



Northern Ireland
Assembly

Committee for The Executive Office

OFFICIAL REPORT (Hansard)

Dedicated Mechanism:
Equality Commission for Northern Ireland;
Northern Ireland Human Rights Commission

17 April 2024

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Ms Paula Bradshaw (Chairperson)
Ms Connie Egan (Deputy Chairperson)
Mr Pádraig Delargy
Mr Harry Harvey
Mr Brian Kingston
Ms Sinéad McLaughlin
Ms Carál Ní Chuilín
Ms Emma Sheerin

Witnesses:

Ms Roisin Mallon	Equality Commission for Northern Ireland
Ms Geraldine McGahey	Equality Commission for Northern Ireland
Ms Éilis Haughey	Northern Ireland Human Rights Commission
Ms Alyson Kilpatrick	Northern Ireland Human Rights Commission

The Chairperson (Ms Bradshaw): I welcome Alyson Kilpatrick, who is the chief commissioner of the Human Rights Commission, and Geraldine McGahey, who is the chief commissioner of the Equality Commission. They are joined by Éilis Haughey, the Human Rights Commission's director of human rights after EU withdrawal, and Roisin Mallon, director of the Equality Commission's dedicated mechanism unit. Welcome, ladies: we have a full panel of ladies today. I am not sure how you want to proceed. Who will go first?

Ms Geraldine McGahey (Equality Commission for Northern Ireland): I will go first, if that is OK, and I will be followed by Alyson.

The Chairperson (Ms Bradshaw): Lovely, thank you, Geraldine.

Ms McGahey: The two ladies either side of us, who are directors in our respective organisations with responsibility for the dedicated mechanism, will help us answer your questions.

I am the chief commissioner of the Equality Commission. On behalf of all of us, thank you for the invitation to brief you on the commitment in article 2 of the Windsor framework. We will do that in two parts. I will speak about the article 2 commitment itself and what it means and outline the role of our two organisations as the dedicated mechanism. Then, Alyson will focus on any key legal developments on article 2 and other issues of concern.

As a co-signatory to and guarantor of the Belfast/Good Friday Agreement, the UK Government committed in article 2 of the Windsor framework to protect rights, safeguards and equality of opportunity provisions as set out in that agreement and that those would not be reduced following Brexit. The relevant rights in the Belfast/Good Friday Agreement, which are underpinned by European Union law, are set out in annex 1 of the framework. Those equality directives relate to protection against discrimination and the promotion of equality of opportunity on the grounds of gender, race, disability, religion or belief, age and sexual orientation. However, there are other EU laws, in addition to those in the annex, that engage article 2. Our working paper, which provides information on the scope of article 2, is linked in the briefing document that you received, so you can have a look at it there. This work provides greater clarity on article 2 generally, and its value has already been recognised by our courts. Alyson will talk much more about those later.

The commissions, as a dedicated mechanism, have been given powers and responsibilities to ensure that the UK Government meet their article 2 commitments. That role includes monitoring, supervising and enforcing the implementation of the commitment, providing advice to government on legislation and policy, undertaking research and, more importantly, providing legal advice and assistance to individuals and raising awareness generally. Significantly, the UK Government have made a commitment to ensure that Northern Ireland law will keep pace with any future changes that the EU make to the EU equality laws set out in annex 1, including keeping pace with EU Court of Justice case law in this area. We have already identified some of the forthcoming EU law that will fall within the scope of that keeping pace commitment, including the EU directives on binding standards for equality bodies and the EU pay transparency directive.

The Committee should note that the commitment is important to people in Northern Ireland. Our latest public awareness survey shows that three quarters of respondents indicated that the Government's commitment to protecting those equality and human rights protections after Brexit was important to them. Worryingly, however, over half of respondents — 53% — were concerned that their equality and human rights had already been reduced due to Brexit.

The Northern Ireland Executive and the Assembly cannot act in a way that is incompatible with article 2. Consideration of article 2 compliance at the earliest stage of policy and legislative development is vital for the effective implementation of article 2. Therefore, the Committee has a really important and vital scrutiny role. As the Committee takes forward its scrutiny work on draft legislation and key strategies, we ask that it gives detailed consideration to their compliance with article 2 of the Windsor framework.

The Executive Office has a leadership role to play in that regard. Article 2 needs to be systemically embedded into the legislative and policy-making processes of Northern Ireland Departments. We welcome the work that the Executive Office has already undertaken in this area in providing awareness-raising, guidance and training for officials across the Civil Service. It is important that that work is continued and built on, and we recommend that the Committee maintains active oversight of the important work undertaken by the Executive Office.

The Stormont brake mechanism has been introduced to further address the democratic deficit. It gives MLAs, in certain circumstances, the power to object to the application of amended EU laws. That mechanism applies to goods and trade and not to the keeping pace commitment under article 2. However, we stress that we need to be vigilant because there may be unintended consequences that would impact on equality and human rights in Northern Ireland. An example of that is the EU accessibility act, which impacts on accessibility standards for disabled people. It is important, therefore, that equality and human rights considerations are built into all key stages of the Stormont brake mechanism, and the Windsor Framework Democratic Scrutiny Committee should engage with the commissions and other stakeholders to seek their views on those matters.

We have been working to provide expert advice to government, and our most recent annual report, published last July, makes it clear that there are significant and evolving risks to equality and human rights post-Brexit. We have set out in detail what, we consider, needs to be done to address those risks. We look forward to a response to our recommendations from the UK Government and the Executive Office.

We have also commissioned independent research, which provides an important evidential baseline to move forward with. We recently published research on the impact of Brexit on minority, ethnic and migrant people; the impact of Brexit on women; and the impact of the loss of EU funding. We have developed a series of policy recommendations arising from that research to secure meaningful changes for equality groups here.

There is also an all-island dimension to our work. We work with the Irish Human Rights and Equality Commission (IHREC) regarding rights and equality issues that are within the scope of article 2 and have an island-of-Ireland dimension. That is because the Belfast/Good Friday Agreement sets out a broad expectation that there will be equivalence of rights and protections across the island. There are already gaps in the equality and rights provisions in Northern Ireland, as you are probably well aware, including on issues such as age regarding goods, facilities and services (GFS), race and disability law reform and gender pay reporting.

Northern Ireland is increasingly falling behind the level of protection that is afforded to citizens across the rest of the UK and in Ireland. To align with best practice and strengthen rights and protections and, at the same time, avoid an increasing divergence of rights, we call on the Northern Ireland Executive to voluntarily align with changes to EU laws where they strengthen the protections and reflect best practice. We have worked with the Irish Human Rights and Equality Commission to develop research and policy recommendations in that area.

The Executive Office has a really important role to play in addressing the gaps. That role includes promoting equality and social inclusion through the adoption of new equality legislation or, indeed, encouraging other Departments to address gaps in equality legislation. We ask that the Committee maintain active oversight of that important work by the Executive Office.

The UK Government's commitment in article 2 of the Windsor framework is important and really relevant in the scrutiny work of the Committee. I reassure you that the commissions take these powers and responsibilities very seriously, and we will continue to work together to robustly hold the UK Government to their article 2 commitment.

I now pass to Alyson.

Ms Alyson Kilpatrick (Northern Ireland Human Rights Commission): Thank you for inviting us. We very much appreciate the opportunity to come here and discuss our work and to hear about what interests and concerns you, if there is anything; I suspect that there is.

I will echo some of the points that were made by Geraldine. Article 2 of the Windsor framework is an important but limited protection against the slippage of human rights and equality standards to which the UK was already committed. It was designed to and does provide a degree of stability and reassurance at a time of upheaval and consternation. We have not passed that period yet. That is particularly helpful if the discourse about rights is contentious — sadly, it still is — and when standards, as Geraldine mentioned and will probably say a little more about later, lag behind those in neighbouring jurisdictions. We welcomed the Windsor framework and remain encouraged by it. It is, however, a novel and complex provision, and it has required and continues to demand significant analysis. I am delighted to say that we have two of the best people whom I can think of helping us with that. Without that intense analysis, we could not have begun to clarify what it really means, and we certainly could not help policymakers and legislators, which is probably one of our main concerns.

Before I highlight some recent developments, I want to make the point, in case it is lost, that the Windsor framework is not a substitute for a bill of rights. It serves a different purpose and falls short of what was contemplated for a bill of rights.

We — when I say "we", I mean both of our commissions throughout — have been really busy since article 2 was introduced. First and foremost, we had to map the parameters of article 2. We needed to know what we were dealing with, what it could achieve and its scope and limitations. I have found it really difficult and challenging to apply — Éilís and Roisin do it with a degree of dexterity that I do not have — because you have to have in your mind and read across several different texts. You then have to apply those in specific contexts and, in particular, factual scenarios, which is not easy. We have used our resources to try to achieve that clarity and expertise in-house. We have been assisted by round-table discussions with a range of relevant experts, and we have commissioned academic research and independent expert legal opinion, which has been really useful. In December 2022, we published our first working paper on the scope of article 2. That has stood us in really good stead ever since. It is a robust but measured view of the nature and extent of the "No diminution" commitment, and it really helped us to focus the rest of our work. In that paper, it was recognised that various aspects would require clarification by the courts, so that is what we have been doing for the past two years. Judgements are starting to come through.

The first key question on judicial interpretation was about the personal scope of article 2; in other words, to whom is the protection owed, and how do they enjoy that protection? The second is about

the scope of the rights covered by article 2, given that they must derive from the relevant chapter of the Belfast/Good Friday Agreement. As everyone in the room knows, they were deliberately vague in their description. Once you answer those questions, you have to determine the scope of the European Union law that continues to set the minimum standards below which the law in Northern Ireland cannot fall. We have been undertaking research ever since. I think that each piece of research has ended up being at least 100 pages. It is complex and involved, but we are getting there. I think that we know where we are going and what the courts are going to do.

I will give you a brief overview of what some of the courts have said so far. This is a little bit self-congratulatory, but, reassuringly, they have confirmed key elements of our analysis from the outset and in that 2022 paper. Some of those cases are subject to appeal, and there are more in the pipeline, so we cannot be too complacent. I will start with the May 2023 appeal, which was by the Society for the Protection of the Unborn Child (SPUC). In that case, the court adopted a six-point test, the substance of which is pretty much the same as or certainly very similar to our five-point test. In that case, the Court of Appeal said that it had drawn particular assistance from both commissions' written submissions and working paper. That was enormously pleasing, because it told us that all of the work that we had put in had been really fruitful. In October 2023, the High Court held that asylum seekers and refugees are within the personal scope of article 2. That was in the *Angesom* case, which some of you may have looked at already. Both commissions intervened in that case. That was important because it made it clear that the rights were not dependent on status and applied to all people who happened to be in Northern Ireland. The court identified certain measures of EU asylum law that bound the UK prior to Brexit and held that they continued to set minimum standards in Northern Ireland. The judgement also confirmed the continuing relevance of the Charter of Fundamental Rights of the European Union, and it might be for a later session to get into more of the detail of that. The court rejected the suggestion that the rights in the relevant chapter of the agreement were frozen in time or limited to the political context of 1998. That was really important, so that we knew, again, the range of rights that we were talking about and that they were not limited to those who had been affected by a conflict.

Most recently, the High Court considered that again in *Dillon*, which was the judicial review of the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023, in which both commissions intervened. I am sure that members will know, because we have not been quiet about it, that the Human Rights Commission has grave concerns about the article 2 European Convention on Human Rights (ECHR) compliance of the Act and its lawfulness under the Human Rights Act 1998. We have advised that it fails to comply with the European Convention on Human Rights and is simply not capable of being made compliant.

For today's purposes, though, I will focus on the application of article 2 of the Windsor framework to the legacy Act. Consistent, again, with our analysis, the court adopted what it described as a generous and purposive approach to interpreting article 2 of the Windsor framework; in other words, reading it in the spirit in which it was intended. Referring to the commitment to civil rights in the Belfast/Good Friday Agreement, the court said that a narrow definition of civil rights would undermine aspects of article 2 of the Windsor framework and held that the fundamental rights of victims were encompassed with the notion of civil rights. That clarity was really important. The court held that those rights included the right to life, obviously; the right to be free from torture, cruel, inhuman or degrading treatment; and the right to access a court, among other things.

The court also held that, if domestic legislation is found to be in breach of article 2 of the Windsor framework, that law should be disapplied. On the question about remedy for breach, we always thought that such legislation should be disapplied as a direct result of article 4 of the UK-EU withdrawal agreement, which is an international treaty, because the UK undertook to ensure that domestic courts would set aside domestic legal provisions if they were incompatible with that treaty. While there will be an argument on appeal about disapplication, we do not see that there is any way of interpreting that other than using the express word, which was "disapplication". The UK Parliament democratically gave effect to that commitment by incorporating the entire treaty into domestic law under section 7A of the European Union (Withdrawal) Act 2018.

There is an ongoing case concerning the Illegal Migration Act 2023 that will look at some of the issues. The Human Rights Commission advised the UK Government of its opinion that there were numerous breaches of human rights standards at the heart of the Illegal Migration Act. That advice was not accepted, so we have used our power to bring a challenge in our own name. As Geraldine said, we do that sparingly and only as a measure of last resort. Our challenge covers a range of grounds but includes our contention that the Act is in breach of article 2 of the Windsor framework. That is because it reduces rights below the minimum standards required by EU asylum directives, which bound the UK

before Brexit and are within the scope of article 2. Until we are proven wrong, we think that that is a clear interpretation. The case was heard in January, and we are waiting for the judgement. We are expecting it soon. I thought that we might have had it by now.

Let me finish with a few short general remarks about where we are. Courts, helpfully, set the parameters, but there is a lot more to be decided. We are intent on playing our part in that and assisting the court in challenging where necessary. The commissions will continue to inform the discourse together and separately, not least through our research programmes. Possibly the greatest challenge is that, like any major change initiative, article 2 requires a complete rewiring of policy- and legislation-making procedures as well as sustained leadership. One of the problems that we have identified is simply an oversight that it is there. We are all getting used to it, so that is understandable. We respectfully encourage the Committee to make regular enquiries about systemic change as well as requesting detail of article 2 considerations as part of your scrutiny role.

We have a slightly strange set-up in that we are accountable to Westminster, but, obviously, we work for the benefit of Northern Ireland and we consider it a great privilege to be back before you at this evidence session. Many of the issues that we have been working on are devolved and are therefore directly relevant to the Committee, but there are also matters that are not devolved. We will touch on all the areas in which we are engaged. We are grateful to the officials in the Executive Office who have assisted in the development of the treaty monitoring group, which will be really useful for everyone involved. We are also delighted — sorry if I appear sycophantic — that you are putting meaningful consideration of human rights at the heart of the making of policy and legislation, and that is certainly what, we would say, article 2 requires you to do. We will keep a lookout to make sure that everyone is doing that.

We look forward to returning to the Committee, maybe with more detail, if you indicate to us what you are particularly interested in or concerned with. We can answer anything in writing as well after the session. Thank you very much for hearing us so quickly after resuming your duties.

The Chairperson (Ms Bradshaw): Thank you, ladies. Thank you for submitting the briefings in advance; they are always helpful.

I will start with you, Geraldine. As part of your contribution, you talked about keeping pace and said that we have fallen behind the Republic of Ireland and Great Britain. Will you elaborate a little on that and outline what we as an Assembly and an Executive could do to bring things up?

Ms McGahey: Cast your mind back to 1998. Looking round the table, there are probably some who were not even there then. We might well have been ahead of Ireland in the equality provisions that we had in our legislation at that time, but, as equality rights and protections have become a devolved matter for the Assembly, nothing has really changed except on foot of EU directives and EU law, so we view the keeping pace commitment as really important.

Across the UK, Northern Ireland lags behind on a number of equality provisions. For example, there is no protection against discrimination on the basis of your age, and we have a legislative deficit in race relations and disability. We have no gender pay reporting — the gap reporting — such as they have in GB. While that might have been contained in the Employment Act (Northern Ireland) 2016, the particular article was never enacted, so we are starting behind the eight ball. We view the keeping pace commitment that the Government have made as being really important to Northern Ireland. We deal with it by working closely with the EU, the Northern Ireland Office (NIO) etc to keep an eye out for proposed amendments to the legislation and then lobbying and issuing guidance to government, advocating that those areas be addressed in Northern Ireland. They do not always accept our recommendations, but, as Alyson and I have said, we strategically choose the cases that we will take forward on the basis of their importance. There are a couple that I mentioned: the binding EU directives for equality bodies and the EU pay transparency directive. We believe that those are the first two that are coming down the tracks that really need to be addressed so that we keep pace, because doing so is a fundamental requirement. Do you want to add anything, Roisin?

Ms Roisin Mallon (Equality Commission for Northern Ireland): Yes. As Geraldine said, there is an obligation on the UK Government to dynamically align with EU changes to the annex 1 equality directives. They must do that; it is a legal requirement that they keep pace with any changes by the EU to the annex 1 equality directives. Geraldine mentioned two examples on which the commission has clearly put it forward that the UK Government must align. That relates to the proposed directives on binding standards for equality bodies, which, we understand, will likely shortly be passed by the

European Commission and European Parliament, and the other one is the pay transparency directive, which has already been passed and is due to be transposed by member states in 2026. Our advice to government has been that Northern Ireland should align with that directive and put the pay transparency directive into Northern Ireland by that date.

To elaborate on what Geraldine has said, the other element relates to voluntary alignment. That is when the UK Government are not required to but it would be good practice to strengthen rights here as a result of emerging EU law. Examples of that are the work-life balance directive, which has not totally been reflected in Northern Ireland domestic law to date. Another really important example is the EU accessibility act. It has already been passed. It is due to be transposed by 2025 and is about increasing the accessibility of products and services for older people and disabled people. It will make a huge difference. It will have to be put into place in Ireland. In fact, Ireland has already taken steps to bring it into force, but we are not aware of any plans across the UK to introduce that legislation here. There are significant implications for older people and disabled people if those requirements are not transposed into Northern Ireland law.

The Chairperson (Ms Bradshaw): I just have a follow-up question, and then I will come to Alyson.

It sounds like there is a lot of work from Brexit. What is happening with regard to the resources and support that you are receiving from the Executive Office?

Ms McGahey: There is a close working relationship with the Executive Office, and we are indebted to the officials for the cooperation that they have given to both the Equality Commission and the Human Rights Commission. The resources that are supplied to our organisations actually come through from Treasury, and the Executive Office manages those on our behalf as our sponsor Department, whereas NIO deals directly with the Human Rights Commission. They are adequate at the moment. We submit a business case for our resources on a two-year programme, and we hope that that level of commitment will be sustained because, without it, there is a lot of work that needs to be done that we could not do. Our resources, along with the Equality Commission, have been cut by about 28% to 30% over the last number of years. There is a lot of work that we should be doing that we simply cannot do because of the resources. We will be keeping the pressure on Treasury to make sure that those resources are maintained, but we would welcome the support of this Committee in future if we should need it.

The Chairperson (Ms Bradshaw): Thank you.

Alyson, I have just one question for you. You mentioned the bill of rights. I know you came when Emma was chairing the Ad Hoc Committee. Can you elaborate a bit on how we, as an Assembly, should pick that issue up again?

Ms Kilpatrick: The danger with the Windsor framework is that people thought that we now had the additional protection because we had something here that they did not have in GB, for example. That is not how it works. There is additional protection here because there are particular circumstances, but the additional protection relates only to the things that could not have happened if we were still in the EU. The bill of rights would be specific to the additional things that Northern Ireland has needed because of the conflict but not necessarily related just to that. We can see from how the courts interpret it that the Belfast/Good Friday Agreement was not just about conflict issues; it was about how to make sure that we never went back to conflict by securing the rights of everyone in the territory. We do not see that as any substitute, and, in any event, the Windsor framework is limited. Lots of rights do not come within Windsor framework article 2 because they are not enshrined in the Belfast/Good Friday Agreement. It is precisely those things that the bill of rights was supposed to cure. We would definitely encourage you to take it up again and, if a further conversation needs to be had about the content of the bill of rights, further explanation about how it would work or people's concerns, we are happy to do that.

The Chairperson (Ms Bradshaw): Thank you. I am conscious of time, so I will go to the Deputy Chair.

Ms Egan: Thank you, everybody, for coming today. I wanted to ask if you could elaborate a bit more. You talked about the areas where, you feel, there has been divergence on equality and human rights. You also mentioned that, when it comes to cases that you take in your own name, you do not do that lightly. Can you explain what considerations go into that before you consider taking a case?

Ms McGahey: We have a remit to provide legal assistance and advice to individuals who want to assert their rights but, more importantly, where we seek to intervene in legal action, we consider the significance of the item and the extent to which failure to intervene would potentially lead to a breach of the commitments that the Government have already made. We have limited resources, so we try to use them to their maximum potential. On the cases that we have intervened in so far, we have been clear that it is within the scope of our remit as the Equality Commission or the Human Rights Commission to do so. You will note that the Illegal Migration Act deals with one of the Human Rights Commission's bread-and-butter issues, so it made an intervention. Whilst we support it, we are not part of that intervention process. We are monitoring it, giving advice and trying to make sure that, where we can contribute, we do so.

The legacy Act is of such import to Northern Ireland as a whole, and the costs of it are likely to be high. We fully expect that it will go to the Supreme Court. Both commissions intervening on separate issues has provided a way of making sure that our resources are spread a little better and are not all coming from one pot. Again, it is down to the significance of the breach. This is novel legislation. It is about ensuring that we support the courts by providing them with the information we have on the basis of our remit and the research that we have carried out to date, to ensure that there is a consistent interpretation of it. At the end of the day, a decision on whether there has been a breach can be made only by the courts. We are at the early stages of trying to make sure that there is a clear interpretation and that the case law becomes embedded in not just our work but that of all Departments.

Ms Kilpatrick: Do you want me to add something on the own-name case?

Ms Egan: If you have anything to add, please do.

Ms Kilpatrick: I think that we are the only ones who have done it, certainly in the last few years.

We have criteria by which we judge and deal with issues. Some cases arise, in a similar way to the ECNI, when people present with an issue. Others are identified by us, because we have an ongoing duty to monitor, review, advise etc. We always prefer to advise, to assist and be constructive. Sometimes, our advice is either not taken or not taken in a constructive manner. Sometimes, we have to enforce the powers that were expressly given to us. In fact, the legislation was amended recently to make sure that we could have independence in bringing cases in our own name. The significance of that was not overestimated.

We also have to consider whether we can add something to it. We do not go in just because we can. Usually, we will intervene in a case that has already been brought, but sometimes that is fraught with difficulty and it is much better to bring a case in our name. That is rare, but we do it when we have to. The Illegal Migration Act is one such case.

Ms Egan: Your intervention in that Act is a positive step forward.

Ms Sheerin: Thanks to you all for the presentation and for the paper that you provided prior to the meeting, which I found helpful.

First, I associate myself with your remarks about a bill of rights, and I concur with the Chair on that. Obviously, she, Carál and I sat on that Committee and were involved in that work. We would like to see that being progressed. I believe that the bulk of the work there is done, and obviously it is an outstanding commitment from 1998.

I should probably declare an interest, given that I am the only member of this Committee who also sits on the Windsor Framework Democratic Scrutiny Committee. You outlined, in the paper and verbally today, your concerns around the risk of the Stormont brake impinging on minority communities in the North by blocking them from accessing rights that will be implemented, going forward, through the EU. That is a concern that I have. Sitting on that Committee, I have thought about that a lot.

One of the examples that come to mind is the issue of mercury in amalgam, which has been publicly discussed. That issue is going to raise its head, and we will, potentially, do an inquiry into the EU's banning of that. That is a concern for local dentists because of the cost implications. That group of people are in dire straits because of Tory austerity for the past 13 years. That is why the industry is in the place that it is in. The implications of that for the general population are the associated health risks. That should be the focus, as opposed to just the optics, which the Stormont brake is really about. I would appreciate your thoughts on that, if you have looked at it.

I know that you have made specific reference to your role as the "No diminution" level relating to Brexit, but one of the things that always strike me is the massive loss of funds when we left the EU. As a rural rep, I talk about it all the time. In rural areas, the loss of the rural development programme (RDP) and single farm payments has real-life implications for people and disproportionately impacts on women and minority communities, particularly in rural areas, who were always the first to benefit from a lot of those schemes. I am thinking of community groups, nurseries and all the other centres in rural areas that were able to benefit from that funding and have not had any opportunity to avail themselves of any replacement. Are you looking at that? Can you give me your thoughts?

Ms McGahey: I will start on that, if I may. We had research undertaken on the very issue of the loss of EU funding. That involved consultation and engagement with a whole range of stakeholders, looking at the funding that they had been getting from EU sources and how that would be supplemented. We made a number of recommendations on foot of that, but, regardless of all that, the outcome has been that you are right: many groups — women's groups, the disability sector and farming communities — have all suffered as a result. If the truth be known, in Northern Ireland, funding was drawn down through those programmes over many years, whereas the funding for similar types of projects might have been provided through local government in GB. We are the only jurisdiction where the allocation of that funding is not being delivered locally but rather through a Westminster group. We have called on the Secretary of State on two or, potentially, three occasions to ensure that the Department for Levelling Up, Housing and Communities is designated under section 75, so that it can demonstrate that it applies the equality principle to its decision-making processes. The Northern Ireland Act 1998 requires that any public authority that delivers services in Northern Ireland should be designated. We still have not got to the bottom of that.

The way in which the funding was delivered — its lateness and the impact that it had on organisations — has been regrettable. Many of those organisations are still finding that they will have to curtail their services or, indeed, plan to make further staff redundant. It is an ongoing issue. Our research paper made a number of recommendations, and they are still very much live. You will find those in our annual report.

On the issue of the Stormont brake, I will give you an example. Roisin referred to it as well: the EU accessibility act. While it may initially and primarily deal with the manufacturing of lifts, disability access to them and access for older people, the issue is that, whilst the Windsor Framework Democratic Scrutiny Committee has a role whereby it can apply the Stormont brake, it needs to be able to demonstrate that it has adequately considered it, because the UK Government, in receipt of such a notice, will ask and monitor whether you have actually considered all the issues and what the appropriate advice is. That is why we have recommended that there should be ongoing engagement with equality and human rights stakeholders, because there is always the potential for an unforeseen consequence.

Ms Sheerin: Yes.

Ms McGahey: Alyson, do you want to add anything?

Ms Kilpatrick: Maybe, and then I will let Éilis show how smart she is on that very complicated and specific question. The annex 1 equality directives are excluded from the Stormont brake, so that is OK in relation to changes, but what we have identified is that it is unlikely that additions — new equality provisions — will be. They will be subject to the cross-community applicability motion, and that is going to impede new equality and human rights directives further down the line.

The Stormont brake also applies to what we sometimes dismiss as "just the trade bits", which is some of what we are talking about — the annex 2 stuff. As Geraldine has said, we have found that quite a number of those have human rights and equality implications, such as with lifts, which is something that I would not have thought of before. However, it is perfectly obvious when you think of it. Also, as you were saying, there are implications for access to fundamentals for medical or dental treatment or whatever. I think we are concerned that it is too qualified now: am I right? Do you want to take over, Éilis?

Ms Éilis Haughey (Northern Ireland Human Rights Commission): I would add simply that, in its exercise of its obligations around providing a report and advice and looking at the implications of using the Stormont brake, were the Windsor Framework Democratic Scrutiny Committee to exercise its role in such a way as to make sure that the equality and human rights implications were looked at — you

were talking about public health implications in terms of amalgam, for example, that could connect into some of those rights — that can be part of the broader consideration that informs the decision on whether the Stormont brake should be applied, because that is one of the impacts on the community, rather than just —. The risk could be that it is a trade-focused analysis. That is very much where the commissions would like to be of assistance, of course, and encourage the Committee to engage fully with civic stakeholders, including us, to make sure that that report is as well informed as possible and that the wide range of implications do not get overlooked in favour of trade.

Ms Mallon: I will pick up on the first question about the loss of farm payments. We have recently published research on the impact of Brexit on women in Northern Ireland, and this was one of the issues that were picked up in that research report. Concerns were raised by those whom the researchers engaged with in terms of the implications of the loss of that funding. It is very valuable research, and the Equality Commission will be taking forward its own recommendations arising out of that research shortly, following engagement with women. I just wanted to say that that was one of the issues that were raised in that report.

Ms Sheerin: Thank you.

Mr Delargy: Thank you very much for your presentation: I really appreciated it. To be honest, you have already answered a lot of the questions that I had. My first question, Alyson, had been on Connie's point around the legal challenge and the threshold for you to reach that, but that has been answered in detail. I have just one point of clarification around that. I appreciate that this probably changes in each case, but is there an indicative timeline for that, or are there any steps that you look at along that process?

Again, Geraldine, you have already answered most of my points already, but —.

Ms McGahey: That was my plan. *[Laughter.]*

Mr Delargy: It was around the 53% as well. Anecdotally, and from speaking to different groups and sectors, we are all aware, from our constituencies and across the board, of the challenges that people are facing, particularly those in minority and under-represented communities. I am curious about that 53% and whether there is a more specific breakdown within it around where the challenges have arisen, or the specific areas that people have spoken about. You have already touched on that in detail, so I would appreciate hearing whether there is any more detail on that.

The Chairperson (Ms Bradshaw): We will go to you first, Alyson.

Ms Kilpatrick: We usually have to act very quickly, but there is a process involved, because we are an organisation; it is not just one person. We are spending public money, so we have to have commissioners approve the sign-off for any spending and every new item of spending. If we go to the High Court or the Court of Appeal, we have to go back and make a proper case for funding.

Judicial reviews have to happen very quickly anyway, and they can be really tricky. Sometimes, that means that it costs us more, because we have to pay counsel to advise us very quickly and to turn around the papers. What I would say is that we only go by what the law provides. We review and advise on what the law requires; it is never to do with our opinion about what is necessary. In some of those cases, for example, around illegal migration, we are talking about people who currently will be subject to these provisions or may be subject to detention without judicial oversight. There are all sorts of things like that, so we have to move very quickly. The length of time that cases take is often outside of our control. The courts are getting very fast, and they are putting us into order and making us move much more quickly than before. It is becoming more effective and efficient. Does that answer your question?

Mr Delargy: Absolutely. You had already given all the detail in response to Connie, and it was just to get that information on the timeline. That is 100%. It is really useful. Thank you.

Ms Kilpatrick: We would probably appreciate having a bit longer to respond to things, but that is balanced out by the fact that judicial review is normally about an infringement to people's rights, so you need to move fast.

Ms McGahey: We have undertaken awareness surveys twice now, and we are getting ready to go out with our third one. It is about tracking people's views over time. Last year, the Irish Human Rights and Equality Commission did the same survey, so that we could track both directions. That figure of people who believed that their rights had already been impacted rose slightly from the first year to the second. Roisin is the person who is over that survey and the nature of the questions that we ask. Do you want to add to that, Roisin?

Ms Mallon: As Geraldine says, this is an annual survey that we have done and are now going to repeat so that we get a benchmark since we first did it to see what people's concerns are and, as Geraldine said, their awareness of the commission, our role and their rights under this. What has been really revealing about loss of rights and people's concerns about that has come through in our research. It has provided in-depth analysis of concerns about loss of rights. As we mentioned, we have just published research on the impact of Brexit on women. Some of the concerns about loss of rights from women were around fear of loss of employment rights, for example, as a result of Brexit. That came over quite strongly, as well as fear of loss of rights in accessing healthcare. That was another issue that came through. As Geraldine mentioned at the start, we researched into the impact of Brexit on minority ethnic people and migrant people here. Again, there were difficulties in accessing services, entitlements to healthcare and other services as a result of changes that came in under the EU settlement scheme (EUSS) and difficulties with accessing that. Those are the types of issues that have provided some in-depth analysis on what people's concerns are here on loss of rights.

Ms McGahey: Let me add one point to that. You will note, from some debate that there has been in the media of late, that people from an ethnic minority background have experienced difficulty on occasion in accessing services, particularly in the likes of health, but it also impacts on policing as well. It is largely anecdotal at this time, and it is an area which perhaps we need to look at in more detail. There seems to be an assumption made by some service providers, specifically in health, that the status of people who come and look for healthcare may not be clear. They are being asked to provide proof of that every time they approach a hospital or a health provider in any context — GP, dentist, whatever. Ethnic minority people interpret that as a direct result of Brexit.

I told you that the research papers that we have produced to date were an evidential baseline. The repeat of those research exercises will show clearly whether those fears are well founded and whether Brexit has been a cause of that. It is not necessarily a breach of their rights and equality protections but how service providers are dealing with them, which is a consequence of Brexit but not something that we can deal with necessarily under article 2.

Mr Delargy: That is really useful, thank you. You talked about going into more detail in another presentation. That is a huge area that it would be really useful to explore. Thank you all very much.

The Chairperson (Ms Bradshaw): I wonder whether you can send us copies of those reports.

Ms McGahey: Absolutely.

The Chairperson (Ms Bradshaw): That would be useful.

Ms McLaughlin: You have talked about us falling behind and how we have not made as much progress on rights since 1998. In your paper, you indicate that there is real concern about the divergence of rights between North and South. Are the structures there to prevent and explore that divergence of rights? Are the right structures in place for us to examine that? It is clear that that gap could widen significantly in the not-too-distant future really, because we are in the early stages of the Windsor framework and its article 2, but already you can see that clear water is emerging in relation to rights. Are the structures right?

Ms McGahey: The structures are right for the time being. It is like everything else: the proof of the pudding is in the eating. We are providing advice, guidance and recommendations to Westminster and to the Executive. We also made representation to the Oireachtas Committee in Dublin. It is about keeping everybody alert to the changes that need to be made.

The reality is that between even Northern Ireland and GB, there is a gap in legislation and a gap in protections. The Equality Commission — I can only speak for it — has been lobbying for many years on the need for legislative reform and the increased protections that are needed in Northern Ireland. The legislation is down to the UK Government and yourselves. The reality now is that we have the

additional challenge process where we can escalate the matter through the joint working group, the Specialised Committee and the Joint Committee itself in terms of the UK Government not maintaining their commitment.

For me, and probably for Alyson as well, some of the important issues in relation to divergence of rights will be about frontier workers. At the moment, there are people who access health care on a cross-border basis. Maybe Alyson or Éilis want to talk more about that because that is an area of significant concern.

Ms Kilpatrick: We can certainly talk about health. We have a paper on that, and it might be worth coming back to talk about that just to get across all our concerns.

The structures probably are there. What is not there is the resource behind those structures to make the structures work. There are all sorts of North/South and east-west dimensions to this. The Belfast/Good Friday Agreement has a North/South dimension, which influences how you interpret article 2 of the Windsor framework when looking at the Belfast/Good Friday Agreement. That is already there, but it depends on all the commissions being well funded for each of them to do their job and then get together to discuss the divergence.

We work with IHREC, and we have the Joint Committee, but it would be inaccurate to say that that is working successfully. There are not enough meetings, and there just is not the capacity. We would like to see more capacity in the structures, but I cannot think of any additional structures necessarily. Like all things, the stuff can be there but it is whether it is being used properly.

Ms McLaughlin: It is particularly important. I represent a border community, so the rights of workers and right of access are extremely important, and the all-island equality of rights.

Ms Kilpatrick: We have some terrific research papers on frontier workers that we can send to you. We have more coming, and also in relation to health, on exactly that issue: people working and living *[Inaudible.]*

Ms McGahey: Education as well.

Ms McLaughlin: We talked about education this morning at the Economy Committee. There are rights in all of this.

That is probably taking us on to the second thing that I want to ask about. Alyson, you talked about legislation. We have to be really careful when developing legislation that we proof it on the basis of article 2. How do you suggest that that is done in a detailed way across all Departments?

Ms Kilpatrick: One has been conducted, I think, by this —. Am I right about that? The violence against women and girls strategy.

Ms McGahey: Yes. An impact assessment was carried out by TEO officials, examining how the strategy is in compliance with the article 2 commitments. Another strategy went through that was not as detailed or had no impact assessment. What we have been advocating for — not for just the Northern Ireland Executive and Assembly but for the UK Government as well — is that Bills coming through have an explanatory memorandum that explains in detail how article 2 has been considered and whether the draft legislation is impacted by those commitments.

That is the starting point, and that is a process that really needs to be embedded both here and in London. TEO officials and NIO officials have been working really closely with both organisations, with Éilis and Roisin, on how that might actually be done. Some of the Committees in Westminster have been very proactive in helping the officers to raise those concerns.

The Chairperson (Ms Bradshaw): I am sorry, I will have to move this along. Three more members have questions.

Mr Harvey: What ongoing engagement do you have with the Equality and Human Rights Commission (EHRC) in England and the Scottish Human Rights Commission (SHRC) on areas of mutual interest? Is there a UK-wide joint commission structure or mechanism?

Ms McGahey: I will start on this, and Alyson can add to it. Our remits are split in two, and others may have a slightly different approach. We do meet regularly. We have a four-jurisdictions meeting that takes place once or twice a year, and we are in regular contact. On the island of Ireland, our work with the Irish Human Rights and Equality Commission is a little more frequent, but there are open channels. We coordinate our work and support each other, across the UK, on the work that is being undertaken so that we can learn from each other and share what is relevant. The Human Rights Commission has a stronger remit again.

Ms Kilpatrick: One of the difficulties about working together is that our legislation is different, so we are founded on a very different statutory framework, using very different principles. Northern Ireland had the first human rights commission, and the others are similar to it and are based on the way that we do it here but are not exactly the same. For example, the Scottish Human Rights Commission does not have the ability to take cases in its own name. There are quite significant differences. We work together as much as we can to avoid duplication, but sometimes it is simply not possible to agree. Human rights commissions can have different views and interpret legislation differently, and that is exactly how it should be. In Northern Ireland, we have different concerns, including the Windsor framework now. There is perhaps more divergence between the commissions, but it is not because we do not talk to each other and we do not try to work together. There can be healthy disagreement on some things.

Mr Harvey: As you said, you are set up differently and there are different needs. Can I ask another question, Chair?

The Chairperson (Ms Bradshaw): Sure. Go ahead.

Mr Harvey: You said that you are accountable to Westminster. How often do you have to report back and who do you report back to?

Ms Kilpatrick: It is an ongoing thing, really. The Government comes up with the money, so they pay for us all. They give us a budget, which we then have to decide how to spend. Commissioners decide on the strategic priorities and then the money has to be found for those.

On reporting back, we do an annual report. We write regularly to the relevant Ministers and meet the NIO. It is only fair to say that less has been required of us on reporting back than I would have expected, if that is not too cryptic. I sometimes wish that there was more interest in what we are doing and, maybe, in response to what we initiate. The legislative policy framework in GB is so different at the minute that, sometimes, we can be forgotten about and sometimes can be seen as an outlier that is a bit of a troublemaker, which we take some pride in, not to be too flippant. We do try to account to them, and they certainly make us account for every penny that we spend.

Ms McGahey: Equality is a devolved matter, so, at the Equality Commission, our reporting mechanism is through TEO and through this Committee. Both organisations report to Westminster on our dedicated mechanism unit (DMU) work annually through our annual report.

Ms Haughey: One of the unusual features, which we appreciate, of our statutory functions in relation to article 2 of the Windsor framework is that, written into the statute, we can request a written response from the Secretary of State to our annual report. Similarly, with our annual report last year, we requested a written report from the Executive Office, although, obviously, with no Executive sitting at that time, that was problematic. We still await a response from both sides to last year's annual report. Unfortunately, we did not receive that as we concluded this year's annual report, which is due to be published in June.

The Chairperson (Ms Bradshaw): Have you passed the point when that can be incorporated into the report?

Ms Haughey: This year's report will be a report of developments up until the end of this financial year at the end of March, and, as of 31 March, we had not received a response from either the Secretary of State or TEO.

Ms Kilpatrick: Can I take the opportunity to make one really important point about the independence of the Human Rights Commission? We get allocated a budget, and it must be for us to decide how to spend it. We should not be going to ask for money for cases that may be against the Government, for

example. That is often misunderstood, and I think that our independence is not always valued as it should be. The centrality of that independence is really key because, if we are not independent, we are not achieving very much at all. That is where the reporting can be uncomfortable at times. We are not answerable to them, but we are accountable.

Mr Kingston: Thank you for your attendance and for the papers and the answers so far.

As you will be aware, the context for this is that the Northern Ireland protocol was totally unacceptable to unionists in the Assembly, and, speaking for Harry and myself, our party took a different position from that of the other parties on the Committee that wanted rigorous implementation of the protocol. Our party took a stand and twice brought about legislative changes through the Windsor framework and the 'Safeguarding the Union' document.

On the desire to have an open border between Northern Ireland and the Republic of Ireland, we have said throughout that that could not be at the cost of our place within the UK internal market. In terms of EU laws applying for manufacturing in Northern Ireland, we have said that if we have access to the EU market, that cannot be at the expense of our place within the UK internal market, so this is a follow-on from the whole issue of EU directives. It is our position that it should be for the Assembly and the Executive to determine what changes to domestic law follow on from updates to EU directives and decide whether they represent enhancements for local workers. We think that Northern Ireland and the UK already have world-leading employment protections, but those constantly need to be updated and enhanced. As I say, our focus will be on protecting our place within the UK market and preventing unnecessary divergence that would damage that place.

You may have touched on this already, but, in your work, do you give due recognition to and do you recognise the importance of recognising Northern Ireland's place as an integral part of the United Kingdom?

Ms McGahey: Absolutely, and we welcome the fact that the Windsor framework sought to address the democratic deficit, because, from the very outset, we were always aware that, by virtue of leaving the EU, the ability for the Northern Ireland voice and the UK voice to be heard in terms of legislation was removed. However, I have to be clear that the Stormont brake does not apply to the article 2 commitment, because our equality legislation so far has been based on EU directives, and that was recognised by the Government. Their willingness to engage with article 2 commitments way back whenever the withdrawal agreement was first being negotiated was based on the commitments within the Belfast/Good Friday Agreement, and that is why it is limited very strictly to those six directives. The Stormont brake applies to the goods provision — annex 2 — but, as we said earlier, there is potential for some of those elements to impact on equality legislation. There is a divergence of equality rights and, indeed, human rights; there is a gap already between Northern Ireland and GB. We seek to close those gaps, and we seek to make our protections here in Northern Ireland the best they can be.

In the past, we have talked about a single equality Act. We would not necessarily want just to replicate what happens in GB; we would want the weaknesses in that to be addressed and the gaps between it and best practice to be closed, so that we are world leading. This is about making sure that everyone in our society is treated with dignity and respect at all levels, no matter who they are, on an east-west, North/South basis. We very much welcome the efforts that were introduced in the Windsor framework to address that democratic deficit.

The Chairperson (Ms Bradshaw): Alyson, do you have anything to add?

Ms Kilpatrick: As far as human rights protections are concerned, the state is the UK. Devolution has meant that there are differences in the UK, but the withdrawal treaty and the legislation that followed were democratic, UK-wide decisions. They were legislated upon by MPs from here and from across GB, so it is taken care of in that way. Northern Ireland has its say. No other region has an ability to block, because Parliament did not intend it to have that ability. That could have been agreed in the relevant legislation, but it was not. There will be divergence on lots of issues. It is a UK state issue, but the UK state has determined, with participation from Northern Ireland, that this is how it will conduct itself in relation to human rights standards.

Mr Kingston: The point is that the Assembly must have the right to examine EU directives and challenge them if we feel that they will be damaging. We will see how that works out.

Ms Kilpatrick: Of course, the Stormont brake can apply to annex 2. You can look at that, but the time to do that might have been when the legislation relating to the Stormont brake was going through. That has concluded now, as far as we are concerned, because somebody else decided how that would work. It was not for us to decide, but it is for us to interpret.

Ms Ní Chuilín: There is a lot in that, so the papers that will follow will be really appreciated.

My concern about the applicability motion and all that comes with it is that there is an awful habit here of screening things out. That was before Brexit and the Windsor framework. When it comes to equality and human rights, in my opinion, the screening exercise is used to avoid doing a full equality impact assessment (EQIA).

On the impact of Brexit and, certainly, the divergence of rights, you mentioned women, disabilities, employment, healthcare and other issues. You also mentioned the status of asylum seekers and refugees. One of the biggest issues, particularly in relation to what you have just said — I need clarification on it, if you have it — is this: the British Home Office, through Mears Group, provides accommodation for asylum seekers. Once their status has been confirmed, they have seven days in which to leave. They then go onto a housing waiting list, which, systemically, has been a disgrace. Most asylum seekers and refugees prefer to live in a community with others. First, what will happen to those people? Secondly, we have section 75 and all that, but, yet and all, the inequalities are becoming greater rather than less; what else can we do on that? Our fear is that the divergence of rights is an excuse not to do rights, just as it is, and was, not to have a bill of rights. Some people in this place do not do rights. What do we do in circumstances like that?

Ms Kilpatrick: On Mears accommodation, getting refugees into dispersal accommodation and all those issues, one of the reasons why we were so determined to challenge the Illegal Migration Act 2023 is that it is not just about deporting people or removing them to somewhere else but about creating an acceptance that those people do not qualify for the same rights as those of us who were born here or who might have moved here and have settled status. That is what is so damaging about the Act. It says that those people do not have the benefit of rights. The minute that you start picking out groups who do not have the benefit of rights —

Ms Ní Chuilín: Alyson, sorry to interrupt you, but those people have seven days to get out. The legislation for eviction here allows longer than that, so, already, there is a clear divergence of rights.

Ms Kilpatrick: It gets really difficult when you talk about the divergence of rights between groups of people as opposed to divergence within the UK.

Ms Ní Chuilín: Fair enough.

Ms Kilpatrick: I always say something that I should not in these sessions, but one of the reasons behind Brexit was to control borders and to distinguish certain groups from others. We take a very strong view that that was the wrong thing to do, but that is a clear direction of travel. Asylum seekers and refugees have fallen foul of that more than anybody else, at this stage, hence our involvement in the challenge of the Illegal Migration Act. We are the only ones challenging the Act, and it is only happening in Northern Ireland because of the Windsor framework, which adds to it.

It all comes down to the idea that, "Those people are not entitled to the same as the rest of us", and it goes right through to the standard of accommodation that they might be moved to, whether they can get a private tenancy, whether they are entitled to certain things, whether the kids can go to school, whether they can get a GP. This is the first stage in that: trying to establish rights, as we have in some other cases. Asylum seekers and refugees have the same rights as everybody else because they are human rights, not status rights or residency rights. We are going to have to tick this off as we go through, and that is probably going to be the first big challenge. That will help in relation to all of the other stuff —

Ms Ní Chuilín: Brilliant.

Ms Kilpatrick: — because all other rights should follow on from that.

Ms McGahey: May I just add that, outside of Brexit and the article 2 commitments, each of the public authorities has an obligation to demonstrate its application of the equality duty — equality principle —

and it does that through section 75. I know that it has got a really bad name; it is seen by many as being a bureaucratic process, but we have —

Ms Ní Chuilín: People who do not want to do rights are doing it down.

Ms McGahey: Yes, I accept what you say, but, in reality, each of the public bodies should be applying and demonstrating to their Ministers and Committees that they have considered the implications of equality under section 75. We are more than happy to come back to talk to you about that another time, because it is important that we have a reinvigoration of what section 75 is about. We need to get away from it being looked at as a bureaucratic process. It is about putting all people at the heart of our policy in Northern Ireland plc, and that is separate from the Brexit issue.

The Chairperson (Ms Bradshaw): We intend to come back to those issues but from a different angle.

Ladies, thank you for that meaty session. I appreciate your time.