Northern Ireland Assembly

Ad Hoc Committee on a Bill of Rights

OFFICIAL REPORT (Hansard)

Briefing by Mr Mark Durkan

15 October 2020

NORTHERN IRELAND ASSEMBLY

Ad Hoc Committee on a Bill of Rights

Briefing by Mr Mark Durkan

15 October 2020

Members present for all or part of the proceedings:
Ms Emma Sheerin (Chairperson)
Mr Mike Nesbitt (Deputy Chairperson)
Ms Paula Bradshaw
Mr Mark Durkan
Miss Michelle McIlveen
Mr Christopher Stalford
Mr John O'Dowd

Witnesses:
Mr Mark Durkan SDLP

The Chairperson (Ms Sheerin): Our next briefing is, again, on the "particular circumstances". This time, we will hear from Mark Durkan, who joins us via StarLeaf. Good afternoon, Mark.

Mr Mark Durkan: Good afternoon, Chair. Thank you.

The Chairperson (Ms Sheerin): Thank you very much for joining us and for your submission. Do you want to begin your briefing?

Mr Mark Durkan: Yes. Thank you very much, Chair. Essentially, I was asked to address the question of the wording of paragraph 4 of the section on human rights in the Good Friday Agreement, with regard to the "particular circumstances of Northern Ireland". However, as you can see from my submission, I believe that you cannot look at what the Good Friday Agreement intended or offered with regard to a bill of rights just by looking at that paragraph; you have to look at the many different references in different parts of the agreement to the issue of rights. Therefore, I do not believe that you can say that references to rights in other parts of the agreement, particularly the strong language in which they are expressed, can be ignored for the purposes of a narrow interpretation of paragraph 4.

It is clear from paragraph 4 that what was envisaged and intended was that a bill of rights would wrap round the European Convention on Human Rights (ECHR) and that the European Convention on Human Rights would be part of the suite of rights that would be included in the Northern Ireland bill of rights. The bill of rights was not an optional extra alongside the European Convention; the idea was that the European Convention was a base starter given at the time of the agreement, while work would continue on what other additional or supplementary rights might have to be expressed in a bill of rights.

Paragraph 4 makes it clear that Westminster was to legislate for a bill of rights. The idea was to guarantee that a bill of rights, of itself, would not require absolute all-party agreement. It would not rest

on the Assembly or all its parties to approve or agree, because otherwise a bill of rights would never be agreed or achieved. The idea of being able to offer a degree of entrenchment, insofar as it could be given under what might be called "British constitutional law", was to say that Westminster would legislate for a bill of rights. That was on the basis of Westminster also, in that agreement, being committed to upholding the European Convention on Human Rights and, indeed, to legislating the European Convention into domestic law so that it would be accessible in the Northern Ireland courts. Remember, paragraph 2 of that section of the agreement gives a clear-cut commitment by the British Government as to what incorporation of the ECHR into domestic law was to mean, including giving people the right to go to court and overturn Assembly legislation for being incompatible. That was an extremely strong commitment in relation to what the European Convention on Human Rights was to mean.

Of course, — some members may take us on to this issue — the Internal Market Bill confounds that because it removes people's right to go to court to overturn legislation if a Minister of the Crown has directed differently. Indeed, the Internal Market Bill gives Ministers of the Crown the right to overrule Assembly legislation, whereas the Good Friday Agreement only gave people here the right to go to the courts to have Assembly legislation overruled. What is happening at present confounds what was provided for in the Good Friday Agreement with regard to the European Convention and the bill of rights.

I listened to Dermot earlier; I listened to him all through the talks in 1998. To borrow a phrase of his: if somebody had told me then that, 22 years later, I would be listening to Dermot Nesbitt talking about these things, I would have said, "You are probably right". If they did say it, they have been proved right. I do not go along with the idea that the bill of rights was going to elevate the European Convention as far as applicability in the courts and justiciability was concerned, but that the additional or supplementary rights would not carry the same weight. I do not think that many other people who were party to the agreement in '98 agreed that.

When you look at the different parties that were there — remember that anything that got approval in the agreement always needed to have the approval of a majority of parties, not just parties that represented the majority — you see that many of them had strong commitments to a bill of rights. Yes, they had different ideas about what degree of expression and reach there should be in it, but they were all very clear that a bill of rights was necessary. We knew that, in the circumstances of the talks, we could not agree the details of a bill of rights any more than we could agree the detail of a new beginning for policing. Therefore, some aspects of work that were agreed in the agreement were handed on for successor consideration by, for example, the Independent International Commission on Decommissioning, the commission to look at policing, the commission for the criminal justice review, and, of course, the Human Rights Commission. It was charged with bringing forward advice on a bill of rights, and it also had a role to consult on a bill of rights. None of us ever thought, in giving the commission that sort of consultative role, that the commission could consult only within the absolute, narrow definition of paragraph 4.

Some of the language in paragraph 4 reflects issues that were being argued about at the time, such as group rights or communal rights. Marching in particular was being argued about, as, for a series of summers in the 1990s, it had caused huge difficulty. In some years, the place went into convulsions over marching tensions. There were different arguments about which right applied where in terms of group rights or community rights or identity.

That is why the language in paragraph 4 is not pointed in one direction or another. Similarly, a general phrase such as "particular circumstances" is used so that we were not up-casting particular breaches, violations or transgressions of rights that people could point to in ways that would then be argued over, and you then get into a whole symmetry of "what aboutery" about what things you do.

Therefore, the general approach of referring to "particular circumstances" was adopted to avoid referring to unique circumstances. You heard from a previous witness who had an aversion to any shorthand references to the "unique circumstances" or "unique conditions" of Northern Ireland or of the island of Ireland. So, "particular circumstances" was used.

Paragraph 4 appears in a section of the agreement that, funnily enough, begins with paragraph 1. While paragraph 4 is a declaration on behalf of the British Government and their commitment on what they would do to bring forward a bill of rights, paragraph1 is a statement by all the participants, affirming a:

"commitment to the mutual respect, the civil rights and the religious liberties of everyone in the community. Against the background of the recent history of communal conflict, the parties affirm in particular:"

There is then a series of rights, including:

"the right to equal opportunity in all social and economic activity, regardless of class, creed, disability, gender or ethnicity";

You find similar language in paragraph 3, which deals with equality questions. Equality and human rights were being dealt with not because they were seen as completely separate issues, but because parties — in particular, the Secretary of State at the time, Mo Mowlam — were committed to making sure that difficulties in creating change and implementation in one should not get in the way of the other.

Mo Mowlam had ideas about creating a combined equality commission, which a lot of the parties did not agree with at the time. Neither did a lot of the pre-existing commissions. Indeed, they lobbied against the idea of a combined equality commission.

Some of the language that appears to separate those issues is because there would be issues with managing and achieving transition and implementation. The word "rights" comes up quite a bit in the equality references in the agreement, and I do not think that people ever believed that a bill of rights would completely ignore all the equality standards and rights. A bill of rights was going to make sure that power would be given to citizens under the European Convention on Human Rights to overturn Assembly legislation for incompatibility, and I think that most participants believed that that would apply to any other right included in the bill of rights.

As someone who was in the negotiations and in the room for everything that Dermot said and reacted to and that everybody else did, I feel that other parties had a different perspective and understanding and maybe a much broader idea as to what might come forward under a bill of rights than Dermot did.

Dermot referred a lot in the talks to the framework convention of rights, but that did not go down well with a lot of participants, as it was framed in the language of national minorities. We would be taken on comparative tours of other situations and told that, in South Tyrol, there was also a displaced national minority that thought itself on the wrong side of an international border. The idea that that is a standard for looking at Northern Ireland, or that parties around the table were only interested in the question of minority rights, is mistaken. The term "minority rights" does not appear in the agreement because people were trying to assert rights on their own terms and in their own right. Our understanding of rights has developed quite a bit since then. While some rights are listed and offered, including in the declaration by all the participants, our understanding of many of those rights has developed.

I heard the previous exchange on disability. The understanding of the rights of people with disabilities has developed quite a bit. We have moved from a political process and governance that thought, condescendingly, about the needs of people with disabilities, to having to hear and respond much more to the rights of people with disabilities. Similarly, understanding is developing about environmental rights.

Children's rights are not specifically mentioned in this part of the agreement, but one of the things that the first Assembly did was to introduce legislation establishing a Children's Commissioner. There was a lot of argument about the wording of that legislation, because that was one of the Bills for which we needed approval from the Secretary of State, because we wanted the commissioner to be able to look at juvenile justice issues, and they were not then devolved. We needed the Secretary of State's approval, but the then Secretary of State would not approve Assembly legislation for a Children's Commissioner if it referred to the "rights" of the child. We were told that we could not have "right"; all we could have was "welfare" or "best interests". As it happened, we ended up with a Bill that refers to "welfare, rights and best interests".

The fact is that our understanding of rights, even in the early days of devolution, extended and moved. It would be wrong to say, for instance, that the Northern Ireland Human Rights Commission or the public that it consulted should not be allowed to develop ideas about what should or should not be in a bill of rights.

In the negotiations we looked at other examples of bills of rights and, of course, many of us had been taken to South Africa to see experiences there. There were different views as to the applicability of the

scope of the South African bill of rights. Some people worried that it went too far in social and economic rights. Some also pointed out that the bill of rights in South Africa was to be permanent and, therefore, would coexist alongside majority rule. They came back at us, saying, "If you want a South African bill of rights, do you also want South African majority rule?".

Those were the exchanges and conversations taking place. Yes, there was a difference of view as to what people wanted to see in a bill of rights, but there is no doubt in my mind that there was not unanimity on the view you that have just heard that we had a very narrow view or expectation as to what would come from paragraph 4. The key thing is that we had, as a bird in the hand, that very strong commitment that, even if we did not get to a wider bill of rights, or get all we wanted in a wider bill of rights, we would have the European Convention on Human Rights.

In my submission, I refer to the fact that British Governments, with different Secretaries of State, have justified the failure to legislate for a bill of rights on the basis that there was not unanimity. They also justified it by saying that, "Anyway, a bespoke bill of rights would not make any difference, because you already have the European Convention on Human Rights and the EU Charter of Fundamental Rights." Of course, the EU Charter of Fundamental Rights has gone with Brexit, and we know that we cannot rely on the current British Government adhering to the European Convention on Human Rights, or perhaps even repealing it altogether.

The Chairperson (Ms Sheerin): Thank you very much. I was not sure whether you had frozen or finished.

Mr Mark Durkan: I am still going to the left.

The Chairperson (Ms Sheerin): I appreciate that, and I appreciate your written submission. It is probably one of the most entertaining that we have received thus far. Your use of alliteration and some of your analogies were interesting to read. I enjoyed it.

I have asked most of those who have made presentations to us about the impact of Brexit. I am conscious that, as per 'New Decade, New Approach' ('NDNA'), we are to:

"consider the creation of a Bill of Rights that is faithful to"

1998 and the "particular circumstances" and to look at the impact of leaving the EU in our "particular circumstances" and what that means. You have stated clearly that you have concerns about the Internal Market Bill and the impact of the British Government having powers to change things that we decide here. In a bill of rights, how can we plug the gaps that might be created by that? How can a bill of rights address any possibility of there being gaps because of Brexit or address any changes that the British Government make as a result of Brexit?

Mr Mark Durkan: I am not sure whether a bill of rights itself can be used to prevent every bit of potential overreach into devolved areas by a British Government in the future, because some of the devolved areas that they would be trying to reach into, in the name of uniformity of the internal UK market, might not relate specifically to any of the rights under the convention or any supplementary rights. It is therefore important that we use a bill of rights to achieve the purposes that were intended in 1998, which were to defend citizens from any legislation that would breach their rights or trespass on their fundamental rights under the bill of rights, and for those rights to be able to be defended in the domestic courts. Of course, as well as giving Ministers of the Crown the right to overrule Assembly legislation, the Internal Market Bill precludes the rights of people to go to court to challenge any of that. What was intended under and understood about the European Convention, and what it means in Northern Ireland domestic law, is changed significantly by the Internal Market Bill. Moreover, it seems to be a trailer for more possible changes in that direction. I worry that the slippery slope beckons.

We are paying a price for there not having been a bill of rights. If there had been a bill of rights, supplementing the European Convention and dealing partly with framework convention issues around identity, addressing other issues of rights and perhaps articulating some of the European Convention rights in a much more applicable and current way for the modern age — those relating to disability and children, for instance — we would have been in a much better position to say to a British Government and the Westminster Parliament, "You cannot legislate in the Internal Market Bill, or in any other Bill, in the way that you are doing. You cannot simply knock away the European Convention on Human Rights commitments in the Good Friday Agreement as though they are a stud wall and not a key supporting wall in the agreement. You are interfering with the fundamental architecture and

understanding of the agreement when you do that". If a bill of rights had therefore been achieved, it would at least have created a more defined and definite position on some of the issues that are arising under Brexit.

Even I, who takes quite an expansive approach to what a bill of rights might include, do not think that you can come up with a bill of rights that states, absolutely, that we are going to prevent all possible trespass by Westminster on the devolved ambit. What we need to do is to reaffirm what the devolved ambit in the agreement was meant to be, and that affects strand one and strand two. People who have been big advocates of Brexit will tell us that it does not change the spirit or the letter of the Good Friday Agreement. We will need to invite those people to participate in a renewal review of the Good Friday Agreement. Let us see now in 2020 and beyond how we are going to give meaning to the letter and the spirit of the agreement, even post-Brexit. That is the challenge that we should put to them.

The Chairperson (Ms Sheerin): Thank you very much, Mark.

Mike, if you are happy, can we go to Mark H first, because he has to go?

Mr Nesbitt: Yes. Of course.

The Chairperson (Ms Sheerin): Mark, have you any questions?

Mr M H Durkan: Yes. Thank you, Chair, and thank you, Mark. I enjoyed your submission. Sorry that I could not call round to the house to have a chat about it, but current circumstances prevail.

In the submission, Mark, you referred to some quarters setting the precondition of all-party consensus for a bill of rights, which, as you said, was not set as a precondition for the Police Act 2000 or the St Andrews Agreement. I do not doubt that you will be able to recall this, because you recall a lot, but can you recall anything from the negotiations that supports an interpretation of that being an implicit condition for having a bill of rights?

Mr Mark Durkan: No, I cannot. There was nothing. As I said in my introduction, it was very deliberately cast that Westminster would legislate for the bill of rights. Remember that not only was that in paragraph 2 in the section of the agreement on human rights but it was intended in paragraph 33 of strand one, which makes a commitment that the Westminster Parliament will legislate to give effect to upholding the United Kingdom's international obligations in respect of Northern Ireland. Everybody understood that to mean the European Convention on Human Rights. Some people saw that as meaning the framework convention as well. Indeed, there are other international obligations. The idea of the bill of rights being legislated for by Westminster was partly so that it was not going to require all-party support in the Assembly or outside of the Assembly. It meant that nobody was going to be guaranteed absolute satisfaction that everything that they wanted in a bill of rights was going to be in it or that anything that they did not want in a bill of rights was not going to be in it. The clear commitment and understanding was there, and not just from Mo Mowlam but from Tony Blair. That was understood.

This argument that there needed to be all-party consensus was made afterwards. None of that is written into the agreement. Nothing in the agreement said even that there had to be Assembly consideration of a bill of rights, or anything else. What the agreement did provide for, of course, was that the Assembly would be guided on its own legislation by the Equality Commission and the Human Rights Commission, but it did not specify directly about a bill of rights. Strand one does, however, refer to the European Convention on Human Rights/bill of rights but not in a way that implies that the Assembly has to give prior approval to those. It is taking those as a given that would then have to guide the Assembly on the advice that would come forward from the Human Rights Commission.

It was also allowing the commission to support cases that could overturn Assembly legislation. It would therefore be odd if the agreement that was giving such a powerful mandate to the commission, possibly even over Assembly legislation, would say that the commission can do its work only with full approval from the Assembly or can only get a starter on the bill of rights. It was not there, just as there was not, as I mentioned, a requirement that there would have to be all-party agreement on policing; just as there was not all-party agreement on the St Andrews Agreement; and just as there was only one party agreeing to the Northern Ireland (Offences) Bill when it was introduced in 2005, even though that dealt with the very sensitive issue of legacy and victims. The same Government that brought in the Northern Ireland (Offences) Bill, which was initially supported by one party, which then, thankfully,

withdrew its support, were at the same time saying that all-party consensus was needed on a bill of rights. It was a dishonest position, and it was a self-frustrating test that was introduced.

Mr M H Durkan: Thank you, Mark. As Emma said, I have to nip out to attend another meeting. I will catch up with you soon.

Mr Mark Durkan: Thanks for the warning. *[Laughter.]*

Mr Nesbitt: Hi, Mark.

Mr Mark Durkan: Hi, Mike.

Mr Nesbitt: Mark, I am learning why it is "particular circumstances" and not "unique circumstances". Does that mean that an argument that what we are looking at in Northern Ireland applying anywhere else in the world does not preclude it becoming part of a bill of rights?

Mr Mark Durkan: No, it does not preclude it. Anything that applies in any other part of the world may be applicable or adaptable to a bill of rights here. After all, the agreement refers to examples from international conventions and instruments. Those examples could be from broad international conventions, or they could be more bespoke examples in particular countries, or whatever. As I said, because it was so current in the 1990s, the South African bill of rights was one of the examples at which people were looking. There was a bit of a pick-and-mix approach taken here. Not just a few parties but all parties took a bit of a pick-and-mix approach to how applicable some parts of the South African bill of rights were and whether its bill of rights fitted the context of the sort of inclusive Government that we intended to have as a permanent feature here. In South Africa, of course, the Government of national unity was to be for only one term, but the bill of rights was to be enduring.

It was therefore entirely valid for people to offer those examples and ideas in the negotiations and draw down on them. We certainly did not believe that we, as split parties, had the full detail or mastery of all of those. That is why we were happy to see that the mandate would be given to a body such as the Human Rights Commission, which would no doubt consult and take all sorts of academic advice. In a whole series of talks, both formal and informal, parties had discussed issues around a bill of rights many times. We were given enlightenment by people such as Kevin Boyle, Tom Hadden and others through comparative examples of where bills of rights worked to deal with different issues and to absolve different apprehensions that might be in the way of a political agreement and institutional acceptance.

Yes, people are free to suggest examples from other places that might usefully be applied to a bill of rights here. People also have the right to qualify how applicable or translatable they think that some of those examples are.

Mr Nesbitt: Dermot Nesbitt discussed concepts such as mutual respect and parity of esteem. You are being a bit more concrete, by discussing, for example, parading. Was there a list of concrete issues back in 1998?

Mr Mark Durkan: No. There was not. There was a litany of issues that people would refer to in exchanges. As I implied, some of that got into a bit of whataboutery. That meant that those of us who were negotiating, and the people who would have to draft a text, knew that we would not get into a whole list of examples or issues, because that would just bog us down in negativity and the past. It would have looked like finger-pointing and blaming, rather than pointing the way to the future. That is why the list of rights that were affirmed by the participants in paragraph 1 of that section of the agreement are about from here on. They are very much future-looking and not about upcasting issues of the past. When you look at some of those rights, however, you can infer from them that there were particular issues that informed why that statement of rights was important, such as "freedom from sectarian harassment" and the right to choose where you live.

There was therefore not a list circulated as such, but, yes, parties, perhaps in their written submissions and certainly in the verbal exchanges, gave examples of issues that they felt would have to be addressed in a particular way in Northern Ireland and that they could not see being covered just by the European Convention in itself or something like the framework convention. As I say, some people did not like the concentration on the Framework Convention for the Protection of National Minorities. That was not just because people were not comfortable in the immediate context of Northern Ireland in the

1990s. People were also thinking that if some of us wanted a change in the constitutional status to a united Ireland, we would want a better benchmark for rights in a united Ireland than just the promise of good treatment of national minorities that is in the framework convention. We would want a higher benchmark than that.

People had and shared their views and ideas, and we knew that more work was needed, which is why the mandate was given to the Human Rights Commission. That mandate, however, was clearly given on the basis that the UK Government would legislate. That might sound like two birds in the bush, but, of course, the bird in the hand that we had in the agreement was the clear commitment on the ECHR and what its justiciability would mean in the Northern Ireland courts.

Mr Nesbitt: If a Northern Ireland bill were added to the European Convention, would that change the nature of the relationship between the Human Rights Commission and the Assembly and Executive?

Mr Mark Durkan: Arguably it does. When we were negotiating the agreement, we saw the Human Rights Commission as having a number of potentially impactful roles to play as far as the Assembly was concerned. The first would be its advice during legislation or perhaps in response to a decision or action taken by a Minister or a Department.

Secondly, the fact was that it was going to be able to support cases that would be taken by people. The agreement does not just state that citizens will be able to go to the court. It also creates a support resource in the Human Rights Commission that can help people to take those cases, right to the point of being able to overturn Assembly legislation. That was fairly significant scope for the people negotiating the formation of an Assembly and intending to be in that Assembly to give to the Human Rights Commission, but we did.

I am sure that the Committee does not want to get bogged down in the whole issue of the petition of concern, or anything else, but remember that the safeguard mechanism around the petition of concern was not meant as a veto. It was meant to trigger an Assembly-proofing exercise, focused specifically on equality or human rights considerations, by setting up a special Ad Hoc Committee that would then take evidence. We envisaged the key evidence in such a proofing stage for legislation, or some other Government measure, being the evidence that would come from the Human Rights Commission and/or the Equality Commission.

We did not specify them in the paragraph of the agreement that refers to the taking of evidence was because there was not yet agreement on whether there would be a single equality commission or we would we would have a continuation of the individual equality commissions that existed. We would have got into very cluttered language had we made specific references to the commissions. For the sake of shorthand, we did not make direct reference, but we all agreed that the Human Rights Commission and the Equality Commission would probably be the two telling witnesses when it came to such a proofing exercise triggered by a petition of concern, and it was a petition of concern. It was not a petition of objection or a petition of veto. It was a petition of concern to trigger that proofing system. Unfortunately, the 1998 legislation did not properly translate that into law.

Mr Nesbitt: Mark, thank you very much indeed. See you soon.

Mr Mark Durkan: Thank you, Mike.

The Chairperson (Ms Sheerin): We have no other questions from in the room. John, do you have any questions?

Mr Nesbitt: Is he on mute?

Ms Bradshaw: He must be on mute.

The Chairperson (Ms Sheerin): He is still on mute.

John, we cannot hear you.

Mr O'Dowd: Can you hear me now?

The Chairperson (Ms Sheerin): Yes.

Mr Mark Durkan: Yes. I can hear you.

Mr O'Dowd: I was just saying thank you for your presentation, Mark. It was another very useful, insightful, interesting and thought-provoking presentation, as was your written submission. That history of the negotiation of Good Friday Agreement is very useful.

You said quite correctly that the British Government's position should not have been that they needed consensus in order to legislate for a bill of rights. They had an obligation under the treaty to bring in a bill of rights.Where we are now is that we have this Committee set up under NDNA and we still have objections from certain sections of the community, whether those are muffled, more vocal or however they may be. What advice do you have for the Committee about moving the process on? My opinion is, at this stage, that we have to make a dramatic leap, because we have been inching forward for far too long.

Mr Mark Durkan: Thank you, John. One thing to say is that, although you have been asked to look at some of the particular language of 1998 and what it might mean, the fact is that you are doing this job in the here and now and basing it on all of the experience and disappointments since 1998.

On clear and present issues, some of the things that we were told were offsetting considerations in the absence of a bill of rights, such as the EU Charter of Fundamental Rights, are no longer there. Part of the compensation for not having a bill of rights was that Northern Ireland at least came under the EU Charter of Fundamental Rights, so one of the Committee's tasks has to be to look at how it can safeguard the rights that are jeopardised by the loss of the EU Charter of Fundamental Rights. It can do that by making sure that those rights are included in supplementary or additional rights that could sit alongside the European Convention of Human rights in a bill of rights.

I also think that the Committee has a job of work to do to try to nail down an absolutely enduring commitment to the European Convention on Human Rights. Remember that the Good Friday Agreement nailed down a commitment to the European Convention on Human Rights, and that was to be an enduring commitment. The planning permission was to add to that with the wider and supplementary bill of rights. The course that the British Government have set by legislating on Brexit to be able to knock through the European Convention when they feel like it means that the Committee needs to address the bill of rights, as it was always intended to do, as incorporating the European Convention on Human Rights. The bill of rights is not something that is separate to, and purely an optional accessory beyond, the European Convention.

Some of the people who in the past justified not having a bill of rights said then that other rights were in place. Those rights are no longer protected or given in the same way, and we know that they are in jeopardy in the future. If people were committed to the language of the Good Friday Agreement then, why will they not commit to the spirit of that and, in the sense of a renewal or review of the agreement, say, "Right, how do we frame proper understandings of and undertakings on rights into the future?".

I will cross-reference the issue of a petition of concern, although I do not want to get bogged down in it. The more that we are able to point to citizens as having the rights and mechanisms to challenge authority and decisions and to assert their rights in the courts, the less that parties will find themselves having to be reliant on the more negative safeguard practices in the Assembly that can give rise to some of the excesses and abuses around things such as the petition of concern, which was not properly legislated for and has still not been properly reflected, even in the Assembly's Standing Orders. If we give more rights to the citizen, that makes it easier for parties to move away from those sorts of clumsy process safeguards. As was reflected in my submission, we could sense that there was a difference of opinion, even as far back as the talks. Some parties saw a bill of rights as a badge for the system, whereas other parties saw it as a shield for citizens. That fundamental difference is still going to be there, whether it is muffled or otherwise.

Mr O'Dowd: The one concern that I have about the idea of a renewal or review of the Good Friday Agreement is that I would not trust this British Government with my shopping list, never mind with the Good Friday Agreement. Given the state of the international community, we do not have the dynamic of strong American interests, although, of course, there are still senior American politicians and figures who are very interested in the Irish political process and continue to care for and nurture it. We are losing the European Union oversight element as well, so it may not be the best time for such a review.

Mr Mark Durkan: I do not advocate a full-blown renewal/review, but that is the basis on which we have to have the conversation. Some of those people are saying that the way in which they are dealing with Brexit does not affect the spirit or the letter of the agreement. The rest of us therefore need to remind them of what the spirit and letter of the agreement should mean, and what it should mean in the light of this generation, in 2020, based on all the experience that we have had. The experience that we have now of the way in which the British Government are legislating reinforces the case for having a bill of rights and those sorts of protections, not just for citizens but to protect the devolved institutions. It is the standing and locus of the devolved institutions that is also being undermined by aspects of the Internal Market Bill and some other Brexit-related legislation.

In the absence of a renewal/review, or something else that is rooted in the Good Friday Agreement itself, bits of the agreement will be knocked off here and there, and people will say, "It is still the Good Friday Agreement". We will see more and more bits of it knocked off, knocked down and cut through, yet we will still say, "We do not want a renewal/review". If we let people take away chunks of the agreement, we are not defending it by then saying, "We cannot review it in any way or challenge people about what it means in this day and age".

Yes, there is a huge risk of that happening with the current British Government. Trusting them to deal with not just the Good Friday Agreement but anything to do with rights is like asking Attila the Hun to mind your horse. The fact is that we have to deal with the terms that we have. I am not a golfer, but I know that the rule of the game is to play the ball where it lies.

Mr O'Dowd: I do not play golf either. *[Laughter.]* We will leave it at that.

The Chairperson (Ms Sheerin): No other members have questions. Thank you very much, Mark, for joining us this afternoon and for your submission. You can take your ease now.

Mr Mark Durkan: Thank you very much, Chair, and thanks to the Committee.