



Pictured at the anti-poverty seminar, from left to right: Patricia McKeown (UNISON), Bernadette McAliskey (STEP NI), Goretti Horgan (JU), and Pauline Leeson (CiNI)

NGOs call for urgent progress on an anti-poverty strategy for Northern Ireland

Robyn Scott, Communications & Equality Coalition Coordinator, CAJ

NGOs, trade unions, and academics called for an anti-poverty strategy based on objective need to be a day one priority for a new NI Executive at a seminar held in Stormont on 28 June 2023. The half day seminar on ‘Progressing an anti-poverty strategy for Northern Ireland’ was organised jointly by the Equality Coalition, Barnardo’s NI, and the Northern Ireland Anti-Poverty Network (NIAPN). The event was sponsored by Emma Sheerin MLA, with co-sponsors Gerry Carroll MLA, Mike Nesbitt MLA, Sinéad McLaughlin MLA, and Kate Nicholl MLA.

Northern Ireland has been waiting for an anti-poverty strategy for almost twenty years. The 2006 St Andrews Agreement and subsequent Northern Ireland (St Andrews Agreement) Act 2006 contained a [legal obligation](#) for the NI Executive to develop a strategy to tackle poverty, social exclusion, and patterns of deprivation based on objective need.

Following a [judicial review](#) taken by CAJ in 2015, the High Court found the Executive was acting unlawfully for not having yet

adopted such a strategy. In 2020, the [New Decade, New Approach](#) agreement contained a renewed commitment to developing the strategy.

Progress was made during the last political mandate, with the Department for Communities (DfC) establishing an expert advisory panel and co-design group to take forward the development of an anti-poverty strategy. However, the Executive collapsed again before the strategy could be implemented.

The lack of an anti-poverty strategy has coincided with an ongoing cost-of-living crisis and a period of major social and economic uncertainty across NI society, including [proposed budget cuts](#) to public services and to the community and voluntary sector. At the time the seminar took place, UK inflation remained high at 7.9% (when measured using the [Consumer Price Index](#) - see the June 2023 figures). News of the looming budgets cuts was also still fresh in people’s minds, helping to bring a renewed sense of urgency to the event.

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During the seminar, a range of expert speakers examined what progress has been made to date in developing an anti-poverty strategy for NI, while also considering how to ensure the future strategy is as comprehensive and effective as possible.

The seminar centred on the following key asks:

- The adoption and implementation of an overarching, comprehensive anti-poverty strategy based on objective need as a day one priority for a new Executive. This strategy should have clear, timebound targets and build upon the detailed work that has been carried out to date in order to ensure expedient delivery and implementation of actions.
- In the interim, DfC and all government departments should progress the development of the draft strategy as much as is possible by in readiness for a new Executive.

The seminar was chaired by Patricia McKeown, UNISON Regional Secretary and Co-Convener of the Equality Coalition, who opened the session. Patricia then invited each of the event sponsors (previously named above) to provide an input, all of whom expressed their party's support for the anti-poverty strategy as an urgent priority. Sinéad McLaughlin MLA from the SDLP was unable to attend on the day so Paul Doherty, the party's Ending Poverty Spokesperson, spoke on her behalf.

A general introduction to the event was then provided by Trása Canavan, Senior Policy and Public Affairs Lead for Barnardo's NI, who was a member of the co-design group established to help develop the anti-poverty strategy before the last Stormont collapse. Trása focused on the impact of the lack of strategy on people in NI, including children and other vulnerable groups.

She concluded by saying, "We do not need to reinvent the wheel – we already have start of a strategy. We need this draft to be made ready for delivery to the new Minister for Communities on day one of the next Executive. Who is paying the price for this current inaction? It is children, young people, women, pensioners, communities, and schools. I don't want to be standing here again in five years, still asking exactly the same question: Where is Northern Ireland's anti-poverty strategy?"

Further context was then provided by Daniel Holder, CAJ Director and Equality Coalition Co-Convener, who outlined the successful judicial review taken by CAJ on the strategy (which is referenced above). George Sampson, Director of Central Policy for DfC, then gave an update from the department on the development of the strategy, which he said had been paused in the current circumstances. It remains somewhat unclear precisely how far the draft strategy has progressed as it has not been made available to anyone outside the department.

Following these initial presentations, was a panel on 'The view from the Anti-Poverty Strategy Expert Advisory



Panel'. This featured several members of the expert advisory panel: Goretta Horgan, Lecturer in Social Policy at Ulster University (UU); Pauline Leeson, CiNI Chief Executive; and Bernadette McAliskey, STEP NI Coordinator. All three women have individually spent years working towards the development of an anti-poverty strategy. On the panel, they uniformly expressed their palpable frustration with the long delays in the strategy development process, though all remain committed to ensuring it finally comes to fruition.

Bernadette commented that we need to "turn our thinking on its head" when it comes to eradicating poverty. She explained, "Eradicating poverty should not be a budget confined to DfC. It should be across all departments. There should also be a central budget for the eradication of poverty". She stressed that this approach has already been taken in other jurisdictions.

Next, there was a second panel centred on 'Ensuring the voices of people experiencing poverty are heard'. Dr Ciara Fitzpatrick, Lecturer in Law at UU, spoke about her research into the social security system in NI and explained how this had challenged her own perceptions of what it is like to live under or close to the poverty line. Dr Alexandra Chapman, Lecturer in Social Policy at UU, focused on the impact of poverty on women, while Nuala Toman, Head of Policy for Disability Action NI, highlighted how people with disabilities are more likely to live in poverty and, because of this, are often forced to make dangerous decisions on a daily basis to survive. John Patrick Clayton, representing both UNISON and NIC ICTU, provided a trade union perspective, stressing that the need for the strategy was "more acute than ever".

After the second panel, Daniel Holder (CAJ) and Patricia McKeown (UNISON) brought the event to an end with some closing remarks, both re-emphasising that the strategy must be taken forward at the earliest possible opportunity. Patricia commented, "We find ourselves today with essentially no strategy at all, but civil society has never given up. We are closer to having a strategy than we have been before, but now need to look at next steps on how we get there."

A briefing paper, including key asks, was circulated at the seminar and is available [here](#), while the full event agenda can be viewed [here](#). The Equality Coalition will continue to lobby and advocate around this issue.

Relationships and Sexuality Education, a compelling case for reform

By Alyson Kilpatrick, Chief Commissioner, NIHRC

The context: It is important to record that domestic and international experts have long held that comprehensive Relationships and Sexuality Education (RSE) is essential to the fulfilment of a range of human rights. The rights include, most obviously, the right to education, but extend to other rights, such as the right to bodily integrity; the right to be free from inhuman and degrading treatment; the right to physical and mental health; the right to live free from discrimination; the right to have a private and family life; and, indeed, the right to life itself. RSE has been proven to play an important part in preventing abuse and violence against women and girls, in promoting gender equality, and in eliminating discrimination on grounds of sexual orientation and gender identity.

Numerous reports have highlighted the need for reform in Northern Ireland, including the [Gillen Review Report](#), the [Marshall Report](#), and the [Education Training Inspectorate \(ETI\) report](#) on preventative curriculum. They observed that too few schools teach all aspects of RSE. Too few include consent, domestic abuse, sexual orientation, gender identity, contraception, abortion, and menstrual health and wellbeing.

The UN Committee on the Elimination of Discrimination against Women (CEDAW), in its [2018 inquiry](#) into abortion access in NI, recommended that the UK Government “make age-appropriate, comprehensive and scientifically accurate education on sexual and reproductive health and rights a compulsory component of curriculum for adolescents, covering prevention of early pregnancy and access to abortion, and monitor its implementation”. It should be recalled that the UN Convention on the Rights of the Child Committee has also [advised](#) that the UK Government should ensure “meaningful sexual and reproductive health education is part of the mandatory school curriculum.”

This reflects what young people are saying. In a [2023 report](#) on the ‘preventative curriculum’, the ETI recorded that young people wanted to learn more on RSE, particularly on the ‘more sensitive’ topics. The ETI noted that despite young people calling for this, schools were providing little or no teaching.

The investigation: On 12 June 2023, the Northern Ireland Human Rights Commission (NIHRC) published a new report, *Relationships and Sexuality Education in Post Primary Schools in Northern Ireland: A Compelling Case for Reform*, following an extensive investigation into RSE in post primary schools. The investigation was commenced in October 2021. The NIHRC’s investigation included



analysis of the evidence provided by schools, the external providers of RSE contracted by schools, and all relevant public authorities. The evidence included lesson plans and materials, teaching aids, resources available on the [CCEA RSE hub](#), and, critically, the answers to a detailed and comprehensive list of questions. All schools and providers were able to submit any other evidence they believed was relevant. Most schools rely, at least in part, on external providers. Previous [research](#) from the NSPCC and NASUWT indicated that 46% of teachers in the UK did not feel confident teaching RSE.

The investigation demonstrated that the majority of schools are not providing comprehensive, scientifically accurate information.

The NIHRC identified some positive examples of schools providing age-appropriate, comprehensive, and scientifically accurate RSE. Whilst the overwhelming majority of schools have established RSE policies, there was an overall lack of focus on providing age appropriate, comprehensive, and scientifically accurate RSE. In some schools, the resources were outdated and not reflective of society.

A key recommendation of the NIHRC is for law reform - **to make RSE a compulsory component of the curriculum for adolescents**. On 6 June 2023, the Secretary of State for NI [laid regulations](#) to that effect. The NIHRC welcomed this provision. The real test, however, will be whether the spirit of the recommendation is implemented in schools. Practical guidance will have to be provided. That will have to be monitored carefully.

It is hoped that the NIHRC’s report has provided a framework in which those responsible can begin to consult and implement so that reform is practical and effective. While finances are tight across the sector, it is manifestly clear that a failure to reform will be more expensive. The NIHRC will provide whatever guidance or support it can to enable RSE to be developed and delivered in a way that realises human rights rather than limiting their enjoyment.

You can download the NIHRC RSE report here: <https://nihrc.org/publication/detail/nihrc-report-relationships-and-sexuality-education-in-post-primary-schools-in-northern-ireland-a-compelling-case-for-reform>.

The Illegal Migration Act and its incompatibility with international human rights law

Una Boyd, Immigration Project Solicitor & Coordinator, CAJ

The [Illegal Migration Act](#) has received a lot of coverage since being introduced into parliament in March 2023. The stated aim of this legislation is, “to prevent and deter unlawful migration, and in particular migration by unsafe and illegal routes”. The majority of the discourse around the passage of the legislation has been about preventing people entering the UK via boats on the English Channel. However, it is much more expansive than that and applies across the UK, to people arriving by many different means - and for many different reasons.

As a very brief summary, this legislation means that a person who enters the UK under certain conditions will have their asylum or human rights claim declared inadmissible. They face indefinite detention and removal to a third country, and their access to the courts during this process is severely restricted. Under this act, people whose claims are deemed inadmissible will never have their asylum claims assessed in the UK.

It is essential to remember that you must be on UK soil to claim asylum in the UK. There is no asylum visa that allows a person to travel here to claim asylum, and no route for claiming asylum from abroad. Some refugee resettlement schemes are provided by the UK government, but these are extremely limited. For example between January 2022 and February 2023, only 22 people came to the UK under the [Afghan Citizens Resettlement Scheme](#). Whereas the number of people from Afghanistan arriving by small boats in the same period was around 8,633. It is evident that the ‘safe routes’ referred to by the government, do not exist in reality.

The UN High Commissioner for Refugees has called the legislation an [‘asylum ban’](#).

Shockingly, when the legislation was introduced to parliament the Home Secretary made a statutory declaration under the Human Rights Act that she was unable to state that it was compatible with the European Convention on Human Rights (ECHR). Indeed, many of the provisions of the act seem designed to

undermine the application of ECHR and the Human Rights Act in the UK. For example, the act provides powers for a UK minister to disapply the duty to comply with an interim measure of the European Court of Human Rights (ECtHR). The UK Parliament’s Joint Committee on Human Rights has [stated](#) that the legislation risks breaching the UK’s binding international legal obligations.

The political focus of this act has been on demonising people crossing the channel in small boats, seeking sanctuary. However, it has been written with a ‘one size fits all’ approach and applies across the UK. The provisions of the act appear to therefore apply to people entering the UK via the land border, without any nuance or consideration for the unique impacts here. CAJ has [intervened](#) on these potential land border impacts, raising concerns that the legislation could capture migrants living legally in the Republic of Ireland, who accidentally cross the border. The legislation also appears to risk capturing tourists who cross the border without obtaining Electronic Travel Authorisation (ETA).

Visa nationals entering Northern Ireland via the land border have always been required to comply with UK immigration requirements despite there being no checks on the land border. However, the reason that the application of this legislation is particularly concerning is the extremity of the penalties associated with it. A person caught by the provisions of this act faces indefinite detention and potential removal to a third country. Recourse to justice is extremely limited, with the right to appeal, including through judicial review, severely restricted.

Under this legislation, a detained person cannot apply for bail until 28 days in detention have passed. The immigration detention facility in NI is a short term holding facility. This means that a person can only be detained in NI for a maximum of seven days. Due to the 28-day delay, it will not be possible for a person to apply for bail before being moved from NI to long term detention facilities in Great Britain. This could effectively make obtaining bail in NI impossible. Once removed from NI, a person could potentially lose access to their legal advice, legal aid provision, and will be separated from any community and family supports.

The act also provides that detention can be on the basis that an immigration officer ‘suspects’ a person meets the conditions. These detention powers will not be subject to the all of the same statutory limitations as

existing detention powers, with a person liable to be detained “for as long as the Secretary of State deems necessary”. There is no clarity on how immigration officers will make these decisions based on suspicion and there is a very high risk of racial profiling and discriminatory practices occurring.

In applying these provisions to land border crossings without exemptions, it appears that that this new legislation could result in, for example, a Kenyan national residing legally in Donegal, who travels to Derry to go shopping without obtaining the correct visa, being detained indefinitely in Great Britain without proper recourse to the courts, and potentially removed to a third country that is not the Republic of Ireland. These provisions are not only clearly disproportionate, but they risk increasing incidents of racial profiling and discrimination.

It appears that the UK government failed to consider these impacts in drafting the legislation, the land border is not mentioned once in the act or in the explanatory notes.

CAJ also shares the [concerns](#) raised by NI human rights NGOs that the legislation is incompatible with the Belfast/Good Friday Agreement (GFA) and with Article 2 of the Windsor Framework. The GFA commits to the full incorporation into Northern Ireland law of the ECHR, but the act undermines the application of those ECHR rights in Northern Ireland, in direct conflict with this commitment. The GFA also created a duty on the UK government to incorporate the ECHR into NI law with direct access to the courts and remedies for breaches. Measures within the Illegal Migration Act conflict with these commitments, as well as with substantive rights, such as the right to a fair hearing. These measures include the limitation on judicial review, disapplication of Section 3 of the Human Rights Act, and restrictions on adherence to interim measures.

Article 2 of the Windsor Framework commits the UK government to ensure no diminution of protections in the ‘Rights, Safeguards and Equality of Opportunity’ chapter of the Good Friday Agreement as a result of the UK’s withdrawal from the EU. The UK government has confirmed that Article 2 applies to everyone who is “subject to the law in Northern Ireland”.

The Northern Ireland Human Rights Commission (NIHRC) has raised [concerns](#) about a range of potential breaches of Article 2 of the Windsor Framework within the Illegal Migration Act. The rights protections of the



GFA also have a north-south dimension and the Windsor Framework commits, as key objectives, to maintaining north-south cooperation, avoiding a hard border, and protecting the GFA. In this context, it seems likely that the wholesale application of the provisions of the Illegal Migration Act to land border crossings could constitute a breach of Article 2 and, more broadly, conflicts with the objectives of the Windsor Framework.

CAJ has partnered with North West Migrants Forum on a Common Travel Area [campaign](#), which focuses on the impacts of existing visa restrictions on free movement within the island of Ireland. This campaign raises existing issues of racial profiling, discrimination, and the existence of a ‘hard border for some’. It is clear that instead of reforming this, legislation like the Illegal Migration Act risks further hardening the border for some in our communities.

It is essential that the unique impacts of this legislation in Northern Ireland and on the land border are recognised and addressed by the UK government. However, these issues form one small part of the concerns raised about this act, which breaches the UK’s international obligations, undermines the ECHR, and bans the right to claim asylum in the UK.

CAJ had joined with organisations across the UK and within Northern Ireland to call for the UK government to withdraw this bill, and to instead meet its international obligations by creating a fair, humane, and human rights complaint asylum system. With the legislation now passed, we will work to challenge its devastating impacts and to hold the line on human rights for everyone in our communities.

NI legacy bill – from the parliamentary chamber to the court room?

Daniel Holder, Director, CAJ

The now notorious [Northern Ireland Troubles \(Legacy and Reconciliation\) Bill](#) is set for its final stage (consideration of Commons amendments) on 5 September 2023. However, its passage through the UK Parliament is already all but complete. Ministers pressed to have the bill done and dusted before the Westminster summer recess, but ran out of time following two defeats in the House of Lords which (briefly) removed the amnesty scheme from the bill.

The bill, introduced under former UK PM Boris Johnson, tears up the (UK-Ireland) Stormont House Agreement 2014. That agreement would have provided for a suite of new transitional justice mechanisms to ensure ECHR-compliant investigations into unresolved conflict related cases, set up an information recovery commission grounded in protected statements, and would have retained legacy inquests.

Instead, the current bill will close down all the existing investigative and judicial mechanisms dealing with legacy cases in NI at a time when many investigations are still ongoing or unresolved. This will impact inquests, civil cases, Police Ombudsman reports, independent investigations, and PSNI investigations. The bill will also introduce a ‘conditional immunities’ scheme providing for a *de facto* amnesty, with a low and subjective threshold, and set up a new legacy body with limited powers under a significant degree of ministerial control to ‘review’ certain cases (known as the ‘Independent Commission for Reconciliation and Information Retrieval’ or ICRIR).

Both the UN and Council of Europe (CoE) human rights mechanisms have voiced serious concern that the bill breaches UN human right treaties and the ECHR. In an intervention in January 2023, the UN High Commissioner for Human Rights, Volker Türk, [called on](#) the UK to reconsider the bill on the grounds that it would obstruct the rights of victims to meaningful remedies. The Council of Europe Committee of Ministers (CoM) have issued a number of formal decisions highlighting areas of ECHR-incompatibility of the bill. In early June 2023, the

CoM issued a strongly worded [Interim Resolution](#) expressing serious concerns regarding the bill.

The UK government has pressed on regardless. In May 2023, the Secretary of State, responding to Labour calls for a ‘total rethink’ on the bill, boldly claimed the UK government itself would be tabling ‘game changing’ amendments to the bill.

Such an announcement was treated with considerable scepticism given such claims had been made at previous stages of the bill and not come to fruition. This occasion was no different. The new amendments did not address any of the identified areas of ECHR incompatibility of the bill and in some cases made it worse. The circumstances in which the ‘game changing’ amendments were eventually tabled also point to ministers not being overly confident they would withstand scrutiny.

The amendments were published late in the evening on the 8 June. Such timing in part may have been designed to limit the opportunity for journalists to source alternative viewpoints before print deadlines. However, it is also notable the amendments (which had been under preparation for some time) were only made public straight *after* the CoE Committee of Ministers meeting to consider the bill.

The publication of amendments also took place after the conclusion of Rishi Sunak’s visit to US President Biden, where there has also been opposition to the bill. The US-based Ad Hoc Committee to Protect the Good Friday Agreement, issued a subsequent statement urging the White House to challenge the UK decision to proceed with the bill, adding that it [agreed](#) with CAJ that the amendments were “smoke and mirrors’ that addressed none of the legacy bill’s principal flaws and in certain instances have made the legislation worse”.

Ahead of the report stage in the House of Lords, the Council of Europe Commissioner for Human Rights, Dunja Mijatović, [intervened](#) raising concerns that the UK in pursuing the bill was ignoring “the many warnings that this legislation would violate the UK’s international obligations and put victims’ rights at risk”. The Commissioner also held that the UK government amendments “leave the fundamental problems with the bill intact, such as the conditional immunity scheme that would result in impunity for serious human rights violations, the unilateral shutting down of avenues to justice for victims, and

questions about the ability of the Independent Commission for Information Recovery to deliver outcomes that would meet human rights standards.”

CAJ issued a [briefing](#) for the report stage of the bill in the House of Lords (21 and 26 June 2023). This raised the same concerns regarding amendments not addressing ECHR incompatibility. We also raised concerns amendments would actually shut down some of the existing legacy mechanisms, such as inquests more quickly, as well as further concerns that the government amendments to the immunities scheme were “ancillary and mere window-dressing, with the conspicuously low threshold for immunity remaining intact”.

Despite the separation of powers during the debates, the Parliamentary Under-Secretary of State for Northern Ireland, Lord Caine, [criticised](#) the judiciary for dealing with inquests too quickly for his liking and accused Coroners of ‘overloading’ the system. The government amendment aimed at shutting down more inquests passed and an opposition amendment to remove the ban on legacy inquests was narrowly defeated.

Opposition amendments did, however, lead to defeats for the government on the immunities scheme, knocking it out of the bill. In a further defeat, an amendment was passed that would require ICIR reviews to be ECHR compliant. When the bill returned to the House of Commons on 18 July, Ministers tabled and won votes to reverse both amendments. Ministers had still hoped to push the bill back to the Lords to complete passage before the summer recess and [blamed](#) the UK opposition when they ran out of time to do so.

The UK opposition have committed to repealing the bill, and institutions will take time to get up and running, meaning any slipping of this timetable could mean the plans never come to fruition. Perhaps conscious of this, the UK government has rushed ahead to set up the ICIR before the bill has even passed. The Chief Commissioner of the ICIR has already been recruited.

Once the bill does complete its parliamentary passage, attention will turn away from the chamber and into the court room, with a wide range of legal challenges expected.

To this end, CAJ hosted with colleagues in Queen’s University a legal symposium on 27 June (pictured



above). This brought together lawyers, academics, and NGOs working on legacy cases. The keynote speaker was Robert Spano, former President of the European Court of Human Rights, now at the law firm Gibson Dunn. Also speaking were Alyson Kilpatrick, Chief Commissioner, Northern Ireland Human Rights Commission (NIHRC); Dr. Isabella Risini LLM, visiting professor on Inter State Cases and the ECHR at the Walther Schücking Institute, Kiel University, Germany; Daniel Holder, Director, CAJ; and Prof Kieran McEvoy of Queen’s University Belfast (QUB). The event was chaired by Dr Anna Bryson, who is also based at QUB.

Considerable focus will turn to the Irish government’s reaction once the bill is passed. Dublin has maintained strong opposition to the bill both domestically and internationally. But attention will now turn as to whether Dublin will litigate to stop the bill through an inter-state case to the European Court on Human Rights. Taking such a case has been under ‘active consideration’ by the Irish government for some time and was recently [recommended](#) by an Oireachtas Committee should the bill become law.

A benefit of the inter-state case, in addition to the considerable weight it would carry, is that it could bypass the need to first exhaust UK domestic remedies right up to the UK Supreme Court, which could take years, and hence be capable of stopping the bill before irreparable harm is done. Crunch time is approaching.

You can view all of CAJ’s recent work on legacy here: www.caj.org.uk/our-work/legacy-of-the-past.

Aspects of Northern Ireland's planning system found to be in breach of international convention

Eliza Browning, Policy Officer, CAJ

The 2021 findings and recommendations by the Aarhus Convention Compliance Committee (ACCC) in a case taken by the River Faughan Anglers has significant implications for the NI and UK planning systems and the standard of review applied by domestic courts in relation to environmental planning matters.

Established under the remit of the United Nations Economic Commission for Europe, the Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters ("Aarhus Convention") entered into force in 2001 and was ratified by the UK and NI in 2005. Embodying principles of international environmental law, the Aarhus Convention explicitly links environmental rights and human rights and "creates an interlocking set of procedural environmental rights, the right to access environmental information, the right to participate in environmental decision making, and the right to access justice to defend either of those rights and the environment itself by challenging breaches of environmental law". As the complaints mechanism of the Aarhus Convention, the ACCC examines complaints about Party non-compliance, adopts findings and may make recommendations.

In 2013 the River Faughan Anglers Ltd (RFA), a non-profit organisation that manages fishing rights on the River Faughan, submitted a complaint to the ACCC alleging that NI had failed to comply with the Aarhus Convention in relation to the development of settlement lagoons by a concrete production plant next to the River Faughan Special Area of Conservation. The case involved repeated breaches of environmental planning regulation and a lack of enforcement by the planning authority against those breaches.

Domestic Proceedings: In 1984, W&J Chambers' concrete production plant near the River Faughan was denied permission to expand. However, between 1995 and 2005, the plant expanded without authorisation. During this time, Chambers also created several 'settlement lagoons' for highly contaminated waste on the riverbank, without proper permission.

In 2008, some of the unauthorised development was retroactively made lawful, through NI planning legislation which permits for breaches of environmental planning regulation that give rise to significant effects on the environment to become immune from enforcement should the planning authority fail to act within a period stipulated in planning law.

When such a scenario materialises, the planning authority is required to issue a Certificate of Lawfulness of Existing Use or Development (CLUD) confirming that the unauthorised development is now deemed lawful. Chambers was granted a CLUD for most of the unauthorised development, but the lagoons were not included. Chambers then applied for retrospective planning permission to keep the lagoons.

Initially, the Department for the Environment (DOE) in 2008 determined that the lagoons had no significant environmental impact. However, in 2010, the Northern Ireland Environment Agency (NIEA) found that the lagoons posed a serious risk of water pollution in the River Faughan. As a result, in 2011, DOE planning recommended rejecting the planning application and issued an enforcement notice to remove the unauthorised lagoons.

Chambers successfully appealed the enforcement notice in 2012, arguing that the lagoons had become immune from enforcement. In the meantime, Chambers submitted a revised site plan, proposing to relocate the lagoons outside the floodplain. DOE planning conducted another environmental impact assessment screening and concluded that the revised plan would not significantly affect the environment.

The RFA contested this decision and sought more information about how the screening decision was made. DOE refused to discuss it further and told them that the appropriate remedy for contesting the screening was judicial review. In September 2012, DOE planning granted planning permission for the revised scheme, but with conditions: the new lagoons (to be built outside the floodplain) had to be constructed and operational within six months, and the existing lagoons had to be decommissioned and removed from the riverbank once the new lagoons were constructed and operational.

In December 2012, the RFA initiated judicial review proceedings, arguing that the screening was flawed and that the conditions of approval for the proposed application were incompatible and illogical. They contended that the proposed new lagoons couldn't be built outside of the floodplain without interference with the existing lagoons, posing a risk to the environment. In 2014, the High Court dismissed the application.

As a result of the lengthy legal proceedings, the planning permission expired, and the new lagoons were not constructed. Furthermore, the existing lagoons were not decommissioned and remain in their original location on the riverbank.

The Findings of the Aarhus Convention Compliance

Committee: The RFA submitted a complaint to the ACCC under the Aarhus Convention, arguing that NI had failed to comply with the Convention. The ACCC found that NI had breached multiple articles of the Convention and issued recommendations with profound implications for the planning system.

One of the most significant aspects of the complaint examines the judicial review taken by the RFA. The RFA was challenging the DOE planning screening assessment which determined that the proposed revised site would have no significant environmental impact. The RFA argued, firstly, that the environmental impact assessment screening had been done incorrectly, and, secondly, that the conditions for approval of the site relocation did not make sense, as the proposed lagoons were going to overlap with the existing lagoons, which had already been found to be harmful to the environment. In relation to the first point, the court did not examine whether the screening had been done correctly, finding that to do so would go beyond the appropriate

standard of review. Essentially, the court accepted that DOE Planning properly carried out the screening decision because the state's affidavit said that it did.

The ACCC states, "Having examined the judgement closely, the Committee cannot see any indication that the court undertook any assessment itself of whether the [screening decision] criteria were applied correctly in determining whether the activity was likely to have a significant effect on the environment."

The ACCC states that this low standard of review did not meet the "review of the substantive legality of decisions" as required by Article 9(2) of the Convention. The ACCC states that it does not expect the court to "undertake a completely fresh analysis of all matters arising in the case" and to substitute a decision in the place of the State. However, to meet the Convention standards, the court must conduct its own assessment based on the evidence put forth to determine if the "applicable legal requirements" in making screening decisions were met. The ACCC clearly states that this requires the court to "perform a review function over findings of fact and the weight to be given to evidence where those may have a direct impact on the determination as to whether the applicable legal test (for example, likely significant effects) has been met".

In relation to the second argument put forth by the RFA, regarding objectively verifiable evidence showing that the proposed location of the 'new' lagoons would be directly overlapping with the original lagoons, the ACCC states that "a review of the substantive legality of the permit conditions would require the court to clearly assess this discrepancy in the parties' evidence. Yet, the [RFA's] evidence on this matter is not identifiably addressed in the judgement at all."

Rather, the ACC went on to say, "[the court] accepted the evidence of Mr. Brown, DOE Planning's senior enforcement officer, without explanation and without commenting on the conflicting evidence provided by [the RFA]". The ACCC found that the court essentially copied and pasted Mr. Brown's affidavit into the judgement with no assessment or discussion about why the State's evidence was more compelling.

The ACCC found that the court's uncritical acceptance of the State's evidence and low standard of review of the screening breached Article 9(2) of the Convention. While the ACCC deferred issuing specific recommendations in this matter due to similar concerns being before the Committee against the UK in (ongoing) communication ACCC/C/2017/156, the findings on this breach have ramifications for the standards of review applied by domestic courts in future environmental law matters.

Other significant findings of the ACCC include:

- Agreeing with the RAF's argument that CLUD laws do not allow for public participation in decision making and essentially shield developers from enforcement, allowing them to circumvent the EIA Regulations. Finding that the current system in which developers who are refused planning permission have a right to a merits-based appeal before the Planning Appeals Commission, whereas citizens who object to a planning application that is approved have no such equal right of appeal, (with the only recourse for

citizens being judicial review, which is beyond affordability to most) to be a breach of Article 9 of the Convention.

- DOE Planning generally makes the development control officer (DCO) report available online a week prior to making its recommendation on planning permission to the Council, but that did not happen in this case. Instead, the report dated 24 August 2012 was not provided to the RAF until 17 September 2012, four days after planning permission was granted. The RAF had asked for the report multiple times before the decision was issued and was told each time that the report had not been finalised. The ACCC found that the competent authority's failure to provide the report to the communicant in these circumstances is a "serious matter" and breached Article 3 (2) of the Convention.

The ACCC issued the recommendation that the UK and NI take the necessary legislative, regulatory, administrative, and practical steps to ensure:

- Decisions to permit activities that have significant effects on the environment cannot be taken after the activity has already commenced, or has been constructed (save for highly exceptional cases)
- Unauthorised developments that have significant effects on the environment cannot be made lawful through a failure of the planning system to enforce the law and cannot receive CLUD permits.

The UK and NI must now submit a detailed progress report on the implementation of the recommendations by October 2023, continue to collect data to ensure that the recommendations have been fulfilled, and participate in implementation monitoring sessions. The successful implementation of these recommendations will require a concerted effort on the part of civil society, potentially administrative bodies such as the Office for Environmental Protection, and the domestic court system.

The ACCC findings on this communication are also important reference for those seeking environmental justice in other jurisdictions. Indeed, the Environmental Rights Centre for Scotland has been quick to pick up on these findings of non-compliance and has lodged its own communication seeking equal rights of planning appeal for Scotland. On 21 February 2023, the ACCC deemed the ERCS's communication admissible.

It is important that activists, civil society, and public authorities are aware that because of dedicated activism by the RFA to protect the Faughan River, many entrenched aspects of NI's planning system have been found to be in breach of Aarhus Convention rights, to be fundamentally unfair, and to be putting the protection of our environment at risk.



The far right playbook and big tech

Niamh McDonald, Coordinator, Hope and Courage Collective

What do we mean by “Far Right Playbook”? There have been persistent attempts to sow division and hate in communities by targeting people seeking state protection by far right actors going back at least five years. In 2018, there was a spate of localised protests in different parts of Ireland, instigated almost exclusively by a handful of Irish far right influencers with the support of an international network.

The far right playbook involves a combination of tactics aimed at promoting and advancing their agenda. This playbook is roughly the same, whatever theme is used. It always begins hyperlocal. New local Facebook pages and other social media accounts are created to flood news feeds with rumours designed to create fear and anger. The far right try to frame it as local community concerns. The goal of the far right is to create localised social panics and paranoia by demonising certain minority people, such as migrants, people seeking asylum, and members of the LGBT community.

Often, they call snap public meetings or protests, try to pit people against each other and sow divisions locally. During these events, the far right is actively promoting hateful ideologies and sowing mistrust. Through these processes, people can be recruited into far right networks or groups seeking to infiltrate political systems to gain power. Increasingly we are seeing the use of intimidation and violence to further their goals.

The Impact of the pandemic: The far right used the pandemic as a fertile ground to spread and amplify conspiracy theories. Taking advantage of the uncertainty and fear surrounding Covid to sow doubt in communities. Issues such as immigration, globalisation, and distrust in institutions have been exploited by far right groups to blame marginalised communities and promote their hate filled narratives.

Lockdowns and economic hardships resulting from the pandemic created social and economic anxieties, contributing to the appeal of far right ideas promising "simple solutions" and scapegoats. Online audiences were gained, the post-pandemic far right is a more hardened, extreme and violent movement.

People directly affected by hate: In the latter part of 2022, we saw increasing attempts in Dublin to create a hostile environment for people seeking asylum. A handful of prominent voices, with the support of far right groups

in the background, utilised protests directly targeting people seeking state protection and premises being used for

accommodations. A similar

playbook was used creating local fears and polarisation.

Since January 2023 a concerted campaign against the LGBT community has begun under the guise of removing ‘harmful’ library books. These actions see gender critical actors working with openly violent far right actors to remove LGBT books for younger audiences from libraries. These actions also intimidate people working in our public libraries and bookshops.

Many communities have courageously pushed back against the vocal minority, with welcoming groups set up around the country.

The primary catalyst for protest is the political ambitions of those organising them. The state’s abysmal record on housing and homelessness, and its two-tiered approach in dealing with people seeking state protection has been leveraged to good effect.

Big tech and the far right: This vocal minority, assisted by persistent inadequate actions by large tech companies, provides the platform for pumping out hate-filled disinformation. All major platforms have been used to whip up hate and fear against people seeking asylum, refugee status, and increasingly towards migrants. Since February 2023, the Hope and Courage Collective (previously known as FRO) has noted extremist language to include migrant and LGBT people in the same breath.

The Elon Musk Takeover: We want to draw attention to the changes at Twitter. Since Elon Musk has taken over Twitter, the platform has become a magnet once again for those intent and pushing hate division incitement and violence. Many white supremacist and hate accounts, previously banned, have now been reinstated. Hate organisers in Ireland are openly thanking Elon Musk for supporting them.

Twitter is a global communications organisation with international headquarters based in Dublin. It is a platform that shapes news making, media commentary and perceptions of political organisations within electoral systems across the globe. It is now also a primary conduit for fear, violence and hate visited upon our communities, led by an owner engaging with Irish white supremacism

The Dangerous Path: Online Hate Breeds Real World Violence: The Hope and Courage Collective has been flagging for more than a year that an increase in frequency

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and intensity of violent and inciteful rhetoric online from far right influencers would, if left unchecked, lead to physical violence in communities. Many of these same prominent influencers have been churning out content and commentary designed to incite hate, in many cases going back several years and travelling the country to incite local division all, it would seem, without any consequences.

If you are interested in **learning more** about these issues, please visit the Hope and Courage Collective website, www.fro.ie, or [sign up](#) for their newsletter. The Hope and Courage Collective is a civil society organisation in Ireland that works with community groups, advocacy groups, trade unions, activists, and academics to stop hate organising in our communities and workplaces.

When is an independent regulator not an independent regulator?

Sara Boyce, Mental Health Rights Organiser, PPR

When is an independent regulator not an independent regulator? When it's the Regulation and Quality Improvement Authority (RQIA), whom we now know has failed to regulate statutory community mental health services for the past 14 years.

This astonishing failure in regulation has finally come to light, thanks largely to the dogged determination of Mr Paul Herbert, a full-time carer for his 35-year-old nephew, Gareth Waterworth.

On 12 May 2023, [Mr Herbert won a High Court challenge](#) that established that the RQIA, the regulatory body for health services, is legally required to scrutinise community-based mental health services.

Mr Herbert claimed that the RQIA had wrongly asserted it had no legal remit to regulate the provision of community mental health services. The background to this case is outlined in detail [here](#). Prior to the High Court hearing, scheduled for early June, the RQIA conceded it had been misdirected on a point of law and that it "does have a statutory duty to regulate the provision of mental health services to patients in the community by keeping under review the care and treatment of patients pursuant to article 86(1) of the Mental Health (NI) Order 1986".

Regarding the failures of care for Gareth Waterworth, outlined in the judicial review application, the RQIA stated that is "taking steps to exercise that role in respect of the individual's care and treatment in the community", pursuant to article 86(2) of the Mental Health (Northern Ireland) Order 1986. A senior judicial review judge, Justice Colton, accordingly made an order to quash the RQIA's previous assertions.

The ongoing [Muckamore Abbey Inquiry](#) serves as a reminder, if one were needed, of the enormity of these matters, with scrutiny of the health and social care regulatory framework forming a key line of inquiry.

So, what has happened since the court declaration on 12

May 2023? In plain speak 'not a wile pile'. The RQIA has issued a press release and has plans to hold a series of online events. The Department of Health (DoH) finally issued a statement to the BBC on 8 June 2023. In it, it welcomed the confirmation provided by the judicial review ruling, that in fact, monitoring, inspecting, and regulating statutory community mental health services is the responsibility of the RQIA. The department also stated that it has engaged with both the Northern Health and Social Care Trust and the RQIA with regard to implementing the recommendations and learning.

As the sponsor department for RQIA, which is a Non-Departmental Public Body, that statement from the Department of Health is less than credible. The 2016 Department of Health's Management Statement and Financial Memorandum for Regulation and Quality Improvement Authority, clearly sets out the framework within which the RQIA operates. In particular, it details the rules and guidelines relevant to the exercise of the RQIA's functions, duties and powers, and how the RQIA is to be held to account for its performance.

It states that the department determines the RQIA's performance framework in light of the Programme for Government (PfG). It also specifies that "proportionate assurance will be provided to relevant policy leads at the Department of Health" and that "senior departmental officials will hold biannual Ground Clearing meetings with the RQIA". The Department of Health, as well as the NI Assembly's Health Committee, the health trusts, and political parties all knew for some considerable time of this failure in oversight by RQIA. In full knowledge, they failed to address the failings. These regulatory failings are of significant public interest and affect a very large number of individuals and families across society. The response to date by both the Department of Health and the RQIA are totally inadequate.

In the interests of openness, transparency and accountability, the 'New Script for Mental Health' campaign, which is supported by PPR, has asked the Department for Health a [number of questions](#). We will share the response we get from the Department of Health. More information of the #NewScript campaign is available here: www.nlb.ie/campaigns/mental-health.

Féile an Phobail, 35 years on

Kevin Gamble, Féile an Phobail

35 years on, Ireland's biggest community arts festival continues to provide a local, national, and international platform for Human Rights campaigns in both Ireland and Internationally.

Féile an Phobail, was first held in August 1988, during one of the darkest years of the conflict in Ireland. West Belfast at the time was characterised by widespread economic and social deprivation. Unemployment and poverty was the norm, opportunities for a life affording scope were few and far between.

Ken Bloomfield, head of the Civil Service, in a 1987 memo to British Secretary of State Tom King, when commenting on British Government ideas to tackle poverty and unemployment in West Belfast, famously described our community as “alienated from normal civilised behaviour” and having a “ghetto mentality”. It was also around this time that funding was withdrawn from community and social enterprises across the north and, in particular, West Belfast. We were a demonised community. These colonial tactics were best summed up by a senior British soldier in a conversation with a Clonard priest when he described our community as a “tube of toothpaste that would be squeezed until it delivered the IRA”.

Out of that darkness an idea was born, or maybe it was an idea that was rekindled, that led to the first Féile in August 1988. Those founders and visionaries of the Féile recognised that our best retort to the British direct rule ministers and their officials was seeking to help our community mark off a corner of the world in which its people could express themselves, put their best foot forward, and welcome the world in to see for itself who we were and what we stood for.

Fast forward to the present day and Féile stands proudly as Ireland's biggest community arts festival, delivering three flagship festivals annually, as well as a year round programme of inclusive arts and cultural events, including

headline music concerts, talks and debates, visual arts exhibitions, theatre and dance, tours and walks, and sporting events. Feile now welcomes in excess of 100,000 people to West Belfast annually.

From its inception, Féile has always provided a platform for victims of the conflict when a hostile justice system delayed and denied them justice, and has highlighted local and international human rights campaigns.

There is an annual presence by the Ballymurphy families, the McGurks Bar campaign, and NGOs, such as Relatives for Justice and the Pat Finucane Centre. Families impacted by the conflict here have also drawn inspiration from the campaigns of other victims of British colonial policy from around the world. John Halford, the lawyer for twenty-four unarmed Chinese plantations workers slaughtered by Scots Guards at a Malayan rubber plant in Batang Kali in December 1948, gave a powerful presentation of their legal fight in British courts to secure a public inquiry in the circumstances of the massacre.

Dan Leader, the lawyer for elderly Kenyans who were tortured during the Mau Mau revolt against British colonial rule in the 1950s and 1960s, gave a talk on their landmark legal victory in the High Court in London which led to the British Government paying out £20m to more than 500 victims of torture.

Our annual Palestine day provides a platform to invite speakers and campaigners highlighting the ongoing injustices suffered by the people of Palestine, and also shines a proud light on the rich culture and heritage of the Palestinian people, with showcases of art work, clothing, music, food, and much more.

Every year at our August festival, we hold the annual PJ McGrory lecture. PJ was an outstanding advocate of Human Rights, and the annual talk invites human rights advocates and campaigners from all over the world to West Belfast. Indeed, many current Human Rights Advocates and Lawyers point to attending Féile as being pivotal in their careers.

One of the standout events in this year's programme is a



lecture on 'Stephen Lawrence: Legacy & Lessons For The Future'. This lecture and discussion will be delivered by Suresh Grover, founder and current national coordinator of The Monitoring Group and a veteran civil rights campaigner. Suresh coordinated the Stephen Lawrence family campaign at pivotal points of the case. In the 30th anniversary year of the murder of black teenager Stephen Lawrence in London, he will consider the legacy of that murder and the current state of racism and violence in Britain.

Many of those involved in the birth of Féile have learned to find their own advancement in the search of the advancement of others. Some have stayed with Féile and many others have gone on to give their skills and energy to the community in other roles and responsibilities. Their contribution to this proud community has been invaluable.

Whilst Féile hasn't eradicated all the social and economic problems of West Belfast, it is not an exaggeration to say that it has played an important role in reconciliation and

building relationships across our divided community. It has sent forth a tiny ripple that with other likeminded initiatives can "build a current that can sweep down the mightiest walls of oppression..." [as originally said by American politician and lawyer, Robert F. Kennedy].

If I was asked to define Féile's greatest achievements, I would say it has provided a voice to our community, our young people, victims of the conflict, and our artists, and has helped bring some happiness and joy to West Belfast in some difficult times.

To misquote the famous Irish playwright, George Bernard Shaw, "Some people see things and say, why? The people of West Belfast dreamed things that never were, and said 'Why Not?'"

Here's to another 35 years of Féile an Phobáil!

You can find out more about Féile an Phobail and the upcoming August festival by visiting:

www.feilebelfast.com.

Farewell to CAJ Director Brian Gormally

Friends, family, and colleagues gathered together at the Deer's Head in Belfast on Friday 28 April 2023 to say a fond farewell to CAJ's outgoing Director, Brian Gormally. Brian retired at the end of March after leading CAJ since 2011. During his tenure as Director, Brian made a huge contribution to CAJ and helped solidify our organisation as a beacon for human rights. He is pictured right with two of the retirement gifts he received - a hi vis vest (like the one he wore as an observer at the G8 summit in 2013) and a special lei made by our Policy Officer, Eliza Browning, who is originally from Hawaii.

Daniel Holder, formerly our Deputy Director, is now Director of CAJ - the rest of the CAJ team wishes him all the best in this new role.



CAJ and ICCL hold roundtable event to discuss racial profiling

On 7 June 2023, CAJ and ICCL held a closed roundtable to discuss racial profiling in immigration and law enforcement, North and South, as part of an ongoing series of events on human rights-based policing. A primary discussion point was the impact on ethnic minority communities who are stopped by Gardaí when they cross the border. These selective cross border checks mean that in practice there is a hard border for some people.

Throughout the day, a common theme, both North and South, was the lack of official state statistics and data on racial profiling use by law enforcement (particularly when law enforcement acts as immigration enforcement). This

makes it difficult to remedy, and to challenge, state denial of the existence of racial profiling, which is particularly a problem in the South. Contrasting starkly with the lack of official data, many NGOs and impacted individuals have a wealth of data collected on the existence and impact of racial profiling.

Overall, the embedding of human rights in the culture and structures of policing was seen as essential in remedying racial profiling in general law enforcement.

Civil Liberties Diary - April to June 2023

Compiled by Cara Magennis



25 April 2023: Essential services are facing massive cutbacks due to the reduced Stormont budget, with the NI Public Sectors Chairs' Forum indicating that cuts could hit 20%, which would be a massive setback to all departments. Jill Rutter, who is a member of the Institute for Government thinktank has said that the Secretary of State has been using the budget as a way to "pressurise the [Stormont] parties to get back into power-sharing." She also stated that "This year is going to be very difficult on public spending..."

9 May 2023: The Windsor Framework has boosted NI's economic performance, according to PwC. Figures from PwC's latest UK Economic Outlook show that NI is second only to London amongst the UK regions leading economic growth. PwC estimates the economic growth was 0.9% in London and 0.6% in NI over the three months to February 2023.

22 May 2023: Sinn Féin leader, Mary Lou McDonald, has called for the immediate establishment of a citizens' assembly to discuss "how we transition" to a United Ireland, following her party's success in the recent council elections in NI. She has said that she believes that a border referendum will happen within this decade. The council election was the first time that Sinn Féin outpolled unionists parties since the establishment of the assembly, with Sinn Féin winning 144 seats and the DUP winning 122.

17 June 2023: During a 'Shared Island' seminar on education, segregation

within the NI school system was discussed as a contributing factor to divisions within our society. Peter Osbourne of the Belfast-based Integrated Education Fund (IEF) argued it was critical for there to be a focus on the ending of segregation in NI schools over the next 25 years. Only 7% of schools in NI are currently integrated.

19 June 2023: During the British Irish Intergovernmental Conference in London, the UK and Irish governments clashed over legacy. Tánaiste Micheál Martin stated that both governments needed to work together on the issue of legacy. He added that he did not believe that the Northern Ireland Troubles (Legacy and Reconciliation) Bill was compliant with the European Convention of Human Rights (ECHR).

20 June 2023: Children from refugee and asylum seeking backgrounds have been found to have a longer wait for places in schools in Northern Ireland. The findings were published in a report from Queen's University Belfast. The report includes accounts of schools being reluctant to admit pupils from these backgrounds even when spaces are available. The transfer test was also flagged in the report as an area of particular concern, with some migrant families feeling that their child had been disadvantaged due to it.

20 June 2023: The Council of Europe's Commissioner for Human Rights, Dunja Mijatović, has said that the UK legacy bill still has fundamental problems, despite a series of amendments made to the legislation. She said that the bill, which includes a

'conditional immunity scheme', would "undermine the human rights of victims", and urged the UK government to withdraw it.

21 June 2023: The Taoiseach, Leo Varadkar, has said that the Irish Government will consider legal action if the UK legacy bill, which has been an extremely controversial, is enacted by the UK government. He made the statement in response to Sinn Féin leader, Mary Lou McDonald, who said the bill would "shut the door" on victims of the troubles from ever being able to access justice. The DUP leader, Sir Jeffrey Donaldson has also said that the bill is an "affront to justice".

21 June 2023: The Commissioner Designate for Victims of Crime for NI, Geraldine Hanna, has told the NI Affairs Committee that the justice system in Northern Ireland is nearing breaking point. She said she was concerned by the possibility that police will have to reduce the number of neighbourhood officers in response to budget cuts.

23 June 2023: A group of civil society organisations, academics, political parties, and faith leaders based in NI – including CAJ - released a joint statement condemning the UK government's Illegal Migration Bill. The statement, which labelled the bill as 'cruel' and 'unnecessary', was launched at Ulster University during an event for Refugee Week.