



Shadow Secretary of State makes Bill of Rights pledge

The Shadow Secretary of State for Northern Ireland, Tony Lloyd MP, has pledged that an incoming Labour government would legislate for an NI Bill of Rights.

The Labour MP, who represents the Rochdale constituency in England, made the commitment at an event organised by the Equality Coalition to launch a conference report about the impact of Brexit on citizenship, entitled *Post-Brexit Citizenship Status: Divided by the Rules?*. The event, which was held on 27 June 2019 in UNISON, also featured a presentation on the Equality Coalition's *Manifesto for a Rights Based Return to Power Sharing* and a panel discussion with local political representatives.

Mr Lloyd gave the keynote address at the event, before responding to a series of inputs and questions on equality and human rights from various members of the Equality Coalition.

During his address, Mr Lloyd said his party was committed to introducing a Bill of Rights to Northern Ireland. It was a matter of deep regret for him that previous Labour governments had not fully delivered on the rights based commitments within the peace agreements, including those related to the development of an Irish Language Act, which is a UK responsibility. Mr Lloyd spoke also about the need to protect Northern Ireland and the Good Friday Agreement from being damaged by the UK's exit from the EU, regardless of what specific form Brexit ends up taking. He ended his speech by saying that although the exact interpretation of human rights may change, the fundamental

concepts do not. They should be the floor from which we all operate.

Mr Lloyd was interviewed by the media outlet *Meon Eile* at the event, and used this interview to reaffirm much of what he said during his keynote speech. Speaking on camera, he commented: "One thing that Labour would want to see is the implementation of the Bill of Rights that was promised in the Good Friday Agreement. The one thing we've got to make sure is that if Brexit does go through in the form that some are talking about that there is absolute protection of the underlying rights that were built into the European Union membership, which we would then lose, [and] the Good Friday Agreement. That's fundamental for people from all backgrounds in Northern Ireland."

The Equality Coalition, which is co-convened by CAJ and UNISON, is delighted by the commitments given by Mr Lloyd and hopes to engage with him again on these in the near future.

You can download the *Post-Brexit Citizenship Status: Divided by the Rules?* conference report direct from the CAJ website: <http://bit.ly/2xi0DMI>. The report was produced by the Equality Coalition in conjunction with BrexitLawNI.



Inside this issue of Just News....

Northern Ireland
(Executive
Formation) Bill 2019:
What happens next
with the amendments
on equal marriage,
abortion, and legacy?

Page 2 - 5

Northern Ireland
Business and Human
Rights Forum

Page 6 - 7

The use of 'everyday'
stop and search
powers

Page 8 - 9

CAJ latest news
round-up

Page 10

Equality complaint
made against
Translink for
facilitating
discriminatory
passport checks

Page 11

Civil Liberties Diary -
June 2019 to August
2019

Page 12

Northern Ireland (Executive Formation) Bill 2019 – What happens next?

Several amendments made to the Northern Ireland (Executive Formation) Bill 2019 during its passage through the UK Parliament could have far-reaching consequences for NI society. The following articles look at the amendments on marriage equality, abortion law reform, and legacy respectively.

Love may soon become more equal in Northern Ireland with the long-overdue introduction of same sex marriage

By Clare Moore, Equality & Social Affairs Officer, Irish Congress of Trade Unions (ICTU)

‘All love is equal’ – one of the straplines of Love Equality, the campaign for marriage equality in Northern Ireland. When Love Equality was established by six organisations (including the Rainbow Project, HereNI, Cara Friend, the Irish Congress of Trade Unions, Amnesty International, and NUS USI) to lead the fight to deliver marriage equality to Northern Ireland, one thing was patently clear. In Northern Ireland, all love was not equal.

For unique in the UK and Ireland, LGBT+ people in Northern Ireland could not marry the person they loved. And should they choose to marry elsewhere, their marriage would only be recognised as a civil partnership on their return.

The first Love Equality rally on June 2015 saw 20,000 pour onto the streets in Belfast and such was the popular support that it seemed inconceivable that LGBT+ people would continue to be discriminated against. Despite this growing popular and political support, moves to have marriage equality delivered by the Northern Ireland Assembly were frustrated by the DUP’s continued use of the Petition of Concern. Attempts to introduce marriage equality by a cross party Private Member’s Bill were derailed when the Assembly collapsed in 2017.

And so the Love Equality campaign began to focus on Westminster as the only way to deliver equality.

Now four years after that first rally, an amendment to a Westminster bill, which was largely intended to extend the deadline for the formation of a new executive government in NI, looks set to be the somewhat unlikely mechanism to deliver same sex marriage to Northern Ireland.

The Northern Ireland (Executive Formation) Bill (the Bill) was introduced in the House of Commons on 4 July 2019. Its purpose was to increase the time allowed for making Ministerial appointments following the last Assembly election (held in 2017) to 21 October 2019; and to impose a duty on the Secretary of State to report on progress towards the formation of an executive in Northern Ireland.

The Bill was amended by both Houses of Parliament. Among these amendments was the addition of a clause on equal marriage, which was introduced to the Bill via an amendment tabled in the House of Commons by Conor McGinn MP and co-



sponsored by members from a range of parties. It was passed into the Bill on Tuesday 8 July by a vote in the Commons of 383 to 73.

The Bill received Royal Assent on 24 July 2019, becoming the Northern Ireland (Executive Formation etc.) Act 2019. Section 8 on ‘Same sex marriage and opposite sex civil partnership’ will come into force on 22 October 2019, unless the Northern Ireland Executive is reformed on or before 21 October 2019. The section requires the Secretary of State to make regulations, to come into force on or before 13 January 2020, to provide that, in Northern Ireland, same sex couples are eligible to marry, and opposite sex couples are eligible to register a civil partnership. The Secretary of State may also make supplementary regulations.

The tabling of the amendment by Conor McGinn came after many months of behind the scenes work to find a suitable vehicle for the introduction of marriage equality with both MPs, with Peers including Conor McGinn and Lord Robert Hayward deserving special credit.

What happens next? All being well and following a period of public consultation, the law will come into effect on 22 October 2019, meaning that the first weddings could be early 2020.

Anyone who tuned into Parliamentary TV to listen and watch the live debate in July will have been struck by two things. Number one, the overwhelming desire from MPs from all backgrounds and parties to deliver marriage equality. And number two, how lonesome those opposing the amendments sounded.

Marriage Equality in Northern Ireland is often characterised as a controversial issue. Love Equality begs to differ. Come 22 October, the only controversial thing about it will be how long it has taken to get here.

True or false? The facts about the pending changes to abortion law in Northern Ireland

By Alliance for Choice

Alliance for Choice is aware of the scaremongering being circulated by organisations unhappy with the likely changes to the law on abortion in Northern Ireland on 22 October 2019. We believe that the best interests and wishes of the people of Northern Ireland are finally being granted. Despite the pushback of a vocal minority who would see women imprisoned for having abortions, we know the majority of the population of Northern Ireland support those who have had or will need an abortion. Below we have set out the text of the most popular misconceptions, along with some counterpoints.

FALSE - The recent amendment of the Northern Ireland (Executive Formation) Bill 2019 in Westminster is to include the imposition of unregulated abortion on Northern Ireland.

TRUE - There are no plans for the deregulation of medical provision of abortion in Northern Ireland. The law removes criminal penalties for women and doctors. It does not remove the ordinary regulation of healthcare, which will remain in place and is strictly upheld.

FALSE - The immediate implications of this Bill are that abortion on request will be legalised to the point of viability and potentially beyond that to 28 weeks (depending on legal interpretation).

TRUE - The upper limit will be 24 weeks, which is necessary due to pregnancy anomaly scans happening between 20 and 22 weeks. The laws on abortion past 24 weeks will remain the same, which means people can access abortion if there is a risk to their life or long-term health.

FALSE - No consultation took place on the amendments related to the abortion clause at Westminster with the people of Northern Ireland. The process that led to the provisions being passed into law was deeply flawed and has significant detrimental consequences for devolution.

TRUE - There have been four inquiries within the last two years on abortion in Northern Ireland, which specifically engaged with stakeholders, medical professionals, politicians and statutory bodies. These were, in chronological order:

1. CEDAW inquiry: The inquiry undertaken by the UN Committee on the Elimination of Discrimination against Women (CEDAW) involved extensive community consultation in Northern Ireland. CEDAW representatives met with the NI Minister for Communities and Minister of Justice, the Attorney General for Northern Ireland, and officials from the Department of Health, NIHR, ECNI and NICCY. They interviewed members of the NI Assembly, civil society representatives, academics, trade union officials, and representatives of the Westminster government. In the report produced from the inquiry, the Committee stated that, "The restriction, affecting only women, preventing them from exercising reproductive choice ... involves mental or physical suffering constituting violence against women and potentially amounting to torture or cruel, inhuman and degrading treatment, in violation ... of the Convention [on the Elimination of all Forms of Discrimination against Women]." They concluded that forcing a woman to continue with her pregnancy in such a situation amounted to unjustifiable state-sanctioned violence.



2. All Party Parliamentary Group on Population, Development and Reproductive Health report on *Abortion in the Developing World and the UK*: In preparation for this report, the APPG on PDRH hosted a series of parliamentary hearings on abortion, which included examining the situation in NI.

3. Women and Equalities Committee inquiry on *Abortion law in Northern Ireland*: The Committee engaged with a wide variety of people, visiting NI twice and hearing from witnesses, professionals, stakeholders, and individuals impacted by the law.

4. British-Irish Parliamentary Assembly (BIPA) inquiry: Though the final report is awaiting publication, this cross-jurisdictional inquiry heard from government representatives; academic, medical and legal experts; and campaigners representing all points of view on issue.

FALSE - This course of action goes far beyond the public conversation that has been happening in Northern Ireland in recent years, which was about amending the law to allow abortion in cases involving life limiting conditions deemed fatal to the foetus before, during or shortly after birth

TRUE - The 2016 Northern Ireland Life and Times Survey showed that 70% of those surveyed (across voting patterns and religious belief) agreed that abortion should be a matter for medical regulation and not criminal law. A survey commissioned by Amnesty International found that 75% of adults in the UK want the government to change the abortion law in Northern Ireland and that 66% of NI adults think that, in the absence of a devolved government, Westminster should act to change the law. The *Abortion as a Workplace Issue* research report further corroborates these figures. 61% of respondents agreed or strongly agreed with the statement that the current restrictions on abortion access were cruel and inhumane. 85% believed a woman should not be arrested and prosecuted for having an abortion, while 19% had direct experience of abortion as a workplace issue.

Find out more

If you would like to learn more about the issues addressed in this article, you can visit the Alliance for Choice website, where a number of in-depth guides on the current situation are available. These include a medical brief, legal brief, and a briefing on Section 75 requirements in relation to reforming NI abortion law. Go to www.alliance4choice.com. Additionally, Alliance for Choice welcomes the clarity in the just-published NIO guidance for medical professionals, which is available here: <http://bit.ly/33ixwGV>.

NI (Executive Formation) Bill 2019 – Did you spot the legacy amnesty amendments?

By Daniel Holder, Deputy Director, CAJ

Given the enormity of the marriage equality and abortion law votes in Westminster in July 2019, it largely escaped notice that the same bill bolted on (for the first time in legislation) measures to legally advance the cause of a *de facto* amnesty for the security forces. Duties on the Secretary of State for NI to report to the UK Parliament on progress on restoring devolution by 4 September 2019 (then regularly thereafter) were augmented, including by two duties for a 'report on progress' to limiting security force prosecutions in Troubles legacy cases.

The first, in Section 3(8) obliges a report on progress towards a "presumption of non-prosecution" for "veterans of the Armed Forces and other security personnel", either through a Statute of Limitations "or some other legal mechanism". This prosecutorial proposal is tied to preventing "repeated investigation" where there is not "compelling new evidence".

Despite officially opposing an amnesty and supporting the Stormont House Agreement (which maintains prosecutorial decisions are a matter for the Director of Public Prosecutions), all Tory and DUP MPs voting supported this amendment. Labour and other MPs opposed. The vote carried by 308 votes to 228. A second, and much more precise, amendment then went through on the nod.

This second duty in Section 3(9) also seeks to differentiate a presumption of prosecution in Troubles-related incidents. It is more specific, calling for the Attorney General for Northern Ireland to issue "new Prosecution Guidance" that would differentiate between prosecution decisions on the basis of whether the deadly weapon used had been lawfully or unlawfully "supplied" to the alleged offender.

The current NI Attorney General (AGNI), John Larkin, has voiced support for an unconditional amnesty. However, a cornerstone of the current reformed



justice system is that prosecutorial decision-making is vested in an independent Director of Public Prosecutions (DPP) and that prosecutorial decisions are made on the basis of the statutory Code for Prosecutors under S37 of the Justice NI Act 2002, issued by the DPP, not the AGNI.

The reforms of the peace settlement took place against a backdrop of controversial interventions by former Attorney Generals to prevent prosecutions of members of the security forces. The GFA-mandated Criminal Justice Review recommended that legislation should "confirm the independence of the prosecutor" and that "there should be no power for the Attorney General to direct the prosecutor, whether in individual cases or on policy matters". What is now proposed would roll back the GFA-initiated reforms.

A central tenant of the framing of the amendment is to differentiate a presumption of prosecution on the basis as to whether the suspect had been lawfully or unlawfully 'supplied' with the weapon, rather than what is then done with the weapon. As this is an issue the judicial process would already take into account, the intention appears to be to introduce a presumption against prosecution where the accused had been 'lawfully supplied' with the weapon. It is not clear if the scope of 'lawfully supplied' is only intended to cover service issue weapons to the RUC or Armed Forces. In the alternative, it could also be

deployed to impede prosecutions in 'collusion' cases where agents within paramilitary groups were supplied with weapons by members of RUC Special Branch or British Army intelligence, (presuming such services still wish to try and maintain such activities were 'lawful').

Such a differentiation of presumption of non-prosecution would unduly interfere with the procedural duties under Article 2 of the European Convention on Human Rights, as it would leave circumstances where it would not be possible to prosecute killings that were unlawful by virtue of Article 2.

The AGNI has confirmed he is not currently preparing such Prosecutorial Guidance, nor does it appear there is presently a power for him to do so. A current provision for issuing Statutory Guidance vested in the AGNI is found in Section 8 of the Justice NI Act 2004. The DPP must have regard to this guidance when preparing or amending the Code for Prosecutors. However, this guidance, must relate to the exercise of the functions of the PPS and other criminal justice agencies "in a manner consistent with international human rights standards relevant to the criminal justice system". Such human rights standards do not support, but counter against, impunity and the removal of due process from state actors in relation to legacy investigations. Unless stretched beyond credible interpretation, this would not therefore appear to be a vehicle to further the purpose of the amendment.

On 4 September 2019, the Secretary of State issued his first report to Parliament on the subject and thankfully poured considerable cold water on the suggestion of re-instating the Attorney General for Northern Ireland into the prosecutorial process.

The report states: **"Under the Justice (Northern Ireland) Act 2002, the AGNI does not superintend the DPP for Northern Ireland and therefore is not able to either issue prosecution guidance to the DPP or direct the DPP to issue such guidance ... The UK Government has no plans to alter the current**



division of responsibilities, and independence as between, the DPP and the AGNI."

The AGNI has recently floated his own proposals for a separate process, whereby the AGNI himself, or a Legacy Commissioner, would be able to make decisions as to whether criminal investigations, prosecutorial proceedings, or inquests would be able to proceed in relation to the use of force by the security forces prior to the GFA. This, it is proposed, could be progressed by virtue of an amendment to Section 3 of the Criminal Law Act NI 1967 on reasonable self-defence, with the AGNI/ Commissioner wielding a veto over police and prosecutorial processes on grounds of lawful use of force.

Speaking recently in the House of Lords, Lord Jonathan Caine, a former NIO SPAD to various Tory Secretaries of State, stated he had discussed at length with the AGNI the possible way forward of modifying Section 3. The purpose would be to legislate to make a 'moral distinction' between those who set out to commit murder and those who commit "a split-second error of law while carrying out their duty".

Again, like the provision in the bill, any such move would roll back the justice reforms of the GFA and the principle of equality before, and application of, the rule of law, by again seeking to disapply the rule of law to the security forces. Such moves need to be watched carefully as they have the potential to set back years of work to strengthen the legitimacy of the justice system.

Northern Ireland Business and Human Rights Forum

By Glenn Bradley, Head of Global Supply Chain at Hardscape and Chair of the NI Business and Human Rights Forum

I am the chair of the Northern Ireland Business and Human Rights Forum, established and convened by the Northern Ireland Human Rights Commission (NIHRC) in September 2015. This article examines its origins and work, alongside initiatives being undertaken in this area by the NIHRC.



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

Background

In 2011, the United Nations adopted a set of Guiding Principles on Business and Human Rights. The principles are based on the recognition that:

- a) Governments must respect, protect and fulfil human rights and fundamental freedoms.
- b) Businesses must respect human rights.
- c) Effective remedies must be available for human rights violations resulting from business activity.

Countries were encouraged to develop national action plans to implement these guiding principles. The UK government was the first to do so, when it published a national action plan in September 2013, later refreshing the document in 2016. In November 2017, the Irish government followed suit and launched its own inaugural national action plan.

In November 2013, the NIHRC published a report on Public procurement and human rights in Northern Ireland – which provided an overview of the rules, policies and practices of public procurement, and an evaluation of the extent to which these arrangements met human rights standards. In practice, the report found there were significant steps still to be taken to ensure human rights are fully protected within public procurement.

This work led to the NIHRC convening a Business and Human Rights Forum to examine how human rights are relevant to business and as a platform for sharing knowledge and good practice. The Forum's agenda is set by its members, who represent a range of businesses, trade unions, public sector organisations, and government agencies. Members are asked to agree a broad statement of principles in order to join the Forum. The aim is to encourage local business and other organisations to join the Forum in order to have a wide engagement, rather than simply providing a meeting place for the already converted to human rights. The Forum holds three meetings each year - hosted by member organisations – with guest speakers, and a specific rights issue of interest to business examined at each meeting.

The Forum recognises the value of the Ethical Trading Initiative, an international alliance of companies, trade unions and NGOs that provides a practical approach to ensuring companies trade ethically and make a positive difference to workers' lives through decent terms and conditions and a safe working environment. Members of the Ethical Trading Initiative have adopted an ETI Base Code of Labour Practice which is based on the standards of the International Labour Organisation. Moreover, with the International Labour Organisation estimating at least 40 million people are in slavery across the world, the Anti-Slavery Charter is a valuable tool in setting out the measures that states, businesses and civic society can take to end slave labour.

The work of the Forum

To date, the Forum has examined a range of business issues, including human trafficking and modern slavery, with presentations from Anti-Slavery International, the Gangmasters and Labour Abuse Authority, and a representative of the Modern Slavery Registry. Other issues covered have included the Irish Congress of Trade Unions' initiative for employers to recognise domestic violence as a workplace issue and its childcare policy as part of its Better Work, Better Lives initiative; poverty in the workplace; and the emerging area of sport and human rights.

Members of the Forum have shared their own work, including the Probation Board's initiative with employers to assist ex-offenders into employment; A&L Goodbody's work with children's NGOs to scope out the legal ramifications for children's rights on leaving the EU; and the involvement of Hardscape and other members in the Ethical Trading Initiative. The latter is particularly important, as the current welcome focus on human trafficking and modern slavery should not divert attention from important supply chain issues to ensure retailers and their suppliers take responsibility for improving the working conditions of those who make the products and components which are then sold onwards. Other meetings have considered the human rights,



equality and other implications of leaving the European Union, with presentations from Manufacturing NI and the Northern Ireland Retail Consortium.

The Forum has run events in partnership with the Business Schools at both Ulster University and Queen's University, and runs an annual event each December during the Northern Ireland Human Rights Festival, which is organised by the NI Human Rights Consortium. As part of the 2018 Festival, the NIHRC and the Forum invited Safia Minney - founder of People Tree and ethical fashion expert - to discuss how businesses can apply sustainable and fair trade fashion in practice. Through this event, the Forum developed a very positive relationship with Belfast School of Art at Ulster University, and a separate lecture was given by Safia to Art students – which gave an added bonus of equipping them and giving them access to knowledge on how to start their own ethical and sustainable businesses.

The NIHRC has also contributed to events run by Business in the Community and Stronger Together (the alliance that works with employers and labour providers to tackle modern slavery), in addition to contributing to public seminars held by the Department of Foreign Affairs and Trade when developing a National Action Plan for Ireland. The Forum also gave written evidence to the Westminster Joint Committee on Human Rights' inquiry, culminating in a report on *Human rights and Business 2017: Promoting Responsibility and Ensuring Accountability* (sixth report of session 2016/17, HL paper 153).

Other practical activities include that the NIHRC has worked with the Department of Finance to undertake a pilot initiative to include human rights policies and practices in a tender for supplying agency workers. The aim was to go beyond simply requiring a short statement of compliance and written confirmation of practices, to examining how a human rights-based approach can be meaningfully developed in practice. This partnership led to the production of a Procurement Guidance Note (PGN 03/18), *Human Rights in Public Procurement*, setting out how government departments and their arm's length bodies should ensure human rights considerations are taken into account when procuring goods and services. Given that Northern Ireland government departments and their public bodies spend around £2.7 billion a year purchasing goods, services and works, ensuring that companies take their international and domestic human rights seriously is a vastly important issue.

The NIHRC is now looking at embedding the principles underlying the guidance note through training and other



initiatives within the Department for Finance and beyond.

A further initiative of the Forum has been to develop a draft Northern Ireland action plan for human rights. The Forum has produced an action plan that it will promote to the Northern Ireland Executive and NI Assembly once devolution is restored. Before the hiatus, the NIHRC met with the Chair, Vice Chair and Clerk to the Northern Ireland Assembly Committee for the Economy, with a view to giving evidence to the committee, and to arrange a joint meeting of the committee and the Forum in the near future. A locally based action plan would be just one of the issues of mutual interest to the two bodies.

Business and human rights complements, yet remains distinct from, corporate social responsibility. It recognises that businesses affect people's human rights through its own activities, business relationships and through its supply chains. Moreover, the 'protect, respect and remedy' framework which underpins the UN Guiding Principles emphasises the international inter-connection and importance of business activity globally. For all businesses, the mantra 'think globally, act locally' has resonance, whether a small company or a multi-national legal corporation. The work of the NIHRC and the Forum is designed to shine a light on rights issues, generate discussion, foster greater awareness, and to incorporate practical work to ensure that business and human rights is given the prominence and place it deserves.

Learn more

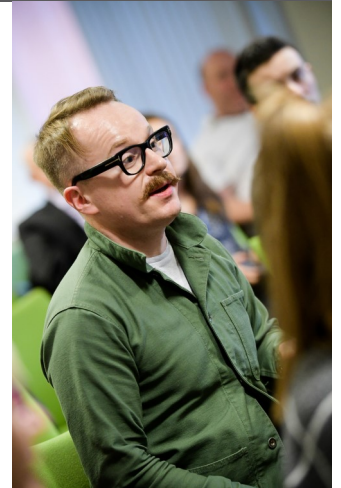
For more information on the Northern Ireland Business and Human Rights Forum, contact Zara Porter on zara.porter@nihrc.org.

For more information on the Ethical Trading Initiative see www.ethicaltrade.org.

The use of 'everyday' stop and search powers

Dr John Topping, Lecturer, Queen's University Belfast

The Police Service of Northern Ireland (PSNI) is often held as one of the most overseen, accountable and human rights compliant police organisations in the western world – as the global 'gold standard', embedded through the reforms under Independent Commission for Policing in Northern Ireland (ICP). Yet in spite of the vast oversight machinery, which acts a general guarantor to this status, curious lacunae exist with regard to the specific power of police stop and search. As one of the most high profile and controversial policing tactics in England and Wales for over 40 years, the issue of 'everyday' stop and search has been, until recently, something of a non-issue in Northern Ireland.



Organisations such as CAJ have done much to highlight human rights and civil liberties abuses with regard to terrorist-related stop and search powers, such as those under the Terrorism Act 2000 or Justice and Security (NI) Act 2007 (JSA). However, there has been very little, if any, policy or academic attention devoted to PSNI's 'ordinary' stop and search powers under the Police and Criminal Evidence (NI) Order 1989 (PACE) or the Misuse of Drugs Act 1971 (MDA). As the dominant form of stop and search in Northern Ireland (which mirrors powers in England and Wales), it may be argued that, between the interstices of the police reform process, attempts at policing with the community, and a terrorist threat as perennial 'hot' policy issues, 'everyday' stop and search has evaded the scrutiny afforded to other PSNI practices. Due to it being a 'standard' policing power, stop and search has thus been recoded as 'good policing', precisely because it demarcates a movement away from those 'hot' policy issues, which themselves create a 'cool' policy climate around such 'mundane' practices in the first place. It is no coincidence that stop and search has failed to receive a single mention in any published policing plans over the past decade by the Northern Ireland Policing Board (NIPB). Perhaps this is because of the fact the stated aims of stop and search by PSNI are presumed to be underpinned by the regulative human rights policing framework more generally in the country.

Yet, when taking a step back, it is curious that between 2004/5 and 2015/16, for example, PSNI use of PACE and MDA powers increased by 74% without attracting any attention set against the 'gold standard' accountability mechanisms. But, at the same time, use of those very same powers dropped by 75% in England and Wales over the same period. To further set PSNI usage volume in context, for 2018/19 PSNI currently use stop and search at

an overall rate (all powers) of 15 per 1,000 of population – the same rate as the much derided Metropolitan Police in London – with four of PSNI's eleven policing districts using stop and search at a higher rate still. While of course JSA powers account for approximately 25% of all PSNI stop and searches, even stripping those away, PSNI's combined PACE and MDA use sits at 11 per 1,000 compared to an average of 5 per 1,000 in England and Wales. So the first, and most obvious, civil liberties issue relates to why PSNI are using these powers of detention at such elevated rates, and in such a consistent fashion without challenge.

Following on from the issue of volume, it is of course apt to question whether those powers are in fact proportionate or effective in terms of how they are used; and the criminogenic 'threat' they are meant to resolve. Yet PSNI's own statistics show that the average arrest rate resulting from a stop and search encounters for 2018/19 sits at 7% - compared to 17% for England and Wales. It must also be noted that eight out of PSNI's eleven districts have arrest rates below 7%. So with 93 out of every 100 stop and searches by PSNI officers resulting in no further action, it begs the question as to what precisely is the power being used for? In view of arrest rates, it is worth remembering that virtually all available criminological evidence shows there exists at best, a weak relationship between stop and search and either reductions in crime, or increases in community safety. With the object of the searches clearly not matching the outcome in terms of officers finding whatever they detained and searched someone for, the application of 'reasonable suspicion' as a legal test, underpinning PACE and MDA, remains a pressing, procedural issue. While PSNI have previously defended the 'quality' of their stop and search practice via unreleased (and therefore not subject to public challenge) inspections from (the former) Her Majesty's Inspectorate



of Constabulary, claims to necessity and effectiveness of the powers are yet to be fully tested within wider accountability framework.

One area of significant concern relates to evidence around the stop and search of children and young people.

Children comprise 17% of all PSNI stops **not** made under anti-terrorism powers. Approximately 35,000 under 18s were stopped and searched by the PSNI between 2010/11 and 2018/19, with 15-17 year old males four times more likely to be stopped in proportion to population. Further, research through the *Young Life and Times Survey* (see <http://bit.ly/2lnFr5c>), as a representative sample of 16 year olds across Northern Ireland, paints a stark picture. As detailed, PSNI do not appear to be following procedural or legal propriety when it comes to the use of stop and search against children and young people.

With 69% of respondents in the YLT research indicating that no clear reason was given for the stop and search; 88% noting that no identifying officer details were provided; and 90% stating no record of the search was given, it points to the fact stop and search is happening at a higher rate than is formally recorded. Systematic recording practices remain questionable; and PSNI cannot be held fully to account for stops that do not technically exist where not formally recorded. On this point, such research must be considered in line with the UN Convention on the Rights of the Child (UNCRC), the principles of which are formally incorporated into PACE Code of Practice A, as that which governs PSNI's statutory power to stop and search.

The YLT further shows that when all other factors are controlled, children are two-and-a-half times more likely to be stopped and searched in socio-economically deprived, urban areas when compared to those who are better off. Beyond familiar themes of 'over-policed and under-protected', when layered onto the fact 80% of all PSNI's 'everyday' stops are conducted under MDA, it points to an apparent drive towards criminalising young males for low level drug possession. In a similar vein, questions must also be raised as to why the Northern Ireland Policing Board, who have been in receipt of age-related stop and search figures since 2013, have failed to treat the issue of stopping and searching children with any apparent urgency.

In general, it is also worth noting that as of 2019, PSNI still do not record or publicly release any stop and search

figures related to religious identity or ethnic background for any stop and search powers, with age-related figures remarkably only released since 2017. Therefore, set against equality obligations under Section 75 of the Northern Ireland Act 1998; the principles of the UNCRC enshrined in Code of Practice A; or indeed PSNI's own Code of Ethics, it is clear that the organisation has a long way to go in terms of reforming the practical use of, and cultural value attached to, stop and search powers. The current status quo in Northern Ireland with regard stop and search further sits in contrast with shifts in England, Wales and Scotland as part of an increasingly rights-based approach to use of the power, as a deliberative policy shift which acknowledges the damage and impact unfettered use has at a community level. The lesson from recent histories of stop and search – whether Brixton in 1981 or London in 2011 – also shows us that the power not only has a minimal impact on crime, but that it unequivocally damages police-community relationships where used inappropriately.

As noted most recently in regard to PSNI:

"It is concerning that the basic power to stop and search...has the capacity to evade scrutiny within this most overseen policing context and is seemingly immune to (a lack of) evidence of effectiveness. Both police and oversight bodies appear blind to the damaging effect the power can have on police-community relations. This remains an elusive power, hard to pin down within established regulatory and accountability structures."

(Topping & Bradford, 2018:13. Available here: <http://bit.ly/2mtjQIL>).

With use of 'everyday' stop and search as a missing part of the policing debate in Northern Ireland for almost 20 years, protection of civil liberties through greater oversight of stop and search will not only enhance the rights of citizens, but reduce the potential for tension in precisely those communities where stop and search is used most frequently – and where equality before the law remains most fraught.

Dr John Topping lectures in Criminology at Queen's University Belfast and is a Member of CAJ's Executive. He has published widely on policing, with stop and search powers being one of his specialist areas. A list of his publications is available here: <http://bit.ly/2kS66qM>.



Brexit and Irish citizens' rights examined

By Úna Boyd, Immigration Project Coordinator, CAJ

On 22 July 2019, CAJ spoke at a conference on *Brexit and Irish Citizens' Rights*, organised by Labour Irish Society in Westminster, London. The Labour Irish Society exists to provide a voice within the Labour Party for Irish communities in Britain and has a broad membership base derived from the thriving Irish community and those interested in Irish affairs. This event provided a platform for discussion and debate just days before the announcement of the new Prime Minister and Conservative government.

The event consisted of a panel chaired by Paula Kelly, Women's Officer of the Labour Irish Society. This panel focused on issues such as access to the EU Settlement Scheme for Irish citizens, enforced dual nationality for NI born Irish citizens, and the Common Travel Area (CTA). CAJ's Deputy Director, Daniel Holder, and Immigration Project Coordinator, Úna Boyd, sat on the panel alongside other experts. Daniel gave a detailed presentation on the impact of Brexit on Irish citizens' rights, which was followed by presentations from his fellow panellists. Campaigner Emma De Souza spoke about her case against the UK Home Office and her struggle to be recognised as Irish, instead of being labelled British by default. Barrister Gráinne Mellon discussed the Common Travel Area (CTA) and called for it to be protected by binding legal arrangements. Lastly, Karin Smyth MP, the Shadow Minister for Northern Ireland, echoed the concerns of the rest of the panel and reaffirmed Labour's commitment to protecting the Good Friday Agreement.

The panel session was followed by an interactive Q&A, which was very lively, with attendees expressing frustration and concern over the lack of clarity on the CTA and the protection of EU rights for Irish citizens.

The event attracted a lot of interest - over a hundred attendees were present, including representatives from key NGOs, civil society organisations, and the Irish embassy. Also present were MPs and Lords, including Lord Dubbs, Stephen Pound MP, John Grogan MP, and Tanmanjeet Singh Dhesi MP.

In this current climate of uncertainty and frustration, it was felt that the event acted as an essential platform for providing clarity and sharing information on these complex issues.

A Renaissance of the Peace Process? What kind of society do we need?

CAJ, Queen's University Belfast, and the Irish Council for Civil Liberties (ICCL) hosted a working conference in September 2019 to explore the concept of having a 'Renaissance of the Peace Process' in Northern Ireland in response to the uncertainty caused by Brexit and related political developments. Featuring a series of panel discussions, the conference was designed to stimulate discussion on the actions and policies necessary to bring about a rebirth of the principles within the peace settlement. In other words, it examined how we can 'go back to basics' and implement what was what was previously neglected, while also developing solutions for the new challenges coming down the road. Experts from both sides of the border, as well as from further afield, were present. A report will follow from the conference, based on the presentations given throughout the day. We will share this with you once ready.

Report launched on countering incitement to hatred

On 13 October 2017, a major one-day conference was held in Belfast to explore, from a human rights perspective, when public authorities should act against speech and cultural expression in order to protect the rights of others. The event was organised by the Equality Coalition, a civil society alliance co-convened by CAJ and UNISON, with additional support from the Senator George J. Mitchell Institute for Global Peace, Security and Justice. During the conference, there were presentations, panel discussions, and afternoon workshops, all exploring different themes related to the legal framework (both local and international) on countering incitement to hatred. From the proceedings of this conference, a comprehensive 90 page report was recently produced.

The launch of this report, on 3 October 2019, was purposely timed to coincide with the review of hate crime legislation in Northern Ireland, which has been running since June 2019 with Judge Desmond Marrinan at the helm. You can download a digital version of the report here: <http://bit.ly/2nTM8xr>.





Equality complaint made against Translink for facilitating discriminatory passport checks on cross-border buses

By Eliza Browning, Equality Duty Enforcement Project Coordinator, CAJ

On Monday 2 September 2019, CAJ submitted a complaint on behalf of 17 directly affected passengers to Translink regarding the company's failure to comply with its approved equality scheme in relation to its policy of facilitating discriminatory passport checks on its cross-border transport services. Translink has been allowing immigration officials to seek the production of passports (and other documentation) from passengers travelling on or disembarking from its cross-border bus services within the Common Travel Area (CTA). This has led to evidence of adverse equality impacts on Section 75 groups, including particularly major adverse impacts on racial groups.

Translink, like every designated public authority in Northern Ireland, has to publish and comply with an equality scheme, which is approved by the Equality Commission for Northern Ireland (ECNI) and sets out how they are complying with their equality duties under Section 75 of the Northern Ireland Act 1998. Under their equality scheme, public authorities commit to equality screening – and, where deemed necessary, equality impact assessing and consulting on – their policies to assess the likely impact of each policy on the equality of opportunity and good relations for protected groups of vulnerable people. If a screening determines that a policy will adversely affect a protected group, the public authority is meant to identify how they intend to mitigate against the adverse impact. What specifically constitutes a 'policy' is broadly defined, encompassing all of the ways in which a public authority carries out or proposes to carry out their functions. Any (proposed, amended or existing) strategy, practice, or decision by a public authority is considered a policy for the purposes of equality scheme commitments.

Translink has adopted a policy of facilitating immigration checks on its cross-border bus services. These checks have taken place on both sides of the border, either on Translink buses that have been stopped en route or during disembarkation at bus stations.

The checks involve Translink facilitating the stopping of its buses to allow law enforcement officers to board the vehicles and subject passengers to questioning (examination) and document requirements. Checks have led to persons being removed from bus services and detained. Translink have confirmed that no equality screening, consultation or Equality Impact Assessment (EQIA) was undertaken in adopting the policy. Additionally, Translink has been unable to clarify the statutory basis upon which law enforcement agencies access their vehicles for the purpose of immigration checks.

UK law explicitly precludes such passport checks being conducted in the CTA under the Immigration Act 1971. Irish law also precludes such checks being conducted on Irish citizens or other EU citizens crossing the land border under the Immigration Act 2004 (as amended by S34 of the Civil Law (Miscellaneous Provisions) Act 2011)). There is also no clear power to stop and board a vehicle for such a purpose.

While under current Irish Law some persons ('non-nationals') are required to carry and produce passports in the CTA, the question remains – how does law enforcement determine who is not an Irish or EU citizen for the purposes of these immigration checks? The most obvious answer is that these checks are frequently conducted on the basis of racial profiling.

As it is not possible to tell who is an Irish or EU citizen by looking at them, persons from ethnic minority background find themselves disproportionately affected by such checks.

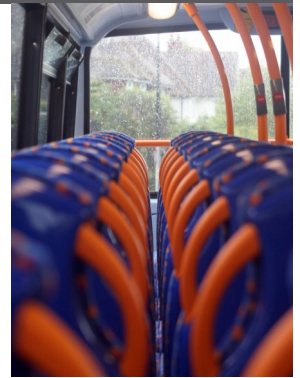
Our submitted complaint to Translink highlighted multiple incidents of racial profiling as people travelled across the border between Northern Ireland and Republic of Ireland, and also by officers in NI ports.

The UK's pending exit from the EU may lead to further complications. In the event of a 'no-deal' Brexit, as of 1 November 2019, British citizens will cease to be EU citizens exercising EU rights and therefore (unless the legislation is modified) may be subject to cross-border passport checks by Irish authorities in a manner in which Irish citizens would not. As a result of this change, there would be significant potential for further discrimination to occur on the grounds of 'community background'. In these circumstances, Translink's policy of continuing to facilitate passport checks could have an adverse impact on additional Section 75 categories, namely religious belief and political opinion.

Due to the clear and present major adverse impacts of this policy on the basis of race and the potential for future adverse impacts on the basis of religious belief and political opinion, we believe that a screening, followed by an EQIA, should have been conducted by Translink on the policy. Instead, Translink has breached its equality scheme commitments. In our complaint, we requested that Translink suspend or discontinue this policy and expeditiously conduct an equality screening, EQIA, and formal consultation under the terms of its equality scheme on any resumption or modification of a policy to facilitate such checks.

On 25 September 2019, Translink responded to our complaint by stating that their practices did not constitute a policy and therefore were not subject to the equality duty. Translink's response also stated that they believe they have to comply with the directions of law enforcement. However, this overlooks the question as to the lawfulness of the direction. In a democratic society, law enforcement officers need an actual power to compel individuals and public authorities to do something. There are many sanctuary cities that in fact decline to voluntarily assist the enforcement of immigration controls that are discriminatory. Furthermore, we believe Translink's actions constitute a policy under the definition in their own equality scheme. We are pursuing this matter and will now file a complaint with the Equality Commission for Northern Ireland.

If you witness a passport check being carried out on cross-border transport, please take a few minutes to report it to End Deportation NI's online reporting tool which can be found at <https://edbracistreporting.typeform.com/to/kl6yCY>.



CAJ can assist people and organisations who have been affected by a public authority's breach of their equality scheme. Email eliza@caj.org.uk for more information.



Civil Liberties Diary - June 2019 to August 2019

Compiled by Sinead Burns from various newspapers

11 June 2019: MPs have been warned that Northern Ireland is facing another welfare reform crisis if support payments from Stormont end during the collapse of power-sharing. The £500 million payment package was designed to offset the impact of UK-wide changes to the welfare system, and is due to expire in March 2020. Following the Stormont collapse, Westminster has been urged to step in and ensure that support is protected in the future.

14 June 2019: Over 1,000 women and girls travelled from Northern Ireland to England or Wales to access abortion services in 2018. The latest statistics have indicated that since 2017, there has been over a 20% rise in women travelling for an abortion.

19 June 2019: The Chief Inspector of Criminal Justice in Northern Ireland has emphasised the need for the outlawing of 'coercive control' following the suspension of the Stormont Assembly. Coercive control is a form of domestic abuse that may include intimidation, humiliation and other types of psychological abuse. Statistics show that in 2017/18, the PSNI recorded the biggest number of domestic abuse incidents in a single year - equivalent to one every 17 minutes.

20 June 2019: A poll has revealed that 70% of people in the UK believe same-sex marriage should be legalised in Northern Ireland. However, support was lower among people living in Northern Ireland, with just 55% in favour of this.

25 June 2019: The Northern Ireland Public Services Ombudsman (NIPSO) is launching a probe into the way that Personal Independence Payments (PIP) have been administered in Northern Ireland. PIP was introduced in NI in 2016 and replaces Disability Living Allowance. NIPSO has the authority to investigate any reasonable suspicions of systematic maladministration and/or systemic injustices related to the administering of

the benefit.

10 July 2019: MPs have voted to force Westminster to reform laws relating to legalising same-sex marriage and abortion in Northern Ireland. The votes were held as part of measures taken by the House of Commons aimed to ensure the running of public services in NI following the collapse of power-sharing. Abortion will be decriminalised and same-sex marriage will be legalised if a new Stormont Executive is not created by 22 October 2019.

17 July 2019: Domestic abuse victims in NI will be given protection under new Westminster legislation. A domestic abuse bill will include measures to combat coercive control. Campaigners called for Westminster to step in following a range of delays to public policy changes in NI as a result of the collapse of power sharing.

7 August 2019: Personal Independence Payment (PIP) claimants have been urged to avail of audio recording facilities during assessments following 'low uptake' concerns. The audio-recording equipment has been rolled out to ensure that any disputes regarding the accuracy of PIP assessments would be resolved quickly and impartially.

8 August 2019: Northern Ireland's two universities have said they will amend their medical and nursing training if abortion laws are changed. Medical and nursing students are taught the legal frameworks for abortion in the UK and Ireland. As with any changes in legislation, course content will be reviewed and updated accordingly.

16 August 2019: The number of cases involving a hate crime reported by the PSNI to the Public Prosecution Service (PPS) has risen by 6% in the last year, up from 335 to 355. Most cases were related to race (37.2%), followed by those considered sectarian (31%) or homophobic (14.1%). 62.5% of the



cases involved 'violence against the person', which marks a 6.7% increase on the previous year.

20 August 2019: Several schemes and community centres in Northern Ireland have been providing thousands of free meals for children to tackle 'summer holiday hunger'. Food poverty is a significant issue for low income families. In Northern Ireland, almost 100,000 children are entitled to free school meals, which equates to almost 30% of all pupils. During the summer, the absence of free school meals can put financial pressure on low-income families.

21 August 2019: Christian Action Research and Education (CARE) NI have called for immediate action to protect churches and other places of worship. The call followed a Freedom of Information request by the group that found that there were 445 crimes recorded as criminal damage to religious buildings, churchyards or cemeteries in the last three years.



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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