



The human rights implications of 'vaccine passports'

Brian Gormally, Director, CAJ

At this stage in the long battle against Covid-19, vaccination programmes are being rolled out in Northern Ireland, the rest of the UK, Ireland and the EU, and in many countries around the world. The reopening of our economies and social life in general are beginning as the lockdown and the progress of vaccination bring a reduction in medical caseloads. In these circumstances, there are some who see 'passports', which contain information on vaccination or other evidence of some level of 'immunity', as a necessary tool.

The World Health Organisation (WHO) has drafted standards for appropriate mechanisms and the EU is fast developing an app that will facilitate travel between EU countries. The English authorities are also in the game, though the technical parameters of their proposals are not yet clear. In any event, people in Northern Ireland will not be able to avail of the English app since health services and the data they collect and hold are devolved. The Department of Health here is exploring local possibilities and are awaiting the go ahead in terms of a policy and budget from the Executive before taking practical steps.

The details of how an app would work are not yet clear, but in respect of a travel app there will be three 'routes' to assumed immunity. The first will be evidence of having received both the first and second vaccination, the

second will be a negative PCR test taken in the 72 hours before travel, and the third would be evidence of having had the disease and recovered up to 190 days before. It is likely that the "passport" will be available through a phone app and a non-digital alternative.

CAJ has carried out a detailed human rights analysis of vaccine of immunity "passports" and it is available on our website: <https://bit.ly/3tp199e>. However, many and various proposals have been made about the contexts in which such passports could be used and the human rights implications are likely to differ. These passports could apply just to international travel or might be applied to travel restrictions within a country; they could be imposed, or at least verified, by the state; or might be demanded by private businesses, such as pubs or shops or, possibly, by one's employers. Obviously, if the contexts in which they applied were minimised, the possible interference in human rights would be lessened. A requirement for a vaccination passport for international travel for holidays, would probably involve less interference with rights than a broad application across many areas of domestic social life.

Our analysis of the passports focuses on the European Convention on Human Rights, as listed in the UK Human Rights Act. It suggests that the proposals do not engage Article 5 (right to liberty), but may engage Article 8 (right to a private life), and Article 14 (freedom

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from discrimination in relation to other ECHR rights). The paper goes on to examine the scope of positive obligations under Article 2 (right to life), Article 3 (freedom from torture and inhuman and degrading treatment), and Article 8. It concludes that there are positive duties on the state to protect life and physical integrity, but that these could not amount to an obligation to specifically develop an immunity passport or app.

The analysis finds, however, that an immunity app would amount to an interference with the rights to a private social life and privacy, thus engaging Article 8. The interference is (a) with the rights of those who could avail of an immunity app, requiring the production of proof of identity, combined with health status to access aspects of social life, and (b) with those who could not or would not qualify for an immunity certificate, whose access to social life would be restricted.

Since Article 8 (private life) is engaged, Article 14 (discrimination) will also be engaged if there is differential treatment on protected non-discrimination grounds. In the case of an immunity (or vaccination certificate) passport or app, differential treatment is its fundamental purpose. It is designed to allow access to various services, freedoms or aspects of a social life for those who have such a passport, and to deny that access to those who do not. If people cannot access an app because of disability, medical conditions or genetic features there is clear interference with their right not to be discriminated against. If such people are given an exemption, there might still be discrimination by gatekeepers to social facilities. The measure may also discriminate on the grounds of ethnicity and economic status, given the unequal take up of vaccinations. A digital app may also discriminate against people living in 'digital poverty' or those unable to use digital devices.

These rights are not absolute, however, and can be interfered with for good reason. To be justified, any interference with rights must be in accordance with law, for a legitimate aim and necessary in a democratic society (which also means the interference must be proportionate to the aim pursued).

There must therefore be an existing or specially legislated legal power to create the measure which interferes with rights. Amongst the legitimate aims specified in the second paragraph of Article 8 are "...in the interests of... the economic well-being of the country... for the protection of health...or for the protection of the rights and freedoms of others". Presumably, in this case, the government would seek to argue that the interests of the economic well-being of the country and/or the protection of health and/or the Article 8 rights of others were the legitimate aims of an immunity passport or app. It could be argued that a legitimate aim for a vaccination app could be to release many people from lockdown restrictions and thereby return some of their Article 8 rights. There might also be a more general and nebulous argument that an app would lead to increased ability to reduce lockdown restrictions and get the economy and society moving, hence restoring some of the Article 8

rights of the population in general, as well as restoring economic and social rights (such as the right to work, etc).

The 'necessity' test implies that there is a 'pressing social need' for the measure. It is important to recognise that this phrase does not refer to the legitimate aim but to the measure which purports to achieve it. So, the state in this case would have to demonstrate, not that there was a pressing social need for the protection of health in general but for this interference in the Article 8 rights of affected persons in particular. If the legitimate aim argued was the protection of the rights of others, the state would have to demonstrate that there was a pressing social need to allow the vaccinated to access travel and other social services. Again, the state would have to demonstrate with convincing evidence that a passport app was in the interests of economic well-being, if that were the legitimate aim relied upon.

In summary, the CAJ analysis finds:

- a) The interference with rights is serious enough to require dedicated legislation giving explicit power to create an immunity app, protecting the collection, storage, use or transfer of such data, and providing for adequate regulation .
- b) There must be an evidential link between the measure proposed and the legitimate aim, whether that be the protection of health, the release of vaccinated persons from lockdown restrictions, or the general ability to open up society in the interests of economic well-being .
- c) Such evidence will have to demonstrate the necessity and proportionality of an app whether or not vaccination is widely available and effective in preventing the spread of disease .

Our analysis concludes that we could not declare definitively that a vaccination or immunity passport or app would be unlawful under the Human Rights Act, but there is an arguable case that it would be. At the end of the day, it would be an evidence based judgement and it would be the responsibility of the courts to rule on it were such a measure to be introduced. The scope of application of the app would be an obvious component of the evidence base. An app solely for use in international travel would involve considerably less infringement of people's rights and so its proportionality might be easier demonstrated. In that case, there would have to be ways of preventing the app's 'informal' use in other spheres. In any event, we have set out above the tests that the proponents of relevant measures would have to meet.



A threat to the rule of law? An examination of the government's plans to alter the law on judicial review

Brice Dickson, Professor of International and Comparative Law, Queen's University Belfast

An Independent Review of Administrative Law (IRAL) was initiated by the UK government in July 2020, mainly as a response to the Supreme Court's decision in September 2019 that the Prime Minister had acted unlawfully in proroguing Parliament for a longer than usual period without providing good justification for doing so. The Court's unanimous decision played into the hands of the Conservative Party, which has for some time wanted to recalibrate the relationship between the courts and the government. The ongoing review of the Human Rights Act is another manifestation of that mindset. The government's position is that courts should not be 'abused' in order to conduct politics by another means.

IRAL reported in March, having conducted a speedy but fairly thorough review. Its report focuses on legal rules concerning applications by individuals and organisations to 'judicially review' (JR) an action or inaction of a public authority – the kind of application taken by the CAJ in 2015 when it successfully challenged the failure of the Northern Ireland Executive to develop an anti-poverty strategy. There were fears that the Review might reach conclusions that were music to the government's ears, but in fact it recommended few changes to the status quo.

The findings

The report confirms that the law relating to JR is particularly important in Northern Ireland and that not a single submission to the Review was in favour of reforming it there. It accepts that if legislation was passed at Westminster restricting JR in relation to non-devolved issues affecting Northern Ireland, thereby leading to a dual system of JR in Northern Ireland's courts, this would be 'highly undesirable'. It also acknowledges that if procedural changes were made in England and Wales, it would be for the devolved institutions in Northern Ireland to decide if they wished to follow suit. On the other hand, jurisdictions in Great Britain might want to adopt Northern Ireland's novel scheme for dealing with JRs through 'consensual resolution'.

More generally the report concludes that it would not be wise to codify the law on JR. It does not think that Parliament should even legislate to clarify the matters that cannot be subjected to JR or the matters which require courts to conduct their JR 'with restraint'. It sees no need to reform the law on who is entitled to lodge applications for JR or on the 3-month time limit for doing so (although again England and Wales might want to



follow Northern Ireland's lead in ditching the rule that applications must be brought 'promptly'). Nor does the panel want Parliament to specify the grounds on which JRs can succeed: that should be left to the common law, which is developed by judges. It says that the rules on who can be allowed to intervene in JR proceedings (as the NI Human Rights Commission occasionally seeks to do) should be clarified. The panel thinks it would be a breach of the rule of law for Parliament to exclude JRs in general and even lesser reforms, aimed at limiting the powers of courts in this context, would be met with 'hostility', but it suggests that courts should be empowered to suspend any order they make to quash a decision, thereby allowing time for specified corrections to be made. The report ends by noting the UK judiciary's high reputation internationally and states that both Parliament and the government can have confidence that judges will respect institutional boundaries.

Post-report developments

Relief all round then – except that the UK government has since issued a consultation paper on possible reforms that would go beyond those recommended by the Review (which the government readily accepts). They include proposed legislation to exclude JRs altogether in certain contexts (through 'ouster clauses'), to allow courts to issue remedies affecting only the future (not the present or the past), and to clarify when a decision becomes an absolute nullity in the eyes of the law. Unfortunately, the 6-week consultation period allowed by the government's paper expired at the end of April.

The time has once again come for all of us who care about participative and accountable democracy to counter strongly any suggestion from government that the scope of JR should be limited. The consultation paper envisages, for example, the creation by Parliament of bodies with plenary powers that cannot be challenged in a JR on the grounds that they have been exercised in an unreasonable way or on the basis of irrelevant considerations. It also criticises using terms such as 'the rule of law' and 'principle of legality', as if they referred to a particular set of moral values or conceptions of fairness. The government is saying that it should be answerable to the people rather than to the courts. So much for respect for the judiciary.

The truth at last: Victims of the Ballymurphy Massacre found to be entirely innocent

Padraig Ó Muirigh, Ó Muirigh Solicitors

“Truth is central to justice, and the discovery of truth requires a searching inquiry.” - Preet Bharara, former US Attorney for South New York

“Our loved ones are innocent” was the rallying cry as family members and campaigners left the International Conference Hall (formerly Waterfront Hall) after damning findings were delivered in the Ballymurphy Inquest on the 11 May 2021. Justice Siobhan Keegan had just found that ten of victims of the Ballymurphy Massacre were innocent, nine of those were shot dead by the British Army. She also found that the lethal force used by the British Army ‘disproportionate’, ‘not justified’ and that the state was in clear violation of Article 2 of the ECHR. There was no finding of British Army responsibility for the death of John McKerr due to the ‘shocking’ lack of investigation of this death.

These family members had always known their loved ones were innocent, but this was the first legal vindication of their innocence. In 1971, the ‘gunman’ and ‘gunwoman’ narratives were perpetuated by the British Army Press Unit and reported on by a compliant media. This misinformation besmirched the reputation of the deceased for almost fifty years.

Justice Keegan’s findings were the first evidence-based report into the events of Ballymurphy between the 9-11 August 1971 when the British Army, in particular, the Parachute Regiment, brutalised the Ballymurphy community, killing indiscriminately and injuring many others. The original inquests into the deaths in 1972 were perfunctory in nature with ‘Open Verdicts’ recorded. In 1970 an agreement was reached between the General Officer Commanding the British Army (GOC) and the Chief Constable of the RUC meant that the investigation of the use of lethal force by military personnel would be carried out by the Royal Military Police (RMP), another branch of the British army ‘family tree’.

During the period when the Agreement was in force, soldiers who engaged in the use of lethal force in Ballymurphy, and elsewhere, were not subject to the rigours of the legal system, nor were they rendered accountable for their use of lethal force. The RUC/British Army Agreement was a significant usurpation of the police responsibility for the investigation of crime when the suspects were soldiers.

I began to represent the Ballymurphy families in 2009 and advised them to make an application to the Attorney General, John Larkin QC, for a fresh inquest into the deaths of their loved ones. We organised witness surgeries and engaged independent lawyers to take statements from witnesses who hitherto had not provided testimony. A detailed application was submitted in 2010. In 2011, the Attorney General directed fresh inquest into

ten of the deaths at Ballymurphy.

After years of delay and a judicial review challenge to the failure to fund legacy inquests, the Ballymurphy Inquest finally began in November 2018. It would hear testimony from hundreds of civilian and military witnesses over the course of a hundred days of evidence at Laganside Court. Leading forensic experts in pathology and ballistic evidence also provided evidence to the inquest.

There were many difficult and distressing days for the relatives of the deceased such as when the Connolly family first heard, in harrowing details of how their mother was shot by British soldiers firing from the Henry Teggart Hall, and died, alone and in great pain, just feet from a house where another woman inside was frantically trying to save her. The court had to rise for everyone in the courtroom to recompose themselves after the completion of the evidence.

The inquest also heard evidence from Sir General Geoffrey Howlett, who was Commanding Officer 2 Para on the 9 August 1971 and the highest-ranking soldier at Ballymurphy in August 1971. The exchanges between our counsel and the senior military witness were very revealing. It was clear from General Howlett’s evidence that he regarded himself ‘at war’ on the 9 August 1971. There is no question in my mind that this mindset played a role in constructing Ballymurphy as a ‘suspect community’ in the minds of senior soldiers and those further down the chain of command in the Parachute Regiment. In his second day of evidence when questioned by counsel he stated that the actions of civilians going to the aid of Frank Quinn and Father Mullan amounted to ‘associating’ with the IRA.

One of most eagerly awaited days of the Ballymurphy inquest was the examination by Michael Mansfield QC of General Robert Jackson. Jackson was 1 Para PRO in August 1971. This would pit “arguably the most high-profile British army general since the Second World War” against one of the greatest courtroom advocates of his generation. Mr Mansfield expertly probed General Jackson on his role in the cover up at Ballymurphy by providing misinformation to the media in the aftermath of the deaths of John Laverty and Joseph Corr.

Mheli Mxenge, brother of Griffith Mxenge, a human rights lawyer assassinated by a counterinsurgency police unit in Apartheid South Africa, said, “I don’t believe knowing alone makes you happy, you need the next thing – you want justice”.

In light of the damning findings by Justice Keegan, the Ballymurphy families have a right to have the actions of those soldiers at Ballymurphy independently investigated, and where possible, a decision made on the viability of prosecutions by an independent prosecuting authority. The British Governments proposals for an amnesty for soldiers and their failure to implement the provisions of the Stormont House Agreement is a derogation of their responsibilities under human rights law. The Ballymurphy families’ campaign for justice will continue.

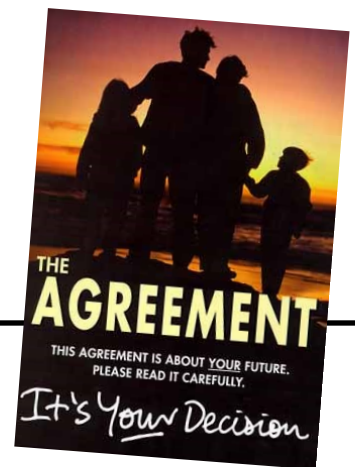
The unimplemented rights commitments of the peace settlement

A new paper from CAJ aims to 'map' the status of the principal commitments relating to human rights (including equality) made as part of the 1998 Good Friday Agreement (GFA) and the subsequent agreements that have emerged during the peace process, including the very recent [New Decade, New Approach](#) (NDNA) agreement, which restored power sharing in 2021. Many of these rights-based commitments still remain unimplemented, despite some originating more than 23 years ago and being intended to prevent abuses of power at Stormont, discriminatory decision making, and rights deficits.

The paper 'updates' the mapping found within '*Mapping the Rollback: Human Rights Provisions of the Belfast/Good Friday Agreement 15 years on*', a [report](#) produced in 2013 further to a conference organised by CAJ in collaboration with the Transitional Justice Institute at Ulster University and the Human Rights Centre at Queen's University Belfast. Despite some welcome commitments in NDNA it is striking how little has changed in the last eight years. The updated mapping exercise was published shortly after the one-year anniversary of NDNA and reflects the limited progress made since then in its implementation. Notably, we still do not have a Programme for Government (PFG).

The mapping exercise draws attention to 15 distinct examples where an important rights commitment has remained unimplemented. These examples cover the following areas: incorporation of the ECHR; international obligations: human rights treaties; NI Bill of Rights (expanded upon below); procedural safeguards on exercise of power; an Anti-Poverty Strategy on basis of objective need; minority language provisions, including the Irish language act; the right of women to equal political participation; equality strategies and legislation; social protection; inequality and segregation in housing; civic space and situation of human rights defenders; dealing with the past; policing; justice reform; and parading.

The full paper, entitled *The unimplemented rights commitments of the peace settlement 23 years on from the Belfast/Good Friday Agreement: A mapping exercise*, is available to download here: <https://bit.ly/2TV51iS>



Case study: A Bill of Rights for Northern Ireland

The following case study has been adapted from the mapping exercise

Provisions for a Bill of Rights (BoR) for NI were contained within the Good Friday Agreement, which stated that the new Northern Ireland Human Rights Commission (NIHRC) would "be invited to ... advise on the scope for defining, in Westminster legislation, rights supplementary to those in the European Convention on Human Rights". It was intended that the resulting Bill of Rights would draw on international standards and reflect the particular circumstances of Northern Ireland. Since the GFA, progress towards developing a BoR has been fitful, with years sometimes elapsing without positive advancement, despite broad support from NI civil society groups in favour of the bill.

After the 2006 St Andrews Agreement, the UK government established a Bill of Rights Forum, which reported its findings to the NIHRC two years later. NIHRC, in accordance with its GFA mandate, then issued advice on the content of the BoR to the Secretary of State for NI, which is still available online [here](#). This detailed advice could have formed the basis of a BoR, but was never taken forward.

Instead, the Northern Ireland Office (NIO) issued a consultation paper that took a minimalist approach and argued that many of the rights were more relevant to a proposed UK or British Bill of Rights. This UK Bill of Rights ultimately did not proceed, but nor did the UK government bring forward any legislative proposals for the NI BoR. The government also subsequently added an additional prerequisite which meant that 'consensus' would be sought from both unionist and nationalist parties on any rights included in the BoR.

No further developments of particular note occurred until the New Decade, New Approach (NDNA) agreement was struck in 2020 (i.e. more than a decade later). Within NDNA, a commitment was made to set up an Ad Hoc Assembly Committee to consider the creation of a Bill of Rights faithful to the stated intention of the GFA.

The 'Ad Hoc Committee on a Bill of Rights' was established in 2020 and has since gathered a substantial body of evidence on the BoR. Many civil society groups, including CAJ and the Equality Coalition, have given presentations to the Committee. A survey, open to anyone, was also used to gather views from members of the public. The Committee has concluded taking formal evidence and is now entering the reporting phase, during which it will consider evidence that it has received.

It remains to be seen if genuine progress will follow, or if this is yet another false start and more years of inaction are set to follow. What is clear, however, is that having a BoR earlier could have prevented the issues that de-stabilised power sharing in NI and contributed to its repeated collapse.

123GP campaign calls for timely and easy access to counselling in NI

Sara Boyce, Development Worker, PPR

The [123GP campaign](#), supported by PPR, is calling for timely and easy access to counselling for everyone who needs it. Right now, ease of access to counselling through GP practices is dependent on where you live in Northern Ireland. [Data](#) obtained by PPR through FOI requests and published in February 2021 reveals a situation that resembles 'postcode lottery'. But people's mental health is not something that should ever be gambled upon.

Wait times vary massively between different parts of Northern Ireland, as illustrated on this [map](#). On the north coast, the majority of GP practices, provide in-house counselling - 100% in East Antrim and 92% in both North and South Antrim. In sharp contrast, only 40% of practices in West Tyrone, 45% in South Down, and 50% in West Belfast provide in-house counselling. Across NI as a whole, over 30% of GP practices are still unable to provide in-house mental health counselling,

People can wait months for an appointment. For some, this could potentially be a matter of life and death. Often, the only option available to GPs is to prescribe medication and, indeed, the budget for antidepressants is [rising year on year](#). Many patients end up seeking counselling elsewhere, paying for it privately or relying on help from the already over-burdened voluntary and community sector, which often has to step in to plug the gaps in GP and Health Trust provision.

As part of their campaign, PPR have been gathering (anonymous) accounts from service users, their family members, counselling providers and GPs amongst others. Some of these powerfully illustrate the need for urgent change:

"Unfortunately, in the last 10 years working in community health I have attended too many funerals of young people, who needed mental health support. Time and time again we hear the same story from family members - my child or sibling could not get support."

"I feel really angry that so little funding goes into talking therapies compared to psychiatric medication. I know that the majority of people who end up in hospital or severely unwell with depression will have struggled on with mild to moderate depression that could have been helped by counselling at an earlier stage. After being helped personally by a counsellor through the GP, it would mean a lot to me to know that support could be made available without a 2 year wait, for me and all my friends and family if they ever needed it. People who can't afford private therapy tend to be the people who contend with the most adversities, and you are failing to meet our human rights with the current lack of well-funded counselling services in primary care."

The primary 'ask' of the 123GP campaign is for GP counselling services to be easily accessible no matter where

someone lives so that nobody in Northern Ireland waits longer than 28 days to be seen by a counsellor after taking that first crucial step and approaching their GP for help. This is reflected in the campaign's '[Consensus on Counselling](#)' statement, which has been endorsed by all of NI's leading political parties (with the exception of the UUP), counselling organisations, and dozens of civil society organisations.

Developing a new Mental Health Strategy for NI

At the time of writing, the Health Minister, Robin Swann, had just published a new 10-year Mental Health Strategy, which will run from 2021 to 2031. 123GP campaigners have been lobbying for this strategy to include firm commitments to counselling, in line with the *Consensus on Counselling* statement.

Ultimately, any proposals in the Mental Health Strategy for improving access to counselling will be measured against the extent to which they deliver on the *Consensus on Counselling* statement, including the following key commitments:

1. Everybody can access counselling when they need it, regardless of where they live.
2. Nobody will have to wait longer than 28 days for an appointment.
3. Counselling will be funded in line with need.
4. The role of the community and voluntary sector will be recognised and resourced.

We hope to draft a full analysis of the strategy for inclusion in a future edition of Just News. If you'd like to read the strategy yourself, it is already available here: www.health-ni.gov.uk/sites/default/files/publications/health/doh-mhs-strategy-2021-2031.pdf.

What you can do

Sharing your own experience of counselling, good or bad, to help convince the Minister to fix access to counselling now. Click on the following link to send your stories: www.bit.ly/3txFFny.

You can also help by sharing the link with others to encourage them to tell their story.

Together we can demand a counselling service that's fair. The thousands of people experiencing emotional and psychological distress depend on it.



Was the 2021 Census accessible to members of the BME community in Northern Ireland?

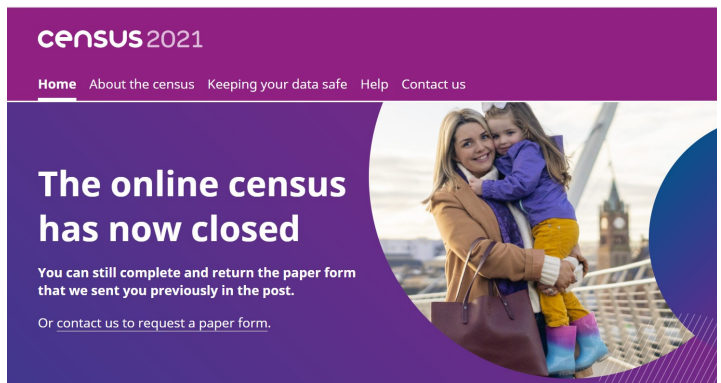
Naomi Green, Belfast Islamic Centre

Institutional or systemic racism can be seen or detected in processes, attitudes and behaviour which amount to discrimination and disparity of access to support systems and lack of consideration of minority communities. With that in mind, the implementation of the 2021 NI Census raised a number of issues.

Anyone working in the charity sector may have noted there is a heavy reliance on census data for government, even though we know it lags behind in capturing data relevant to minority communities, especially in relation to the Black and Minority Ethnic community and religious minority communities. We know that the population of NI has changed dramatically in recent years. One of the most prominent changes, which the assembly and public servants are aware of, is the arrival of 2,000 Syrian refugees through the Vulnerable Persons Resettlement Scheme (VPRS) scheme. The vast majority of whom are Muslims and many have limited English proficiency. There are of course many Syrians who did not come through the scheme as well as other recent immigrants from across the world who are still in the process of learning English.

The census is vital in terms of enabling the allocation of resources for local communities, schools, hospitals, roads, and other public services. Research has shown that Black and ethnic minority people are often disproportionately underrepresented in the census due to several access-related issues. This missing data affects the allocation of resources. Miscounts will have real consequences for the next decade, including how we fund programs for children and how we recognise that we cohabit in a multicultural society.

Many organisations working with minority groups will have been involved with meetings with NISRA about raising awareness of the census prior to its launch, as well as raising awareness within their own communities. However, the census design and the marketing around it was not done in a particularly accessible way. On signing into the census, the design was based on the so called 'two community model' and the only language options readily available were English, Irish, or Ulster Scots. Information leaflets were produced in other languages. However, the letter and accompanying leaflet sent to households to raise awareness of the census were written in English. There was nothing on the main letter indicating alternative languages were an option. The



leaflet did say that the census was available in different languages, but there was no explanation about the census in these other languages. This is a major accessibility issue which may result in significant underrepresentation of some communities who may not have been able to access or complete the survey.

Census questions are primarily based on previous census data, an over-reliance on 'statistical significance' and reluctance to change, rather than an assessment of current need and impact. This can lead to a 'blind spot' in terms of how minority communities are identified and valued. Prior to the 2001 Census in England, Scotland and Wales, a strong user need for data on religion was identified; related to monitoring levels of social exclusion and discrimination, and establishing differences in take-up of services. The major minority religions have been included as clear options in all other devolved nations for some time.

In Northern Ireland, four different Christian denominations are mentioned as clear options under the religion question, all other religions fall under 'other' and then must be typed in. While it is understandable that every single option cannot be included, essentially the 'religion' question can be seen as 'Which type of Christian are you?', rather than 'Which religion are you?'. While NISRA defend this decision by pointing out it is an option to type a response, different terms may be used for their faith group or respondents may not fill it in at all, again resulting in significant underreporting. In the rest of the UK these options were made available - it would be reasonable to expect these could also be included here.

What is frustrating about this is that we know we currently have significant Muslim, Sikh and Hindu communities, which number in their thousands. It is sad to see they are merely classed as 'other', which downplays the historical presence and significance of these religious minorities in NI and encourages the mentality that only the two majority Christian communities 'count'.

Rehabilitation of Offenders challenge

Les Allamby, Chief Commissioner, NIHRC

The NI Human Rights Commission (NIHRC) is challenging the lawfulness of the Rehabilitation of Offenders (NI) Order 1978 through a Judicial Review in the High Court. In particular, the provision that any sentence of over 30 months following conviction can never be spent and must be declared to employers, insurers and many others. These arrangements apply regardless of the offence or the job applied for. Separate rules apply for regulated employment, for example working with children, where different arrangements apply. The challenge is based on the current law being contrary to Article 8 of the European Convention on Human Rights (ECHR), i.e. the right to private and family life. In particular, the absence of any review or other arrangements to look at the specific circumstances of a case will come under particular scrutiny. The case was heard on 6 May 2021.

Much will turn on the question of proportionality of the current provisions and its impact. The Department of Justice placed considerable stock on a recent Supreme Court case *Gallagher and others v Secretary of State for the Home Department* (2019) UK SC 3. In this case, Mrs Gallagher had two convictions for driving without a seat belt on, both long spent, nonetheless, there was still a need for her to disclose the convictions under the Enhanced Criminal Record Certificate arrangements given the particular type of employment that she was applying for (working with adults with learning disabilities). Other applicants based in Britain faced similar requirements to disclose because of the nature of the jobs applied for. The Supreme Court ruled in this case, and in all the others except for one, that the arrangements were proportionate. The Court held that the requirement to disclose spent convictions in pre-defined categories was justified and that the scheme was lawful subject to two specific exceptions around warnings and reprimands for younger offenders and the treatment of multiple convictions without making any distinctions between the circumstances. Lord Justice Kerr issued a dissenting judgment arguing that the test of proportionality was not met in the absence of any review mechanism, save for in Northern Ireland. The requirement to disclose convictions whether spent or otherwise when working in particular regulated employments is not under challenge in this judicial review.

The law in Northern Ireland differs significantly from elsewhere in the UK. Following reform in England and Wales and Scotland, convictions of over four years must be declared throughout the rest of an individual's life. A



White Paper entitled *A Smarter Approach to Sentencing* issued by the Ministry of Justice for England and Wales last year has proposed a rehabilitation period of the length of the sentence plus seven years for those imprisoned for more than four years. This would apply to basic checks only. Moreover, those convicted of serious sexual, violent and terrorist offences will also be excluded from such provision. In practice, there is a sting in the tail since it appears the offences covered will be widely drawn and therefore capture large numbers in its net. Nonetheless, the proposals recognise the value of encouraging rehabilitation and facilitating employment opportunities for ex-offenders.

Elsewhere the contrast is stark, in Northern Ireland receiving a fine requires continuing declaration for five years, compared to one year in the rest of the UK. A prison sentence of six months or less requires continuing disclosure for seven years in NI, compared to the actual sentence plus an additional buffer of two years in England and Wales. The latter applies to prison sentences of up to 12 months in Scotland. Moreover, a prison sentence of between six months and two and a half years is not spent for 10 years in Northern Ireland, while the period in England and Wales is the length of the sentence plus a four year buffer period. In Scotland, for sentences between 12 and 30 months, it is the term of the sentence plus four years (as in England and Wales), while for prison sentences between 30 and 48 months, it is the sentence plus six years.

The Commission's Judicial Review centres on an applicant who forty years ago was convicted of arson and sentenced to five years in prison. He has had a clean record since, yet the need to disclose has impaired chances of employment and affected obtaining business and other insurance. The

application is supported by evidence from NIACRO and Unlock, who are providing practical examples of how the current law continues to impact on job prospects and access to training, accommodation, insurance, and travel, alongside research on the value of a rehabilitation approach. Moreover, a recent Ministry of Justice paper on reoffending rates shows that after seven years, people sentenced to four years in prison are no more likely to reoffend than the general population. NIACRO's affidavit outlined its openness to an approach, which applies a sentence and a buffer period to allow convictions to become spent.

The Judicial Review has already had one result: In January 2021, the Department for Justice (DoJ) in NI published a consultation document on 'on proposals to reform rehabilitation periods in Northern Ireland'. However, its proposals are unlikely to assist the applicant. The consultation document does not set out any concrete proposals, instead it asks broad based questions designed to canvass whether there is an appetite for reform, and if so, what kind of approach should be taken. For example, on the question of drawing a line at sentences of 30 months, beyond which convictions can currently never be spent, it asks whether to go for a lower threshold, remain unchanged, increase the period to four years, or dispense

with an upper limit and adopt a proposal similar to that outlined in the England and Wales White Paper.

Perhaps unusually it is worth giving the last word to the Ministry of Justice. In 2010 it published a Green Paper *Breaking the Cycle* and concluded:

"The Rehabilitation of Offenders Act is often criticised as being inconsistent with contemporary sentencing practice, with the result that it can fail in its aim to help reformed offenders resettle into society. The reasons cited are that the rehabilitation periods are too long and do not reflect the point at which reoffending tails off a conviction; the threshold at which a sentence never becomes spent (30 months) is too low given that sentencing lengths are much longer today; and the Exceptions Order exempts an ever growing number of occupations from the Act. Finally, the Act is criticised as being overly complex and confusing, meaning that people may not realise that the Act applies to them." (para 114)

A decade on from those prophetic words, if any changes are made to rehabilitation periods in Northern Ireland then it will be the first time it has been done since the introduction of the original law in 1978.

Covid Conversations webinar series: One year on

Last year, the Equality Coalition, Transitional Justice Institute (TJI), and Human Rights Consortium teamed up to organise webinars examining human rights issues brought into sharp focus by the COVID-19 pandemic.

Originally intended as a limited series, the webinars continued for far longer than we (the organisers) originally expected, much like the pandemic itself. They ran from summer 2020 to spring 2021 covering a diverse range of topics such as childcare, domestic abuse, digital poverty, food banks, the Black Lives Matter (BLM) movement, and access to justice during the pandemic.

The webinars have now been made available online for watching at any time. Visit our YouTube channel to view them: www.youtube.com/channel/UCy32UaNyCOruYMLS1fcVSoA

These webinars would not have been possible without the input of our expert speakers, who gave up their time to share their insights with us. A massive thank you to all of



them, and to everyone who attended one of the events and helped us draw attention to these important issues.

As Northern Ireland slowly emerges from this crisis, it is vital that we do not simply attempt to return to the 'normal' that led to so many gaps in rights protections. Instead, we must address the inequalities highlighted by the pandemic and strive for a better, more equal future for us all.

The Equality Coalition is co-convened by CAJ and UNISON.

A roll-back of rights? PSNI, human rights and democratic policing

Dr John Topping, Senior Lecturer, Queen's University Belfast

As we move towards the Police Service of Northern Ireland's (PSNI) twenty year anniversary, the issue of human rights compliance has seldom fallen out of the public or political gaze in the jurisdiction. While much of the current focus has centred upon Article 2 of the ECHR and unresolved legacy matters, it would be incorrect to assume that in 2021 human rights and policing are simply a 'job done'. With the [Patten Report](#) in 1999 centred on the protection and vindication of human rights for all, the recommendations were clear that not only are human rights vital for achieving effective policing, but that improper use of police powers to can lead to a breakdown in community relations, making the delivery of 'normal' policing impossible.

It is set against this context that some key human rights developments over the past 18 months and beyond have brought into sharp relief wider questions about the 'state' of human rights-based policing here – and which cumulatively, are a matter of concern.

In recent times, the global pandemic has created one of the most significant and expansive shifts in PSNI powers outside counter-terrorist legislation through public health regulations (see this journal [article](#) for more). Most prominently focused on the *Black Lives Matter* protests on 6 June 2020, the Northern Ireland Policing Board (NIPB) and Office of the Police Ombudsman for Northern Ireland [found](#) PSNI, through use of those powers, were both unlawful and discriminatory in their handling of events. Yet aside from the [ongoing fallout](#) between local BAME groups and the PSNI, it is apt to consider whether this particular episode can be viewed as an isolated 'tear' in the fabric of human rights-based policing.

Stop and search, for example, remains an ongoing source of contest between PSNI and communities for both 'ordinary' and security-related powers. Though beyond criminological concern around volume and effectiveness, it is instructive to observe PSNI responses to the intersection between s.75 equality obligations and non-discrimination provision of the ECHR. It was back in 2013 that the NIPB [thematic review](#) of stop and search recommended recording of community background



should be introduced by PSNI for stop and search, as a matter of urgency. Yet in 2021, it still remains an outstanding action in spite of further [NIPB recommendations](#) in 2019; those of the Independent Overseer of the Justice and Security (NI) Act 2007 across numerous reports; and strong judicial commentary on the matter in the recent *Ramsey* case in 2020.

Similarly, we have witnessed PSNI defy NIPB guidance and direction regarding the recent roll-out of 'spit and bite hoods'. In spite of [calls for their withdrawal](#) by the NIPB along with a range of civil liberties groups at the start of 2021, PSNI have continued to issue them officers when their own equality impact assessments demonstrate that in 81% of incidents, they have been used on people with disabilities.

While on one hand these examples point to problems with particular practices by PSNI, taking a step back it, on the other hand it also sheds light on the wider role of the NIPB in providing practical and effective protection of human rights. Aside from the pivotal role of both the current and previous human rights advisors, along with their annual reports, it is a moot point as to whether the teeth of the NIPB are indeed sharp enough to ensure sufficient pressure is brought to bear on PSNI for 'everyday' human rights matters. This further ties into questions about NIPB's promotion of human rights-based policing in the public domain. It remains vital as ever for CAJ, Amnesty NI and other human rights and advocacy NGOs to campaign around policing issues outside the current NIPB framework of monitoring and accountability – where public-facing human rights issues appear to be falling between the cracks of their performance and governance-based focus.

Beyond operational policing matters, so too questions remain as to how embedded human rights really are for policing in 2021. The arrest of the journalists Barry

McCaffrey and Trevor Birney in 2018 over the *No Stone Unturned* film – and [subsequent settlement](#) in of the case in 2020 have evidenced not only PSNI's capacity to attack press freedom, but a darker edge to ECHR Article 2 compliance and legacy issues by the state. The so-called 'Third Direction' case also shines a light on the potential for state-authorised criminality to become protected in law. So too PSNI lost a [recent case](#) in the European Court of Human Rights over indiscriminate data retention and interference in Article 8 respect for private life. The point being that litigating for human rights remains crucial and necessary around PSNI obligations – not a 'given' which can be assumed.

However, it is important to remember that upholding human rights around policing does not exist in a vacuum. There are many complicating dynamics within the Northern Irish context which limit the extent to which human rights can be fully realised. Not least the [ongoing dissident terrorist threat](#) still classified as 'severe'; [recent attacks](#) by loyalist groupings on PSNI officers; ongoing paramilitarism; and the [resurgence](#) of public disorder resulting in the use of water cannon and AEPs provide very real challenges to delivering human rights-based and even community-oriented policing – factors Patten didn't envisage would still be in play twenty years on.

But so too Patten attempted to remove politics from policing – yet it still remains entwined with, and represents a real threat to, the human rights policing agenda. It can't be forgotten policing operates in an increasingly toxic post-Brexit environment – one in which the value of human rights has been reduced to a political inconvenience via attempts to [revoke](#) the Human Rights Act of 1998. In turn, with conflict-related Article 2 human rights abuses having been [politically redrawn](#) as 'something which happened in the past' via revisionist Conservative agendas, legacy matters continue to impact upon police legitimacy in the present. This is in parallel to the further politicisation of [contentious PSNI decisions](#), where policing events are politically recast as all-or-nothing rule of law events upon which PSNI legitimacy hangs. As Scarman said of the Brixton Riots of 1981, 'whether justified or not, many...believe the police routinely abuse their powers...The belief here is as important as the fact' (see Scarman (1981) para. 4.67). Divisive, sectarian politics continues to shape such perceptions of PSNI.

Directly related to PSNI effectiveness, it is no coincidence

that many communities in which policing concerns are most concentrated suffer from social, economic and educational deprivation and marginalisation – with policing and security as but one point on a wider spectrum of failures by government around the delivery of socio-economic rights. This feeds into the very community instability which PSNI must deal with.

Yet moving forward, while we are not witnessing a critical failure of human rights-based policing by PSNI, it is important to remain alert to any potential, cumulative drift in protections and delivery. This is particularly so in the spaces occupied by policing in the post-Brexit and increasingly, 'constitutional question' space. As human rights-based policing provided the framework for the Patten reforms, so too human rights can lay the path for democratic policing within these fractious political times. As set out in the most recent NIPB Human Rights Annual Report, it is important to retain a watching brief as to where PSNI are on human rights and policing matters.

But crucially, human rights remain as an important tool to help progress policing debates beyond traditional schisms and identities. As the world moves on and wider debates around defund movements and public health policing have taken hold, we have the opportunity consider how human rights-based policing can work in an 'upstream' fashion around crime and social justice issues – not just downstream at the coalface of delivery. Twenty years on, we are still having debates about whether or not PSNI should be using AEPs; about the status of paramilitary groups; about 'how much' stop and search. Yet multi-agency approaches to drugs, mental health and adverse childhood experiences (ACEs) for example, remain in their relative infancy within human rights policing frameworks.

Whatever the next twenty years of policing brings, it is of course vital to remember that more, not less, adherence to human rights standards remains key to the delivery of democratic policing. Patten's human rights core in some respects acted as a glass floor through which we have been able to peer, glad that policing has been changed for the better. But at the same time, there exist many glass ceilings for communities around policing which can only be broken via 'levelling up' through the application of human rights standards as they apply to all – both for policing in the past, the present and the future.

Mother and Baby Homes and Magdalene Laundries in NI

Patrick Corrigan, Northern Ireland Programme Director, Amnesty International

The torrent of criticism directed at the Commission of Investigation into Mother and Baby Homes in the Republic of Ireland (*Just News*, February 2021), and the McAleese review of Magdalene Laundries before that, should serve as a salutary lesson to those tasked with designing an independent investigation into the operation of similar institutions in Northern Ireland.

At the end of January 2021, the Executive agreed to establish an investigation into abuses in Mother and Baby Homes and Magdalene Laundries in Northern Ireland. Crucially, Ministers also agreed that the independent investigation mechanism should be co-designed by survivors of the institutions – the women and girls sent there and the children to whom they gave birth while resident. The decision was a significant victory for victims who have been campaigning for an inquiry for the last decade and who should now be full participants in decision-making on next steps.

A six-month co-design process got under way in March, under a Truth Recovery Panel of experts consisting of senior social worker Deirdre Mahon, Professor Phil Scraton and Dr Maeve O'Rourke. The outcome may be a statutory or non-statutory public inquiry, or a hybrid investigative mechanism, alongside other support mechanisms such as counselling and family tracing and perhaps a parallel redress process. Whatever the outcome, it should be a bespoke independent investigative mechanism designed by survivors.

The Executive commitments accompanied the publication of a [534-page research report](#) into Mother and Baby Homes and Magdalene Laundries in the region. The research, conducted by a team led by Sean O'Connell and Leanne McCormick from Queen's University Belfast and Ulster University respectively, provides the fullest picture yet of the experiences of more than 14,000 women and girls sent to the institutions, most commonly as a result of pregnancy outside of marriage.

The significant level of State responsibility is clear. While the institutions were operated by both Catholic and Protestant churches and religious organisations, they were largely funded from the public purse. Many of the women and girls were referred to the institutions by State welfare authorities and even the Courts.

The research documents the reported "cruel" and "unsympathetic" attitudes of staff in the Homes. 5% of women and girls in Magdalene Laundries attempted escape, but were routinely returned by the police. The [report](#) documents one case from the early 1970s, of a 14-year-old who repeatedly ran away from St Mary's Magdalene Laundry in Derry, even being returned on one occasion by the British Army and police.

The researchers document the movement of women, girls and babies across the Irish border in both directions. 551 babies born in Homes in Northern Ireland were moved to the Republic of Ireland, with some being adopted there, or onwards in Great



Britain and the United States.

The researchers had to rely on voluntary co-operation by the responsible institutions for access to files. In addition, they did not have access to adoption records and were unable to establish the legality of these cross-border adoptions. Clearly, this will be one area which will require proper scrutiny by a future independent investigation. It also raises the question of having adequate powers to compel witnesses and access records, including on a cross-border basis. This may require action by the Irish government.

The research gives disturbing accounts of girls sent to the Homes following pregnancy as a result of incest and rape. The researchers were unable to establish if the men and boys allegedly responsible for the sexual offences were reported to the police. This may not be the only area of potential criminal activity. Many of the babies and women who died in the Homes and Laundries are buried in mass, often unmarked, graves in various cemeteries across Northern Ireland. Might an independent investigation undertake full examination of potential burial sites across the region, to assist with memorialisation?

In an effort to support survivors to co-design an appropriate investigative mechanism, Amnesty International and Ulster University have been running a series of online events featuring speakers with experience of previous inquiries, both in Northern Ireland, the Republic of Ireland and other countries.

The 'Learning the Lessons' series of events has raised countless issues for consideration, including powers of compulsion, legal representation for victims, cross-border access to records and witnesses, a public archive for witness statements and records, scope for prosecution, an investigative process which does not leave survivors further traumatised, survivor participation in the implementation and monitoring of the process, the early establishment of a redress scheme, and the need for assistance with family tracing and specialised counselling.

Meanwhile, the Truth Recovery Panel is appealing for survivors to come forward to get involved with the co-design process, which will run until the, but which has already started its programme of meetings and consultation. The test of the co-design process will come at the end of September when the Panel delivers its report to the Executive. The focus will then shift again to Stormont and whether Ministers will be willing to implement recommendations such as a human rights compliant investigation into past abuses.

Find out more at: <https://truthrecoverystrategy.com/>. The series of events organised by Amnesty and UU, and other resources, are available to view [here](#).

Abortion in NI: A recent timeline

Robyn Scott, Communications and Equality Coalition Coordinator, CAJ

More than 18 months have passed since abortion was decriminalised in Northern Ireland, yet a fit for purpose abortion service – something which women have been demanding for years - still does not exist here.

For decades in NI, it was a criminal offence for a woman to get an abortion under the Offences Against the Person Act 1861. The only exceptions were if the woman's life was at risk from the pregnancy or there was a risk of permanent and serious damage to her mental or physical health. Otherwise, women could be subjected to criminal prosecution in the courts merely for choosing to end a pregnancy. There were no exceptions for rape, incest, or cases of fatal (or non-fatal) foetal abnormality. These draconian rules were far harsher than in the rest of the UK and meant NI was often cited by journalists and academics as having one of the strictest abortion regimes in the world. Women were forced to travel to other parts of the UK and (later) to Ireland to safely and legally access an abortion.

In February 2018, the UN Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW) found that the NI legislation violated "the rights of women in Northern Ireland by unduly restricting their access to abortion". Their resulting report made 13 recommendations - including the decriminalisation of abortion (through repealing the relevant provisions in the 1861 Offences Against the Person Act).

The Good Friday Agreement (GFA) provides that Westminster will "legislate as necessary to ensure the United Kingdom's international obligations are met in respect of Northern Ireland" (emphasis added). This is notably the only area specified within the GFA where Westminster is to legislate on devolved matters. The Northern Ireland Act 1998 - the legislation which codified the provisions of the GFA - gives the Secretary of State for NI (SoS) the power to direct that an action should be taken by a NI Minister in order to fulfil international obligations. There have been occasions when the SoS and Westminster have intervened - for example, this occurred in 2007 when the DUP First Minister blocked legislating for the EU Gender Directive. Despite this, the SoS at the time declined to make use of the S26 powers to decriminalise abortion in NI in response to CEDAW's ruling.

Instead, a series of far more convoluted events have followed on from this. In July 2019, an amendment to the NI Executive Formation Bill was passed in the House of Commons that would decriminalise abortion if power sharing in NI (which was collapsed at the time) was not restored by 21 October 2019. This amendment, originated by Labour MP Stella Creasey, put a duty on the British government to create new laws by implementing the CEDAW recommendations. As devolution was not restored in time (despite a last-ditch attempt by some NI parties), the amendment came into effect in October 2019 and

abortion was decriminalised in NI.

New abortion [regulations](#) subsequently followed from the Northern Ireland Office (NIO) in early 2020, which specified that it is up to Stormont's Department of Health to commission full services. However, this is not the major victory it at first appears to be for the thousands of women (and men) who campaigned for years for abortion law to be liberalised. Firstly, the new regulations explicitly made it an "offence to terminate a pregnancy otherwise than in accordance with these Regulations", so an element of criminalisation was reintroduced, though this is directed towards the person administering the termination, not the woman procuring one.

Furthermore, while women can no longer be prosecuted for having an abortion in NI, there has been no central commissioning of abortion services by the Department of Health (DoH), leaving health trusts to make their own arrangements within their existing budgets. None of these trusts are offering abortions beyond 10 weeks and some are unable to provide a consistent service due to staff shortages and other issues (essentially meaning some women are still being forced to travel elsewhere in the UK and Ireland for an abortion despite the world being in the grips of a pandemic).

This governmental inaction led, in January 2021, to the Northern Ireland Human Rights Commission (NIHRC) launching a [legal challenge](#) against the Secretary of State (SoS), NI Executive, and Department of Health (DoH) for Northern Ireland for their failure to commission and fund abortion services in NI. Possibly in response to this legal challenge, a (potential) step forward was taken in March 2021. The Abortion (Northern Ireland) Regulations 2021 came into effect on 31 March 2021, giving the Secretary of State for Northern Ireland an explicit power to direct relevant NI ministers, departments, and agencies to commission abortion services. However, the current SoS, Brandon Lewis, has yet to use these powers and, at the time of writing, NIHRC was continuing with its legal action; the case was heard on 26 - 28 May and NIHRC now awaits judgment. Another legal case is also proceeding, further muddying the waters. The Society for the Protection of Unborn Children (SPUC) has been granted leave to bring a legal challenge against the Secretary of State, arguing that the Abortion (NI) Regulations 2021 are invalid and unlawful, and that they breach EU law and Article 2 (1) of the Ireland/ Northern Ireland Protocol. NIHRC has been given leave to intervene in this case, together with the Equality Commission of Northern Ireland (ECNI), and another individual. The case is due to be heard in October 2021.

Additionally, on 22 June 2021, the organisation acting as the central access for early medical abortion in NI, Informing Choices, announced that it may no longer be able to do so if additional funding is not made available by October, putting the entire service in jeopardy. The UK government has said it wants "concrete progress" from the executive by this summer, but the summer is now here and still it is not clear what will happen next. Meanwhile, women in NI are left to face further uncertainty.

Expert advisory panel reports on social inclusion in NI: A concise summary

In March 2021, the Communities Minister, Deirdre Hargey MLA, published reports from four 'Expert Advisory Panels' to help inform the development of a series of new social inclusion strategies for Northern Ireland. The reports contain far reaching, ambitious recommendations, which, if enacted, provide a blueprint to help transform Northern and Ireland into a more equal, rights-based society. Their publication is intended to inform the development of the NI Executive's strategies on Anti-Poverty, Disability, Gender Equality, and Sexual Orientation. It is anticipated by the Department of Communities (DfC) that the strategies themselves will be adopted by the end of 2021 (subject of course to agreement from the NI Executive, in yet another test as to whether Stormont can function in delivering rights, or whether the whole process will be derailed). Below are succinct summaries of all four expert panel reports. Each summary highlights some of the key recommendations that CAJ would now like to see taken forward. The reports are all extremely detailed and should be referred to directly if you wish to gain a full understanding of their recommendations. All four are available from the [DfC website](#).

Report from the Gender Equality Strategy Expert Advisory Panel: The report was written by Ann Marie Gray (UU), Louise Coyle (NIRWN), Rachel Powell (WRDA), and Siobhán Harding (WSN), all experts on gender policy. It advocates for the development of a five-year Gender Equality Strategy, which would be reviewed on an annual basis. The authors call for the strategy to be underpinned by CEDAW and other international obligations, and argue against the use of a gender-neutral approach (which is often adopted in NI policymaking despite opposition to such an approach from the women's sector). They also criticise the current pronounced lack of robust, disaggregated data as a major challenge and area of 'critical concern'.

Key recommendations:

1. Develop several supporting strategies to respectively cover bullying, violence against women, women's employment, and childcare.
2. Establish an expert group to conduct a rapid review into data on inequalities.
3. Increase the resourcing of the women's sector, which since 2015 endured deep funding cuts, including more funding for adult education.
4. Provide abortion services and relationship and sexuality education (RSE) that is fully in line with the CEDAW recommendations. In this context, develop an integrated sexual and reproductive health service.
5. Fully implement the recommendations from the Independent Review of Hate Crime Legislation and the Gillen Review (into the law and procedures in serious sexual offences in NI).
6. Remove gaps in protection for those affected by domestic abuse – some will remain despite the new legislation being progressed at Stormont (e.g. there will not be a Domestic Abuse Commissioner under current proposals).

7. Make reporting on the gender pay gap mandatory for all employers with 10-20+ employees.
8. Require mandatory analysis of all public appointments by whatever body has overseen the recruitment process, including seeking feedback from applicants.
9. Strengthen welfare mitigations and make the £20 Universal Credit uplift permanent.
10. Ensure women are given representation in groups with a role in: Covid-19 recovery planning, the outworkings of Brexit, tackling climate change, creating a green economy, and the co-design of new governmental strategies and projects.

Report from the Disability Strategy Expert Advisory Panel: The report was authored by Dr. Bronagh Byrne, Seán Fitzsimons, Tony O'Reilly, and Professor Eilionóir Flynn. The panel decided to use the General Principles of the UN Convention on the Rights of Persons with Disabilities (CRPD) as a guide to what should be included in any Disability Strategy. So far, only limited measures have been taken to give effect to the CRPD in NI, though other jurisdictions in the UK are beginning to explore how the CRPD can be given direct and legal effect. The panel recommends that the Disability Strategy cover a five-year period with an in-built review at the midway point, and annual progress reports. They emphasise that any strategy must be informed by accurate data and the lived experience of disability community – "There must be nothing about us, without us".

Key recommendations:

1. Explore ways in which the CRPD can best be given legal effect in NI.
2. Develop regulations and provide necessary supports to ensure that d/Deaf and disabled people can exercise their legal capacity.
3. Develop a Northern Ireland Disability Forum to work with the government and ensure disabled persons' organisations (DPOs) can engage effectively in decision making.
4. Develop awareness raising strategies in relation to disability and disability related hate crimes (etc) at all levels (including amongst school aged children).
5. Address welfare reform and develop a social security system that better reflects the experiences of those with disabilities.
6. Begin a process of deinstitutionalisation - resource and timetable the closure of all remaining long stay hospitals and replace these with community-based care alternatives. Place those d/Deaf and disabled people currently institutionalised at the heart of decision making about their future.
7. Conduct a review with d/Deaf and disabled people of all statutory controls that influence the built environment. Promote digital inclusion and accessibility. Advance recommendations aimed at improving transport for people with disabilities.
8. Develop a new Disability Employment Strategy and revise disability employment law. Support the participation of d/Deaf and disabled people at all levels of the workforce e.g. by monitoring the disability pay gap in employment and ending the practice of reasonable adjustment being used as a punitive measure. With regards to public appointments, remove additional burdensome qualifying criteria not

essential to the successful appointments.

9. In schools, establish independent review on informal exclusions and on the extent to which restraint and seclusion is taking place, and ensure current guidelines are in line with rights-based standards. Also ensure mandatory training on disability and SEN across teacher training programmes.
10. Involve d/Deaf and disabled people's organisations and individuals in the 'Developing Better Services' programme, which is designed to introduce more patient-centred approaches in NI. Likewise, involve people with disabilities in developing guidance and disability human rights and equality training for healthcare and social care providers.

Report from the Expert Advisory Panel on the Anti-Poverty Strategy:

The panel behind this report was made up of Goretti Horgan, Pauline Leeson, Bernadette McAliskey, and Mike Tomlinson. The key assumption underlying their report is that the purpose of the Anti-Poverty Strategy should be to raise living standards and reduce living costs for those below an agreed, objectively-defined poverty line. They provide a 'blueprint' for a strategy that would last for years to come and which is based on social and economic rights in UN human rights conventions and the Social Development Goals. Costings are given; the overall calculation at present is that £780 million per year would be the cost of lifting people out of poverty; which the panel estimates to be considerably less than what poverty currently costs the economy.

Key recommendations:

1. Base the strategy on a definition of poverty that refers to social as well as material needs. This definition should be easily expressed as a measurable standard of living, below which no-one should fall.
2. Ensure the strategy includes policies aimed at eradicating destitution, hunger, and 'severe' poverty, including homelessness. No adult or child should be excluded from emergency funds or food provision because of a 'hostile environment' immigration policy.
3. Introduce a duty to reduce child poverty with targets and timetables. Also include a duty to review plans and progress against targets every five years.
4. Make discrimination in goods, facilities, and services unlawful on grounds of socio-economic status and age.
5. Introduce a 'poverty proofing' socio-economic statutory duty on public bodies when making strategic decisions (as per the Equality Act in Britain).
6. Establish an Anti-Poverty Commission (based on the Scottish model) to: a) monitor progress on reducing poverty and income inequality; b) promote the reduction of poverty and income inequality; and c) advise the Executive on any matters relating to poverty.
7. Regularly quantify total 'objective need' by auditing the 'costs of poverty' and estimating the expenditure required to end household poverty.
8. Introduce a new weekly 'Child Payment' of between £12.50 and £15 for 0-4 year olds and 5-15 year olds in receipt of free school meals. Permanently end the 'bedroom tax', 'two child rule', benefit cap, and five-week wait for universal credit.
9. Make participation in school cost free to reduce family outgoings through a number of measures, including offering free school meals over holidays and expanding Sure Start provision and breakfast and homework clubs.
10. Reverse the trend of families in poverty being housed in the private rented sector and regulate this sector.

Report from the Expert Advisory Panel on LGBTQI+: The report was written by Dr Fidelma Ashe, Cara McCann, Ellen Murray, and John O'Doherty, who recommend the development of an 'LGBTQI+ Strategy', rather than 'Sexual Orientation Strategy', by DfC (with LGBTQI+ standing for 'Lesbian, Gay, Bisexual, Transgender, Queer (or Questioning), Intersex +'). They explain this would much better encompass the diversity of the LGBTQI+ community in NI by including both sexual orientation and gender identity issues. The report recommends that there should be an LGBTQI+ implementation fund underlying the strategy, to fund work done both by the government and by the LGBTQI+ charity sector in implementing the action plan. Additionally, they recommend that the strategy be reviewed annually and, after five years, be followed a 'Stage 2' plan, informed by further research.

Key recommendations:

1. Ensure gender affirming healthcare services follow international best practice and that NI's gender recognition legislation is fit for purpose and is reflective of the diversity of genders here. End intersex genital mutilation in NI.
2. Ensure LGBTQI+ mental/emotional health needs are met by service providers. There should be equal access for LGBTQI+ people to fertility services, adoption, and foster care.
3. End conversion therapy in NI.
4. Take a zero-tolerance approach to hate crimes and online harassment within schools or other learning environments. Schools and all other education venues must be safe for LGBTQI+ young people and teaching staff.
5. Ensure the statutory curriculum is inclusive of the diversity of society and visibly includes minority communities such as LGBTQI+ people. Provide all young people with access to age-appropriate RSE inclusive of LGBTQI+, which is universal and not dependent on school ethos.
6. Support access to sports, activities, uniforms, and facilities that is inclusive of all genders and gender identities.
7. Ensure the PSNI protect LGBTQI+ people's human right to equal protection under the law in ways that are responsive to their circumstances and needs. Likewise, address gaps and weaknesses in the legal protection of LGBTQI+ people's rights (and their damaging effects).
8. Effectively protect LGBTQI+ people against hate crime and domestic violence and sexual violence. Provide LGBTQI+ people with safe and secure housing.
9. Monitor sexual orientation and gender identity alongside other Section 75 categories, and ensure S75 obligations are met. Update departmental systems to ensure monitoring of sexual orientation and gender identity.
10. Include gender identity questions in the census. Alongside this, put guidance in place to protect private data concerning the characteristics and history of transgender people.

Civil Liberties Diary - April to June 2021

Compiled by Hanna McKee from various newspapers



1 April 2021: Blair International, a Northern Irish haulage company partnered with DUP MP Ian Paisley launched a class action lawsuit in the High Court against the UK Government. The claim is against the economic impact of the Northern Ireland protocol; the claimants are arguing is a breach of economic rights provided in the Human Rights Act 1998.

2 April 2021: Conradh na Gaeilge issued a legal challenge against the NI Executive over its failure to implement an Irish language strategy. There have been numerous promises by the Executive to introduce legislation on the Irish Language, including as part of the 2006 St Andrew's Agreement. During court proceedings in 2017, Justice Maguire held that the Executive had failed its legal duty to adopt a "comprehensive law and strategy on the promotion of the Irish".

9 April 2021: Following the civil unrest in towns across Northern Ireland, the Northern Ireland Programme Director of Amnesty International, Patrick Corrigan, criticised the actions of the PSNI. Corrigan stated, "Police using water cannons and plastic bullets is an extremely alarming development, particularly if deployed against children."

12 April 2021: The Irish Human Rights and Equality Commission executed its statutory powers to intervene with an equality review against the Bank of Ireland. The review has led to a change in the bank's policies that now allows refugees and asylum seekers to open a bank account using their State-issued paperwork, which all asylum seekers and refugees hold. This advancement was welcomed by the Commission.

15 April 2021: Geraldine Finucane, has won the right to challenge the UK government's decision to not hold an inquiry into state collusion in the death of her husband Pat Finucane. Northern Ireland Secretary of State, Brandon Lewis, ruled out an inquiry in November 2020. In February 2019, the Supreme Court held that previous probes into the killing did not meet Article 2 human rights standards. Mrs Finucane took legal action against this, with the family's barrister noting how the family has been "left in the dark" during the process. A full hearing will take place in June.

21 April 2021: Legislation is to be brought forward after the Assembly voted 59-24 in favour of a motion rejecting the harmful practice of conversion therapy. Conversion therapy is a practice or intervention which attempts to erase, repress, "cure" or change someone's sexual orientation and/or gender identity.

22 April 2021: The High Court granted permission for the families of five victims of Bloody Sunday to take legal action against the decision not to prosecute ex-soldiers. Thirteen people were killed and 15 people wounded after members of the Army's Parachute Regiment opened fire on civil rights demonstrators in Londonderry on 30 January 1972. In 2019, the Public Prosecution Service (PPS) decided to bring charges against only one soldier. The judicial review is to begin in September 2021.

11 May 2021: An inquest in the deaths of ten people killed in Ballymurphy in August 1971 has found the victims "entirely innocent". The shootings happened after an operation in which paramilitary suspects were detained without trial. 9 out of 10 victims were killed by the army, the coroner has stated. A UK government spokesperson said it would now "take the time to review the report and carefully consider the conclusions".

14 May 2021: Immigration lawyers at the Children's Law Centre have warned the UK government that the new plan for immigration encroaches on devolved issues in Northern Ireland, as well as contravening important obligations under international law. The encroachment of devolved justice powers impacts on the safety of traumatised children in NI. There is a call on the Home Office to instead find ways to improve rights protections for children, while providing a safe and legal route for asylum seekers.

26 May 2021: Abortion legislation was introduced in 2020, following a vote by MPs after the collapse of the Assembly. Despite this, there has been a failure by Stormont to introduce abortion services across Northern Ireland. This is now being challenged by the High Court in Belfast. The NI Human Rights Commission (NIHRC) is taking the case against the Northern Ireland Executive, the Department of Health, and the Northern Ireland Secretary Brandon Lewis.

2 June 2021: Fourteen individuals reported by the police for possible breaches of covid-19 restrictions during Black Lives Matter (BLM) protests are not to be prosecuted. The Public Prosecution Service said the decision was taken "after careful consideration of all evidence" submitted by the PSNI. There are ongoing investigations by Northern Ireland's Police Ombudsman into the PSNI's handling of the BLM protests in comparison with the Bobby Storey Funeral.