



Northern Ireland
Assembly

Committee for The Executive Office

OFFICIAL REPORT (Hansard)

Article 2(1) of the Protocol on
Ireland/Northern Ireland: Equality
Commission for Northern Ireland and
Northern Ireland Human Rights Commission

16 September 2020

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Colin McGrath (Chairperson)
Mr Doug Beattie (Deputy Chairperson)
Ms Martina Anderson
Mr Trevor Clarke
Mr Trevor Lunn
Mr George Robinson
Mr Pat Sheehan
Ms Emma Sheerin

Witnesses:

Dr Evelyn Collins CBE	Equality Commission for Northern Ireland
Ms Geraldine McGahey OBE	Equality Commission for Northern Ireland
Dr David Russell	Northern Ireland Human Rights Commission

The Chairperson (Mr McGrath): Representatives of the Equality Commission and the Human Rights Commission are in attendance today to brief members on the new oversight powers that they have received. I welcome Geraldine McGahey, chief commissioner of the Equality Commission; Evelyn Collins, chief executive of the Equality Commission; and David Russell, chief executive of the Northern Ireland Human Rights Commission (NIHRC). It is good to see you here today, and it is great to be back to having presentations in person again.

You should know the majority of the members who are here today. George Robinson is in his constituency but is with us on StarLeaf. Maybe you have a few opening remarks that you would like to share with us. I will pass it to you, and then we will move to some questions.

Ms Geraldine McGahey (Equality Commission for Northern Ireland): Good afternoon, Chairman and members. It is a great pleasure to be here. I had a conversation with many of you back in May, albeit virtually — I think it was over the telephone — so it is nice to be able to put faces to names.

We are delighted to have this opportunity to brief you on the article 2(1) commitment as set out in the Ireland/Northern Ireland protocol to the withdrawal agreement and to explain what our role is as part of the dedicated mechanism. I am accompanied today by the chief executive of the Equality Commission, Dr Evelyn Collins, and Dr David Russell, the chief executive of the Northern Ireland Human Rights Commission. Unfortunately, the chief commissioner, Les Allamby, was not able to make it today, but I believe that he has sent his apologies separately.

We are very pleased to brief you jointly, as we have worked closely together over the last two years to try to secure the commitment to no diminution of rights and equality protections and the necessary arrangements to enable the oversight of the Government's commitment. As you know, and as set out in the short briefing paper that we supplied to you, article 2(1) sets out the Government's commitment to no diminution of rights and to safeguards and equality of opportunity in Northern Ireland, including in the area of protection against discrimination as a result of the withdrawal. Those rights, safeguards and equality of opportunity are as set out in the specified part of the Good Friday Agreement (GFA). This is an important commitment, given the concerns that exist about the potential for diminution when the UK is no longer part of the EU.

Schedule 3 to the European Union (Withdrawal Agreement) Act 2020 gives both commissions new functions to enable both organisations to act as part of the dedicated mechanism to monitor, advise, report on and enforce the UK's adherence to this commitment. The Northern Ireland Act 1998 has been amended accordingly, and the whole thing will come into force at the end of the transition period, on 31 December. Specifically, this will involve monitoring adherence to the commitment; reporting to the Secretary of State and the Executive Office, either on request or on our own initiative, on such implementation; advising the Secretary of State and the Executive Committee of the legislative measures that ought to be taken to implement article 2(1), as well as advising the Assembly and/or each of its Committees, as relevant, on the compatibility of any Bill with article 2(1); promoting awareness and understanding of the commitment; commissioning or providing assistance for research; and, very importantly, providing assistance to individuals with complaints of an alleged breach of the commitment, and ultimately the potential to bring judicial review proceedings in respect of any alleged breach, either in our own name or on behalf of a complainant.

Additional resources have now been confirmed by the Government. They will cover staffing and programme costs such as awareness raising, research and legal work. That has enabled us to make a start to be ready to go live on 31 December. As a priority, we have commenced recruiting staff to undertake the necessary work; getting legal advice on the scope of the commitment; undertaking engagement with key stakeholders, including Assembly Committees, government Departments and public bodies, equality and human rights organisations; and also planning general awareness raising activities in the coming months. We will continue to work very closely with our colleagues in the Human Rights Commission on this, and also with the Irish Human Rights and Equality Commission to ensure that arrangements are in place to oversee and report on rights and equalities falling within the scope of the commitment and that have an all-island dimension.

We look forward to ongoing engagement with the Committee on this important work, perhaps through regular sessions, which you can consider at your leisure, as we work to ensure effective scrutiny of the Government's implementation of their commitment. I thank you, Mr Chairman, on behalf of the Equality Commission, for being able to say a few words. If it is OK with you, Dr David Russell will say a few.

Dr David Russell (Northern Ireland Human Rights Commission): Just to reiterate what Geraldine said, Les Allamby, the chief commissioner, sends his apologies. It is unfortunate that he was not able to make it today.

For over three years, we have been working together to protect and promote the framework underpinning human rights and equality in Northern Ireland — a framework that is central to the Belfast/Good Friday Agreement and to good governance, peace and stability under the devolution settlement. Our principal objective has been to ensure that, following the UK's withdrawal from the EU, as much as possible of the human rights and equality framework remains intact. Looking to the future, we were concerned, in equal measure, to ensure that Northern Ireland remains a progressive society and that new legal guarantees are introduced to prevent any slide backwards after 31 December.

The outcome of our discussions has been successful in some regards, and disappointing for us in others. I am sure that Committee members will be fully aware that leaving the EU means that the direct jurisdiction of the European Court of Justice will no longer apply, and similarly the Charter of Fundamental Rights of the European Union will disappear in the majority. We have advised against both of those consequences throughout the last three years, since the practical removal of both will lessen the framework that has served to protect our individual rights and freedoms for so long. On the other hand, the UK Government are now committed to ensuring that rights and equality protections will continue to be upheld in Northern Ireland after the withdrawal, and they have done so in a number of specific ways that are to be welcomed. First, the UK Government have reaffirmed, in the recently published Northern Ireland Office (NIO) explainer document, a commitment to the European

Convention on Human Rights, which has been incorporated into domestic law pursuant to the commitment in the Belfast Good Friday Agreement to do so.

Secondly, the UK Government have acknowledged that, in Northern Ireland, EU law, particularly on anti-discrimination, has formed an important part of the framework for delivering the guarantees on human rights and equal treatment set out in the agreement. On the basis of this recognition, article 2 of the Ireland/Northern Ireland protocol commits the UK Government to ensuring that no diminution of rights will be caused by our departure from the EU and, importantly, to keeping pace with a number of key EU directives even after the transition period has ended. What this means is that, after 31 December, we will be at a baseline below which we must not fall. At the same time, if the EU decides to amend or replace the substantive rights contained in those key directives listed in the treaty, to improve the minimum levels of protection available, the corresponding substantive rights protections in Northern Ireland will also develop to take account of this.

In essence, there is now a legal guarantee that Northern Ireland will not, in the future, fall behind minimum European standards in anti-discrimination law. The Northern Ireland Office has further confirmed that the no diminution commitment is binding on the UK Government and Parliament, the Northern Ireland Executive and the Assembly as a matter of international law. As Geraldine said, to uphold this commitment, the Equality Commission and the Northern Ireland Human Rights Commission have, under article 2 of the European Union (Withdrawal Agreement) Act 2020, been mandated with a number of duties and powers. As they have already been laid out, I will not repeat them.

Working in partnership, we will implement our duties alongside the Irish Human Rights and Equality Commission, as Geraldine said, as the commissions are collectively tasked with providing oversight and reporting on rights and equality issues that fall within the scope of the commitment and have an all-island dimension. We are also mandated to bring any appropriate matters to the attention of the specialised committee referred to in article 14 of the protocol. To enable us to fulfil our new mandate, confirmation of additional funding has been received from Treasury. The focus is now very much on the practicalities of delivering against the mandate, including agreeing how we will work together, and on planning our work to the end of this year and, beyond that, to when the new duties and powers come into force. Thank you.

The Chairperson (Mr McGrath): Thank you very much for your presentation. It can be quite a complicated landscape, and it is very useful to learn about the various interactions that will take place in the period ahead. I will start with a few questions.

My first question is probably the most obvious one, given what has happened in the last week. There is considerable concern that, effectively, the word of the British Government is not worth very much because they do not seem to stick to it. They have published their Internal Market Bill, contained within which are a number of assertions that are at variance with some of the protections in documents such as the Good Friday Agreement and others. The withdrawal agreement suggests that the British Government are steadfast in their commitment to protecting those rights, but, given what we have heard in the past week, do you have any concerns? Will the Bill impact on the future protection of rights?

Ms McGahey: I can fully understand the concerns of many about the standing of treaties and Government commitments. However, they have been very explicit in their commitment to ensuring that there will be no diminution of rights or safeguards, to the extent that the commitment is fully laid out, not just in the article itself but in the explanatory document that they have published. The Government have gone as far as providing the level of resources that we sought. They have worked very hard with us over the past two years to ensure that it was as good as we could have hoped for with regard to the commitments that we were given, so we have every faith that it will be maintained. I accept that we are looking into a crystal ball, but we will continue to act in good faith, and we encourage the Government, and anyone else, to ensure that the rights and safeguards of all of our citizens are protected. The Good Friday Agreement very clearly sets out those principles, and we hope to see that protection maintained. That is from an Equality Commission perspective. Do you have anything that you would like to add from a human rights perspective, David?

Dr Russell: An initial look at the Internal Market Bill suggests that nothing in it directly affects article 2, which is the aspect of the mandate that we have been charged with. I do not want to say that definitively but, certainly, that is our initial analysis. However, on the general question, human rights law is grounded in international standards, and I do not think that it is wise for any Government,

anywhere in the world, to step outside of the rule of international law. Therefore, that is a concern. However, as Geraldine says, with regard to the actual provisions of the European Union (Withdrawal) Act 2018, as it affects the mandate that we have been given, it does not appear to have impacted on it, and we continue to work in good faith.

The Chairperson (Mr McGrath): I appreciate those answers, which are critical because they come from the Human Rights Commission and the Equality Commission. The people of the North should not have to look into a crystal ball to see the future of their rights; we should have definitive, clear and unequivocal guarantees about the rights of the people who live here. Over the past week, we have seen that we are being used as a trading post at which our rights, cultures and backgrounds are being traded. That is totally unacceptable. It is wise, David, to say that the British Government should not be stepping outside of international law, even if it is just a teeny-weeny bit, which is what we were told by the Secretary of State last week. That is just unacceptable.

My next question may be considered a bit too concerned with process. However, I will ask it, given that you have this important role going forward. You mentioned that there are a number of EU directives that we need to adhere to. So, if, going forward, there are changes to those EU directives — obviously, you would need to be consulted as part of that process — how will you be made aware of those changes so that you can highlight that you need to look at something to check that it will be proofed against the protection of rights and equality?

Ms McGahey: That is under discussion and negotiation. We will have to try to establish a memorandum of understanding with the EU on its plans and proposals so that we are fully informed. The joint consultative working group would also probably have a role in that, but I am not that versed in the detail of all of that yet, so perhaps Evelyn or David would like to come in on that.

Dr Evelyn Collins (Equality Commission for Northern Ireland): With the future-facing element of the directives, which are listed in annex 1 to the protocol and govern a range of equality issues, it is, of course, important that we have early sight of any potential changes, so it is a very good question. We have been raising it with the NIO, and the understanding is that it will be part of the joint consultative working group's role under the protocol and that there is an agreement that the EU and the UK:

"Shall, in a timely manner, exchange information about planned, ongoing and final relevant implementation measures in relation to the Union acts listed in the Annexes to this Protocol",

That will include the six directives in annex 1 to the protocol. We will work with the joint consultative working group to make sure that we are informed in a timely manner and engaged fully on that. In addition, we are very keen that the joint consultative working group should also have a wider engagement in Northern Ireland with groups that may be affected by any of the changes to the directives, so that it is not a conversation just between officials from the European Union and the UK.

The Chairperson (Mr McGrath): A memorandum of understanding would be very useful because it would clearly define the roles on each side as we move forward. Would you like to see one or have you heard that it is concrete and is happening?

Ms McGahey: We aspire to having one. It is my view that true collaborative working happens when you ensure that everyone knows their roles and responsibilities and can be held to account if something does not work. We will work towards that and hope to encourage others to see that way forward. That is on our radar, and we will continue to try to develop it.

The Chairperson (Mr McGrath): That might be useful. We might discuss afterwards whether we could write to somebody to suggest that it would be worth seeing that.

Finally, you mentioned that you will work with the sector and various groups to try to ensure that everybody is aware of what is happening with article 2. There is, perhaps, still not a great understanding of what article 2 is and of its impacts. Have you any plans to do some work to promote that? With the European Convention on Human Rights, schoolchildren can nearly tell you exactly what those rights are because they are promoted. People in communities know exactly what those rights are. Have you any plans to develop promotional work so that people understand what rights they have and how those protections will be in place?

Ms McGahey: As I said, we have now had confirmation from Treasury that resources are being made available to us for programme costs as well as staffing. We have commenced the recruitment process to have those staff in post. An early priority will be to raise awareness right across society of what this means, and what it means for them. There is also significant work to be done with Departments and officials on how they will be impacted by this in terms of screening etc. So, yes, we have that very much on our radar. We hope to be in a position to commence that in advance of 31 December. However, as I do not manage the staff in either organisation, maybe I should defer to David and Evelyn in this regard.

Dr Russell: The promotional aspect is a statutory obligation, so it makes sense that it is one of the very first activities that people work out together. The rights in the article will only be real if people are aware of what their rights are. You have hit the nail on the head. That is probably one of the most important initial pieces of work that we will have to do.

Dr Collins: I absolutely agree.

The Chairperson (Mr McGrath): OK. That is grand.

Mr Beattie: Geraldine, David and Evelyn, thank you very much for coming here and briefing us. It is a complicated subject, and it is very emotive now. I guess that we are all on a heightened sense of alert to everything, given that the Internal Market Bill has come in. However, you have put me at ease to a degree by saying that you are not tracking anything in regard to human rights or equality that you have a major concern about. On that point, are you tracking any substantive complaints in regard to Brexit?

Ms McGahey: It is all very new and has not come into force yet. We cannot really anticipate what types of complaints there might be, but we are preparing for all eventualities. We have commissioned legal work to try to define the scope a little better. It is rather daunting when you see it written down on paper and consider that it has tentacles into other legislation as well. That research is ongoing. Evelyn, would you like to add to that?

Dr Collins: It is important that we remain vigilant across all aspects of rights. The NIO is quite clear in its explainer document that it does not anticipate diminishing any rights. However, we will want to be absolutely vigilant, whether it is in relation to the annex 1 equality directives rights and any changes here that might, even inadvertently, result in a diminution, a planned diminution or, indeed, the broader issues raised by the relevant sections of the Good Friday Agreement. As Geraldine says, it is hard to see where potential complaints might arise. However, we want to be absolutely on the front foot and vigilant about all aspects of the rights that are covered.

Dr Russell: We have not had complaints for the reason that Geraldine articulated. The powers and duties will come into force from 1 January. However, over the last three years, we have done work that has featured in the negotiations to some extent. There are some recurrent themes on which we remain vigilant. Over the last number of years, we were very keen to do work on how the common travel area would have worked in practice in a post-Brexit scenario. The question of citizenship rights in this place and what those mean in practice has been well versed in the public domain, including legal actions being taken on it. Given that we share the only land border with another European Union member state, I guess that issues such as frontier workers are among the things that are a starter for 10. However, I would not want to pre-empt everything, because the truth is that, when the door opens on 1 January, there could be 100 people or no people standing outside.

Mr Beattie: Thanks, David. May I ask two questions? One is very direct, and the other is slightly hypothetical. This is the direct question. Geraldine, you might want to pass this to Evelyn.

Ms McGahey: Well, I have two legal experts with me.

Mr Beattie: It is a resource issue. You are resourced until March 2023. I take it that that is direct resourcing from the UK Government.

Ms McGahey: It is, yes.

Mr Beattie: What does that look like at the minute? What funding are we talking about?

Ms McGahey: The funding for the Equality Commission is for research work and for a staffing establishment of 10 to 11 people. On the specifics of that — director, researchers etc — Evelyn is best placed to answer.

Dr Collins: I am not sure that you want that level of detail, Mr Beattie, but I am happy to provide it. As Geraldine said, for this year, it is an amount for part of the year, because the resources were available and secured only from July/August. It is about £400,000 for us, and £800,000 for the subsequent two years, so that allows us to recruit 10 or 11 staff. We will have a separate dedicated mechanism unit, which will be headed by a director equivalent to grade 7 in Civil Service terms. We have recruited for that position, and we will recruit for deputy principals in the next few weeks. In total, by the end of the financial year, we hope to have about 10 staff in post. They will be divided across the main functions that are set out for us in our amended duties under the Northern Ireland Act. They include promoting awareness, providing advice, commissioning research and taking legal action. Those are the key skill sets that we are looking for in staff. You are right: it has been committed until the end of the financial year 2022-23.

Obviously, we will keep under review the scale and nature of the work that is coming over the door, and we will be in discussions with Government about the appropriate level of resources. It could be more than what we have for the next period, or it might be less. We will keep it under review and continue the ongoing discussions with Government.

What is clear is that the article 2(1) commitment and the arrangements for the dedicated mechanism is an internationally binding commitment, and it will subsist beyond the current level of agreed resources, so there will have to be resources going forward, too.

Mr Beattie: Exactly, and that is the point that I was getting to. Thank you for the figures. If it is initially secured until 2023, I take it that we have agreement that it will continue. It has to continue, and it cannot stop. It does not say, "until it stops", does it? We have that tacit agreement that this will continue.

Dr Collins: There is certainly a strong understanding. We do not have any figures for beyond that. It will be under review. However, we have a strong understanding that the commitment persists, so the arrangements will need to persist in order to deliver and hold the Government to account.

Mr Beattie: Is it the same with you, David?

Dr Russell: Yes, the figures are very similar. It is in and around £350,000 to £400,000 this year and, subsequently, the amounts that Evelyn has worked out. We are in a slightly different position in that we have a wider ongoing negotiation with the Northern Ireland Office about the commission's core budget. That needs to be settled before we are in a similar position about being able to start recruitment for the dedicated mechanism. We are trying to deal with that matter as well. However, the funding for the dedicated mechanism is the same and, as the Committee knows, we are in the middle of the comprehensive spending review process, so a wider conversation is going on.

Mr Beattie: With your indulgence, Chair, I will ask a last question. Geraldine, you said that, when we leave, there will be a base standard for the EU on rights, and we will sit at that base standard. However, if that base standard is raised, we have to raise ours to match it, but elected representatives will have no input into the raised standard. Is that a human rights issue?

Ms McGahey: It is, without doubt, a democratic deficit in Northern Ireland being able to input into that. However, David or Evelyn would be best placed to respond to the legalities of that. I do not feel that it is an issue. The Good Friday Agreement sets out a standard for rights and safeguards for the people of Northern Ireland. It is based on EU law, and it is a government commitment to do that. It is our job to make sure that that commitment is followed through. That is really as far as we can go. We do not want to get involved in any political discussion on the rights or wrongs of it. If it happens, we will have to make sure that it follows through. David, do you want to add anything to that from a legal perspective?

Dr Russell: Not an awful lot more. As Geraldine said, we have to keep pace in terms of the provision of the treaty for those aspects of the directives that impact on the rights that are set down in the Good Friday Agreement. That is agreed in the treaty. Does it create a democratic deficit? We no longer have representation in Europe, so those directives will be forged by the remainder of the member states,

and we will follow suit as a consequence. That is what the dedicated mechanism — the keeping pace element — is going to be all about. It is very specific and is set down in the treaty. It is those six directives, and it must relate directly to the provisions of the Good Friday Agreement.

Mr Beattie: Here is the hypothetical piece, Geraldine. What if the expansion of the EU sees it bringing in other, less developed nations, and therefore the rights have to drop? What if the rights baseline has to drop in, say, five years? Do we drop our human rights baseline, or do we stay at a higher level? It is hypothetical, but I do not know about five years or 10 years from now. The EU is expanding; what happens if it drops its rights baseline?

Ms McGahey: The rights that are currently there are the minimum standards, so there would be no potential addressing of the issue within the withdrawal agreement as to that kind of scenario. We would be very reluctant to have that happen. The Good Friday Agreement is set very strongly on the principles of rights, equality and safeguarding opportunities. We would not want to see that diminished in any shape or form; we would be quite vocal in that regard. That is my view, and I believe that the Human Rights Commission has a similar view.

Dr Russell: What is being established here is the legal minimum baseline. If the EU, hypothetically speaking, were to regress in the future, there is absolutely no reason, legally or otherwise, why we would have to follow suit. One hopes that the UK would, rather than being regressive, try to keep the standard at least at the minimum, if not actually be progressive and raise the bar higher. Equally — turning your question on its head slightly — there is nothing to stop us moving ahead and protecting rights better than what is provided for in the EU.

Ms McGahey: In many ways, Northern Ireland has already slipped behind the rest of the UK in its protections. We are constantly pushing to have law reform that brings us in line with the protections afforded to citizens across the rest of the UK. We would not be in any way participating in or supportive of any form of reduction of those rights. We would be very vocal in the opposite.

Mr Beattie: Thank for your indulgence on that question.

The Chairperson (Mr McGrath): A recurring theme that we will probably come back to in various elements is that democratic deficit — the fact that we will have to deal with various changes, be it to rights or other elements, without having a direct voice or input. We really need to get to the bottom of how we can achieve that and how you can have your oversight of those things.

Martina needs to leave a little early today, so I pass to Martina first for questions.

Ms Anderson: Thank you all for allowing me to come in. Thank you, Geraldine, Evelyn and David, for your presentation.

Many of us hoped to be coming here in a different climate and atmosphere. I appreciate what you said around acting in good faith for your part and taking the British Government at their word. I have to say that the international community does not share your faith. As we sit here today, a law officer in Scotland has resigned. We heard the comments from the Lord Chief Justice. I hoped that I would hear something strong from you with regards to international treaties being binned. Whilst I want to talk to you about the non-diminution of rights, I certainly do not share the view that you will continue on in good faith, given what has happened. I think that there is a community of people out there expecting some guidance from you because, if I heard you right, you have been engaging with the NIO. Are you taking it at its word with regards to article 2 not being impacted at all by what happened during the week? The drop in the rights baseline in Britain is something that we need to be more concerned about, given the drop in the baseline that we have had already.

When we are talking about the non-diminution of rights, I am trying to get a handle on what your views are with your dedicated mechanism, which is supposed to be established and involve the Irish Human Rights and Equality Commission. Do you have any concerns that even the British Government are claiming that they would only be breaking the law a little bit by not honouring a binding international treaty? Do you have concerns that the Bill may impact on the rights under article 2 that we were supposed to have secured? They are only the minimum; they are only the floor upon which we have to build. Does what has happened over the last few days not cause you any concern?

Ms McGahey: It does cause concern; of course it does. You do not want to see any international treaty breached by anyone anywhere across the world. I am not over all the detail of the Bill, but we have been reviewing it, and, at the moment, we see it having little impact on article 2. We can only act on the basis of the information that has been given to us and the commitment that was given to us very strongly by the NIO and the Government that they will be moving ahead with the Bill and do not envisage any circumstances in which there would be any form of breach. They have issued an explainer document to support that, and they have given considerable resources to enable the work to commence. However, like everything else, we will have to continue to watch, consider all the implications that arise from this and look for any impact on the article 2 commitment. If there is any impact, we will duly raise the matter. David or Evelyn, do you have anything that you wish to add?

Dr Collins: No.

Dr Russell: To reiterate what Geraldine said, as far as we can see, the Internal Market Bill has no impact on our mandate, but that is not to say that what is being done is not of concern. At the beginning of my presentation — Committee members may want to look at this — you will see that, in the explainer document on the article 2 commitment, the Government are very clear that the commitment is binding on the Government, on Parliament, on the Executive and on the Assembly as a matter of international law. The treaty is a matter of international law, and of course it is concerning when any state steps outside a binding international treaty, particularly given that all our human rights laws flow from binding international human rights instruments.

Ms Anderson: It is binding, as you said, and the Good Friday Agreement is an international treaty that is lodged with the United Nations and talks about an all-Ireland charter of rights. You talk about the British Government explainer document, which states that they do not believe in the North/South equivalence of rights and in equality of protection. So, how can we have the protections under article 2, EU rights that would be applied in the South of Ireland as well as the North, when, in the explainer, we have the British Government saying that they do not believe in the North/South equivalence of rights and that that is not what diminution means? They are already sending you a very clear signal.

Dr Russell: I probably should have talked, in my opening remarks, about the things that we did not get. The equivalency of rights — North to South and South to North — was something that we argued strongly for. The Government have a very clear line on that. In their view, the commitment under the Good Friday Agreement required an equivalency of rights flowing from the North to the South; the South had to bring up its baseline and that equivalency would not travel in the other direction. That is their stated view, and it is not something that we argued for. In fact, the contrary was the case. Given the context, we thought that equivalency across the island as a whole would have been a move of wisdom, but the Government's position is as stated.

Ms Anderson: How then will cross-border workers be affected by the withdrawal agreement and the implications, even though we have only a limited direct supply in the North?

My concern goes back to your response to the Chair around raising awareness. Sometimes, people do not know what they have until it is gone. A lot of these rights and protections are for carers of disabled people and those with a disability. What are the implications of stripping the Charter of Fundamental Rights and it not being applicable here? What does that mean? How will that impact on rights protections and the rights of the child? We know that the Charter of Fundamental Rights has more rights than the European Convention on Human Rights and is directly applicable.

Brexit was a disaster, and we have already had the Charter of Fundamental Rights removed. We have already lost GFA international agreement rights, which were binding in the GFA and were going to be taken forward. It is difficult to operate for ourselves, and I, like many others, had expected that there may have been a comment from your organisation about the implications of what was done to an international binding agreement.

We cannot have a situation where people are more concerned about the protections of cows and sheep being impacted with the Bill last week and the protections of people not even being referenced. That is why a briefing like this is very important. For you, the issue of raising awareness with people outside about the implications of all this is crucial.

Ms McGahey: That is why we have been pushing really hard and trying to move very fast on the recruitment exercise to get that awareness programme planned and implemented in advance of 31 December.

As David said, the Human Rights Commission worked very hard and negotiated hard in addressing the Charter of Fundamental Rights. I do not know whether David can add any more to that.

Ms Anderson: Sorry, do you mean addressing it by letting people know that it is gone?

Ms McGahey: Yes.

Ms Anderson: Are you thinking now that people out there are aware of the implications of that being stripped away?

Ms McGahey: No, I do not think that they are aware.

Ms Anderson: I do not think so either.

Ms McGahey: I do not think that people are aware of any of these issues. That is why we feel that it is really important to get the awareness-raising campaign up and running very quickly. It is not just the wider public; it is Departments in the Civil Service and all public-sector organisations that have a role in devising public policy. The sooner we can get that programme up and running, the sooner the wider public can become aware and the more they will be tuned into looking for issues that become different. That is the piece of work that we need to continue with at pace.

Dr Russell: I absolutely agree. As I said, frontier workers in particular and cross-border working will probably be one of the first things that we will look at. I do not want to gaze into the crystal ball too much, but you can imagine that people affected in those sorts of areas are probably, in many ways, the most likely to come to the two commissions' doors early on.

Ms Anderson: Can you give an example for us to get an understanding as to what potentially could happen?

Dr Russell: These are hypotheticals, but there is potential that the Government will say that there could be an issue around access to childcare provision. I know that Les spoke to the Committee previously about that issue. There are issues around health and social care and access to education. We have significant numbers of people moving across the frontier every day for all sorts of things, including work, as well as exercising their social and economic rights, and that would not have been an issue previously. Those are the sorts of things that, potentially, could raise difficulties and will fall very much within the scope of the new mandate of the two commissions. If people have those sorts of things, that is why the promotional aspect becomes so integral as we lead up to 1 January. They should know that there is recourse to come to the commissions to talk through the issues that they are facing. Certainly, our initial view is that the scope of the mandate would be broad enough to be able to capture those.

The Government's position is pretty clear. It was not that the two things were not hard-fought. At the start, I was careful to say that the removal of the European Court of Justice and the Charter of Fundamental Rights removes an aspect of the overarching architecture of human-rights protections that we have benefited from for a long time. In itself, that is a serious concern, but it is clear that that was a red line with Brexit. That battle has been lost and, therefore, the article 2 commitment will now kick in to ensure the Government's view that it will not substantially impact on the protection of rights. We will have to test the mettle of that come 1 January.

Ms Anderson: In 12 weeks, that may have implications for the 30,000 people who cross the border every day to work or study that affect their childcare, social security benefits or whatever it is, which, at the moment and obviously and rightly so, they take for granted. That will all change.

There needs to be awareness raising, but I suggest that you should reflect on making a statement to alert people before you start to inform them in depth. The clock is ticking and is getting louder week after week. The disaster that is coming down the tracks will have implications for human-rights protections, for people's lives and, for example, for carers of disabled people who live in one part of the island and work or care in another. It is about how that will impact on their everyday lives. You probably need a strong statement or an awareness-raising statement, especially if you are not getting the opportunity to talk to people, groups and organisations.

Considering the noise that has been made by other organisations that have reacted and responded, there is a bit of concern about your silence about it. Obviously, you have concerns. I hear them, and I share them, but you are an authority that people listen to and they should perhaps be able to try to find out some further information from you.

Ms McGahey: I agree, and I accept the points that you have made. Hopefully, you realise that we have only recently had our resources confirmed and been enabled to carry the work forward. We have started the recruitment process. Some people are in post, and, hopefully, others will be in post within the next number of weeks.

I said "raising awareness" or "a campaign to raise public awareness", and that will involve a whole spectrum of activities, articles and press releases. We fully engage with what you said that we should be doing. We will deliver on that well before 31 December and to the best of our ability. It is really important for wider society to be aware of it, and we will endeavour to do that. We are more than happy to keep the Committee engaged in the process and informed of what we are doing.

Ms Anderson: We have only weeks left. Whatever about going around and engaging with the rest of society, at the very minimum, a press statement needs to be issued to alert people who are so caught up, and rightly so, in their lives and in trying to help people. For instance, carers of someone who is disabled or people who use childcare take all the protections that they have for granted. In 12 short weeks, all that could upend their day-to-day living and families' lives. They need to be told that now.

Ms McGahey: We will address that.

The Chairperson (Mr McGrath): Evelyn, I am conscious that, with the layout, we cannot see you. You have been trying to jump in.

Dr Collins: I have a brief point on the conversation about the impact on people's everyday lives. One of the concerns that people with disabilities have raised with us is the difficulty that they will have when taking guide dogs across the border. Of course, we share a land border with a member state of the EU, and, if the issues are not resolved, they will create real, everyday difficulties for people who use guide dogs to travel or go to work across the border. We have to be mindful of that, and we have raised that. If that is not dealt with in the trade agreement, we will need to be alert to that issue. There is a myriad of issues like that that will come up as a result of leaving the EU and that we hope will be addressed.

Ms Anderson: Outrageous.

The Chairperson (Mr McGrath): Martina, you began your remarks by referring to the current climate. I apologise to everybody again that our climate includes the heat in this room, which we will try to control by getting some form of air conditioning switched on. I just want to let you know that we are not putting you under extra pressure. It is just absolutely sweltering.

Ms McGahey: You will not mind if I suddenly take off my coat.

The Chairperson (Mr McGrath): Please. Whatever it requires, because it is very warm in here.

Mr Lunn: It is good to see you all here. Most of what I wanted to ask has already been asked, inevitably. You talked about cross-border workers, but I am thinking more about cross-Europe workers. I am looking for clarification. At the moment, as I understand it, UK residents, or Northern Ireland people, can look for work anywhere across Europe, but the mood in Great Britain seems to be to restrict the right of European people to come to Great Britain to work. If it goes down that route, will that apply to us as well? We are going to be part of Europe and Britain, so, if the UK Government bring in a further restriction — I think that they already have brought in a restriction — on the right of people to come to the UK, and Europe retaliates, would that retaliation apply to us as European citizens?

Ms McGahey: David from the Human Rights Commission is best placed to address that question.

Dr Russell: It will depend on what passport you have, Trevor. It is a matter of whether you are exercising your rights under the Good Friday Agreement.

Mr Lunn: Develop that for me. I might have to get another passport.

Dr Russell: Ireland will remain a member of the European Union. If you are an Irish citizen living in Northern Ireland, you will continue to exercise your EU rights. If you are a UK citizen living in Northern Ireland singularly, you will be bound by whatever the scenario is that you have painted of what is negotiated by the UK Government.

Mr Lunn: That may seem an obvious answer, but it is not the one that I was expecting.

Ms Anderson: We did try to alert people to the disaster of this *[Inaudible.]*

Mr Lunn: An Irish passport holder from here will therefore continue to have the same rights to look for employment in Europe, but a UK passport holder will not in that circumstance.

Dr Russell: Correct.

Mr Lunn: On equal rights, it is almost inevitable that European rights legislation and British rights legislation will start to diverge. That may not happen in very important areas, but it could. If that does happen, who holds sway over Northern Ireland? Are we bound by the British changes, or can we insist on the European changes? You talked about minimum European standards, so, if the British were to reduce the standard — again, I would not be one bit surprised at what this Government might do — would we have the legal right to maintain the European standard in those circumstances. I see Evelyn nodding her head.

Dr Collins: As we have said, the equal treatment provisions that are set out in the annex to the protocol are the baseline below which, in an international agreement, it is agreed that Northern Ireland will not fall. In addition, there is an agreement that, if there are positive changes in Europe, those will follow suit here in Northern Ireland. The anticipation therefore is that we will not fall below the rights that are currently in place at the end of the transition period, whether from the Good Friday Agreement or the annex to the equal treatment directives, and that any changes in Europe upwards would have to be made in Northern Ireland. That is important.

It is also important to reflect on the fact that, as Geraldine mentioned earlier, in Northern Ireland we have at the moment fewer rights than exist in Great Britain. We have talked to the Committee before about that. We have fewer rights, for example, when it comes to protection against age discrimination in the provision of goods and services here. That is not a matter that is covered by equal treatment directives in Europe. It is absolutely the law in both Britain and Ireland, but we do not have age goods, facilities and services (GFS) protections here. There is therefore already not parity between Northern Ireland and Britain in a number of key areas. We would like to see legislative reform going upwards here in Northern Ireland anyway, irrespective of those provisions, although, because of them, it becomes more important that there be real focus on legislative protections for equality here.

Mr Lunn: In simple terms, for me, if Europe were to introduce improved human rights in some area, that would apply to us in present circumstances or in the circumstances that we envisage after 1 January, even if the British did not accept those rights.

Ms McGahey: Correct. If those rights are covered by annex 1, yes.

Mr Lunn: Right. This is my last question, Chair. I want to ask about your current legal powers. I think that I read something here about judicial review. Is that as far as you can take a case? Which is the highest court that you can take a rights case to in this country?

Ms McGahey: We can take a case to judicial review through the domestic courts.

Mr Lunn: Is that it?

Dr Russell: At the minute, if it is a human rights case, we can take it to the Supreme Court domestically. After that, an individual has recourse to the European Court of Human Rights. That is for the purposes of the European Convention, which is an important commitment in the treaty but separate from the new mandate. Under the new mandate, we have recourse through the domestic

courts up to the level of the Supreme Court for judicial review, but we also have recourse to refer issues to the new specialised committee under article 14 of the protocol, which is essentially the adjudicating resolution mechanism where there is a dispute over aspects of EU law between the European Union and the UK after Brexit. If you like, there is no European Court of Justice, but there is a new specialised committee, and we can refer issues to it.

Mr Lunn: Surely that is below the Supreme Court. The ultimate arbiter here would be the UK Supreme Court.

Dr Russell: It would be domestically, but the specialised committee is between the EU and the UK, so it is beyond the domestic realm.

Mr Lunn: OK. Are you comfortable with that?

Dr Russell: As I said at the start, our position was that we should not leave the European Court of Justice's jurisdiction and that we should keep the Charter of Fundamental Rights —

Mr Lunn: Absolutely.

Dr Russell: — but that will no longer be the case.

Mr Lunn: Fair enough.

Mr Sheehan: Thanks to the three of you for coming. I know that you said that there seems to be adequate funding at the minute. Is there currently funding available in the event that a decision is taken to bring a judicial review, or do you have to make a separate business case for it?

Ms McGahey: That would be covered within the programme costs in the actual budget that we have to cover our legal work. That is where we stand.

Mr Sheehan: I just wanted to clarify that. Another issue that I want to raise is around the bona fides, for want of a better term, of the British Government when it comes to upholding their end of the deal. One issue that you raised, Geraldine, was the fact that they had brought out an explainer document. It predates their breach of international law, however. Is that not correct?

Ms McGahey: It does, yes.

Mr Sheehan: In that sense, it therefore might not be worth the paper that it is written on.

Ms McGahey: As I said earlier, the two commissions are not in the political arena. All that we can do is work in good faith in our negotiations with the Northern Ireland Office. The fact is that we have the explainer document, we already have the budgets, and we have the UK Government's word about their commitment to the article. As others have said, we will continually be alert to any potential breach of that commitment, and we will then start to make the appropriate response to any potential breach. At the minute, however, you will appreciate that we, as officials, must take their word for it. The fact that we have money in our budgets to move forward does show significant commitment to delivering on the article. I hope that that helps address your query.

Mr Sheehan: OK. There was speculation in the press across the water at the weekend, in 'The Sunday Telegraph', that the British Government are talking about opting out of the Human Rights Act. The Tories are also ideologically opposed to the European Convention on Human Rights (ECHR), and I know that is not part of the EU. However, if they were to opt out of the Human Rights Act, for example, it would prevent asylum seekers and migrants from using the legislation to prevent deportation. It would also protect British soldiers in war theatres abroad from facing claims or prosecution. The EU has said that, in order for there to be law enforcement cooperation, the British would have to remain signed up to the ECHR and retain the Human Rights Act. Are you concerned about a move in the direction away from or withdrawal from the ECHR and the Human Rights Act? What implications would that have for what we are discussing here today?

Dr Russell: To distinguish between the two, the Human Rights Act gives domestic force to the European Convention in part, not all. For example, the free-standing equality provision in the ECHR is

not given domestic force through the HRA. One instrument is based on the other, but they are not exactly the same. As I understand, you are right that there is a discussion about potentially amending the Human Rights Act. The Human Rights Commission is deeply concerned about that, particularly on the examples that you have given, this place, in particular, around article 2 and what that might mean with regard to legacy and the requirements under the article 2 provision to ensure that dealing with the past is dealt with effectively. That is a concern. We would be deeply concerned if there was a move in that direction.

The European Convention on Human Rights is slightly different. I said in my opening remarks that, with regard to the explainer document and the treaty, the Government are very clear that the European Convention on Human Rights will remain intact once we have left the European Union. It is in the explainer document and the treaty obligation. Also, the requirement to give the European Convention domestic force is a requirement of the Good Friday Agreement. If any move by the UK Government to step outside of that were to happen, the European Convention on Human Rights would not just be a concern in the current context of leaving the European Union, it would be a very clear step outside of the provisions of the Belfast/Good Friday Agreement, and that would be deeply concerning not just to the Human Rights Commission but to anybody living in this place.

Mr Sheehan: Finally, this just requires a yes-or-no answer. There is absolutely no guarantee, given the history of this particular British Government, that they will in any way guarantee the commitments that they have made on the protection of rights here. Is that right?

Ms McGahey: If that were to happen, both commissions would have an awful lot of work on their plate in maintaining the status quo and making sure that there was no diminishing of rights. We would use our legal powers to seek redress. That is all I can say at the moment, unless Evelyn or David can think of another solution. If, further down the road, that was to happen, then we would implement our powers to raise the issue, to take actions in our own name, never mind in the name of a complainant, and to seek that the situation be addressed and put right.

Ms Sheerin: Thank you, Chair, and thank you all for your presentation and your time here today. I know that we have questioned you extensively. I have a couple of things that I want to ask about, but, following on from Trevor's point, about people exercising their passport rights — for want of a better word — obviously, a percentage of people here hold both Irish and British passports. We have people who are Irish citizens and people who identify as British and have British passports. Can you see a situation in which those who are British and have British passports could have fewer rights compared to those who hold Irish passports?

Dr Russell: During the negotiations, the way that it has been put to us on a number of occasions is that there may be an inevitable asymmetry of rights.

Ms Sheerin: So, yes.

Dr Russell: That is the way that it has been put, but I do not want to second-guess whether there will be in practice. We will not know, as Martina mentioned. Until we see how it plays itself out in practice, I certainly do not want to say yes or no. It may well be that there is not, but, equally, it may well be that there is a very real risk that there will be an asymmetry of rights. Trevor raised the European citizenship rights in terms of exercising free movement and working rights and what it would mean if you continued to be, as an individual, a European Union citizen. There is clearly going to be a difference there. Whatever else there is beyond that, I do not want at this stage to be in the game of trying to second-guess what might be coming down the line.

Ms Sheerin: OK. The phrase "inevitable asymmetry" paints its own picture.

I want to turn to the gap in rights that we could end up with. I should declare an interest because I am the Chair of the Ad Hoc Committee on a Bill of Rights. Can you see a role for a bill of rights for the North in plugging some of those gaps? How could that happen?

Dr Russell: It depends what is in it, is the answer.

Ms Sheerin: Yes.

Dr Russell: We were making an argument with people — I have heard the chief commissioner say this on a number of occasions before the treaty was signed — that, in many ways, the mandate for the bill of rights is the European Convention plus supplementary rights that reflect the particular circumstances of Northern Ireland. In many ways, in the absence of a bill of rights, that job was done by the Charter of Fundamental Rights, which is based on the European Convention, and there are a number of additional rights in that. There was a strong argument that there was, certainly, a case to be made that, in the absence of a bill of rights, retaining the Charter of Fundamental Rights was a close second best. We have now lost that, and, in its absence, there is the potential that a bill of rights would, at the very least and as a minimum, plug the gap that has now opened up.

Ms Sheerin: So, if a bill of rights was to be created, including the rights that are in the Charter of Fundamental Rights, that would go some way.

Dr Russell: It would go some way, but, obviously, you would expect me to say that I would prefer to see the Human Rights Commission's advice from 2008 enacted in full.

Ms Sheerin: Obviously, yes.

Following on from Martina's points about people who live on the border — you mentioned them — and cross it every day for work, school or their social life and all the different things that people do, have you particular concerns about cross-border workers or, potentially, migrants to this place who are EU citizens but do not hold either an Irish or a British passport?

Ms McGahey: That is one of the areas that we will be vigilant about. It strikes me that we should say that an independent monitoring authority will be in place separately to protect citizens' rights and some of the issues that we talked about with the rights of frontier workers from the end of the implementation period, including the right to enter and work in a country of their employment or self-employment and so on. They are covered by the citizens' rights elements of the agreement, and there will be a separate independent monitoring authority to look at those rights. One of the pieces of work that we will do over the next while is to make sure that we have a good working relationship and that people will also have no diminution rights under article 2. We need to establish the working methodology between us to make sure that there are no gaps and that there are different routes for different people depending on the issues that are of concern for them.

Ms Sheerin: Thank you. My final comment is that my mum is from Donegal, and, before I was born, my parents lived in Strabane but she was still working in Donegal. That was in the early 90s, and, according to the stories that she has told me about crossing the border on a daily basis, there was, obviously, infrastructure there at that stage. She told me how intimidating it was for her as a young woman and, for some of that time, as a pregnant woman. Crossing the border on foot at the bridge was an intimidating experience on a daily basis, so we do not want to regress, and you indicated that.

The Chairperson (Mr McGrath): Trevor, do you want to ask anything?

Mr Clarke: This is probably more an observation. This session has been useful. I am sure that some members did not get out of it what they wished they had, because a lot of it was focused on hypotheticals. I have to say that, for once, I am encouraged by what the panel had to say, but I am sure that there are others who are very disappointed.

The Chairperson (Mr McGrath): George, do you have anything that you wish to add?

Mr Robinson: You are very welcome, Geraldine, Evelyn and David. You mentioned several times crossing from one side of the border to the other. Say a nurse or a health worker who lives and works in, for example, Altnagelvin has a British passport, would it be advantageous for them to now get an Irish passport? That question was thrown up to me by a constituent in recent times, and I thought that you would be the right people to answer it.

Dr Russell: I do not know whether I have a direct answer, George. One would hope that, come 1 January, there will be no impact and that, regardless of which passport you hold, you will be free to work on one side of the border or the other and to travel unhindered, as you have done to date. I know that that is the intention of all the parties. I do not want to speak for the two Governments, but it is pretty clear that that is the intention. If it was the case that that did not come to pass, both

commissions would want to seriously consider that. If a constituent faced that on 1 January, I would certainly point them in our direction. That is exactly why we have been given this mandate.

Mr Robinson: How does someone contact the commission? Who would be the best contact if a nurse, for example, had that query?

Ms McGahey: If any of your constituents have any queries, they can contact the Equality Commission or the Human Rights Commission directly on their contact numbers, the website or by email. All the details are online. I am more than happy to send details to you, if that would be helpful.

Mr Robinson: Yes, it would be. I can pass that on to my constituent.

Ms McGahey: We will undertake to pass out our contact details to all Committee members.

Mr Robinson: That would be very useful. Thank you very much.

Ms McGahey: No problem. You are welcome.

The Chairperson (Mr McGrath): Of course, George, it could be DUP policy for everybody to get an Irish passport. *[Laughter.]* That would certainly alleviate any of those problems. I am sure that Trevor would be great at —.

Mr Clarke: That is just as hypothetical as everything else today. *[Laughter.]*

The Chairperson (Mr McGrath): OK. That concludes the questions. Thank you very much for coming along today. I find it surreal that we are having a presentation about rights and that we are talking about how we have to protect them, given that it is 2020. As has been mentioned, we are left with uncertainty, and we are talking about hypotheticals when it comes to people's rights. That is what we have to do today: we have to talk in hypotheticals. It is worrying that you are inevitably left to look at international law and international treaties as the source of protection, and yet we have a British Government that can stand up and say, "If we need to break those international laws, we will". That does not exactly inspire confidence in very many people. I hope that the Secretary of State, the Northern Ireland Office, Boris Johnson and the British Government are listening and are getting apprised of presentations such as yours on the fact that the protection is in the international law that they are suggesting that they might have to break. Maybe then they will begin to understand why we are so concerned and so worried.

I thank you for coming along today to give us your presentation. It has been incredibly useful. I am sure that, as members suggested, we will get some more updates from you as we progress towards January and beyond. Thank you very much.

Ms McGahey: Chairperson, on behalf of all of us, thank you very much once again for the invitation. We give you this commitment: we are more than happy to come back and apprise you of what is going on. It is a movable feast, and we are working towards implementation. We are more than happy to come back at your behest to explain what we are doing.