposed programme" for spending the monies for consideration by Ministers. Details are given that this supports a dual delivery model "encompassing known person and family based interventions, complemented by an area based approach". The programme sounded interesting.

Under their Equality Schemes, departments are required to consult on and equality screen new policies (or indeed budgetary decisions). Neither process took place in this case, however. The departments also declined to issue any details of the 'proposed programme' in response to CAJ freedom of information requests, arguing that the proposals were at too early a stage and curiously were of a "sensitive and high profile nature" and were to be "subject to consideration at the highest levels of government". This indicated a role for UK Ministers or even the DUP-Tory Coordinating Committee – which would indicate a process outside of the current constitutional arrangements.

Ultimately the 2018-2019 financial year saw the Secretary of State (without consultation or equality screening) allocate the monies not to the proposed programme, but to existing projects. Notably, this included £16.5 million to DE for programmes on educational underachievement; £1.8 million to the Department of Agriculture, Environment and Rural Affairs (DEARA) in relation to the Tackling Rural Poverty and Social Isolation scheme; and £1.7 million to the Department of Health (DoH) to help tackle severe deprivation through Childcare Partnerships. It is notable that these projects, whilst positive, were largely funded at similar levels in previous years.

In 2019-2020, a similar budget announcement was published by the Secretary of State (again without consultation or equality screening). Ultimately, the same allocations have been made to DE, DEARA and DoH. DoE, at £16.5 million, continues to be the main beneficiary, to the benefit of Sure Start, Nurture Units, Pathway Funding, Numeracy and Literacy, and Extended Schools.

CAJ have again requested details as to how and why these decisions were taken, and for details of the proposed programme. The proposed programme's content and the reason for not proceeding with it remain a mystery.

Civil Liberties Diary - March 2019 to May 2019

Compiled by Sinead Burns from various newspapers

27 Mar 2019: Figures have shown that domestic violence in Northern Ireland has reached its highest level since records began. More than 31,000 incidents of domestic violence were reported to the PSNI in 2018. This follows the implementation of the Domestic Violence and Abuse Disclosure Scheme (DVADS), which allows potential victims to request information regarding their partner's history of abusive behaviour.

28 Mar 2019: Northern Ireland Humanists have called for the repeal of Northern Ireland's blasphemy laws. The group has urged the public to write to their MLAs and ask for a change to the law. Blasphemy laws were already repealed in England and Wales in 2008 and the Republic of Ireland in 2018.

28 Mar 2019: A protest held in Coleraine against the settling of Syrian refugees in the town has been described as containing "neo-Nazi elements" by a local PUP councillor. The small protest took place at the Causeway Coast and Glens council offices in Coleraine. PUP councillor Russell Watton condemned the protest, but did acknowledge concerns about housing refugees when over 1,200 people are currently on the waiting list for social housing in the town.

28 Mar 2019: Sinn Féin has called for an equality expert to oversee social housing in Northern Ireland after latest figures revealed that some areas are facing a chronic shortage of homes, while too many homes were being built in others. Areas such as West Belfast are experiencing an acute shortfall, whereas the number of new houses built in the Causeway Coast and Glens area has far outstripped demand.

8 Apr 2019: LGBT rights campaigners have held a protest outside a Christian conference that has claimed to offer support to people experiencing "same-sex temptations". Demonstrators have branded the conference a form of gay conversion therapy. Organisers of the conference have insisted that it did not offer therapy, but was instead providing pastoral support to Christians attracted to members of the same sex.

9 April 2019: At an event organised by Advice NI and NICVA, academics and civil society groups have warned that Northern Ireland is on a welfare cliff-edge that will see an increase in child poverty and evictions in the coming years. Stormont's mitigations to ease the effects of welfare reform will run out in 2020 and experts have claimed this will result in thousands being plunged deeper into poverty.

18 Apr 2019: Unionist politicians have dismissed claims from citizenship campaigner Emma De Souza (and others) that Irish citizens in Northern NI will have their rights diminished by Brexit. Emma had highlighted changes to UK immigration rules that may mean NI-born Irish citizens will no longer be considered European Economic Area nationals in the UK post-Brexit. As a result of this, Irish citizens living in the UK will be unable to apply for settled status after Brexit and will not have access to their full rights as EU citizens.

25 Apr 2019: A Christian campaign group has labelled as "highly alarming" the prospect of Northern Ireland's abortion laws being changed by Westminster. The group made the comments after the Women and Equalities Committee emphasised the need for the British government to respond to a court ruling that abortion laws in NI are in breach of human rights legislation.

9 May 2019: A Seanad Special Select Committee has heard that Brexit has exacerbated a human rights crisis in Northern Ireland. Professor Colin Harvey of QUB told the committee that there has been a systematic disrespect for the Good Friday Agreement throughout the Brexit process. Daniel Holder, CAJ Deputy Director, emphasised that the equality of treatment principles within the GFA have not been maintained in Brexit negotiations.

20 May 2019: Thousands attended a rally in support of same-sex marriage in Northern Ireland. Campaigners have

called for marriage law reform in Northern Ireland, a key issue at the heart of Stormont's current impasse. The event was organised by Love Equality, an umbrella group made up of organisations that support equal marriage.

22 May 2019: The Ulster Teacher's Union has noted that food poverty is a significant barrier to learning for children. The comments follow the publication of a report by Human Rights Watch, which highlighted how cuts to welfare have increased in the number of poor families not having enough food. In Northern Ireland, almost one in four children struggle to have their basic needs met.

29 May 2019: Advice NI has warned of the huge dangers posed by welfare reform in Northern Ireland. Delays in paying Universal Credit to claimants has caused major issues for social housing providers, with the Housing Executive noting that 92% of its tenants on UC are in rent arrears, compared with only 40% of tenants on Housing Benefit.

Just News

Just News is published by the Committee on the Administration of Justice. Readers' news, views and comments are welcome.

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